

## **Part N**

### **Tax collection rules**

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### *Introductory provisions*

#### **NA 1 What this Part does**

This Part provides the rules to require persons to pay to the Commissioner interim and terminal payments of tax and other amounts payable under the Inland Revenue Acts. The Part provides for—

- (a) a person's general withholding and payment obligations; and
- (b) the payment of terminal tax (subpart NB); and
- (c) the payment of provisional tax (subpart NC); and
- (d) the payment of the following employment-related taxes (subpart ND):
  - (i) PAYE;
  - (ii) FBT;
  - (iii) ESCT; and
- (e) the payment of tax on resident passive income (subpart NE); and
- (f) the payment of tax on non-resident passive income (subpart NF); and
- (g) payments for foreign dividends (subpart NG); and
- (h) the treatment of refunds by the Commissioner (subpart NM); and
- (i) the use of intermediaries in the tax system (subpart NP).

Defined in this Act: amount, Commissioner, employer's superannuation contribution, FBT, foreign dividend, non-resident passive income, PAYE, provisional tax, resident passive income, terminal tax

Origin: new

#### **NA 2 Amounts treated as income tax**

The provisions of this Act and the Tax Administration Act 1994 apply in relation to an amount that a person is liable to pay under this Part as if the amount were income tax imposed under section BB 1 (Imposition of income tax).

Defined in this Act: amount, income tax, this Act

Origin: 2004 No 35 ss MB 12, NC 2(1), ND 1W(2), NE 7(2), NF 13, NG 17(2), NH 3(7)

### *Payment and withholding obligations*

#### **NA 3 Terminal tax obligations**

A person liable under section BC 9 (Satisfaction of income tax liability) to pay an amount of terminal tax for a tax year must pay the amount to the Commissioner under subpart NB (Terminal tax) by the due date.

Defined in this Act: amount, tax year, terminal tax

Origin: 2004 No 35 ss BC 9, MC 1

#### **NA 4 Provisional tax obligations**

A person liable to pay provisional tax must pay instalments on account of their income tax liability for a tax year to the Commissioner under subpart NC (Provisional tax) by the due dates.

Defined in this Act: Commissioner, income tax liability, provisional tax

Origin: 2004 No 35 ss BB 2(3), MB 4

#### **NA 5 Tax obligations for employment-related taxes**

A person who makes a payment or provides a benefit of 1 of the following kinds must either withhold and pay or pay the amount of tax for the payment or benefit to the Commissioner under subpart ND (Employment-related taxes) by the due dates:

- (a) a PAYE payment:
- (b) a fringe benefit:
- (c) an employer's superannuation contribution.

Defined in this Act: amount of tax, Commissioner, employer's superannuation contribution, fringe benefit, PAYE payment

Origin: 2004 No 35 ss BE 1(1)-(3), NC 15

**NA 6 Withholding and payment obligations for passive income**

*Resident passive income*

- (1) A person who makes a payment of resident passive income must withhold and pay an amount of tax for the payment to the Commissioner under subpart NE (Tax on resident passive income) by the due dates.

*Non-resident passive income*

- (2) A person who makes a payment of non-resident passive income must withhold and pay an amount of tax for the payment to the Commissioner under subpart NF (Tax on non-resident passive income) by the due dates.

*Foreign dividends*

- (3) A company that receives a foreign dividend must make a payment for the dividend to the Commissioner under subpart NG (Payments for foreign dividends) by the due date.

Defined in this Act: amount of tax, Commissioner, foreign dividend, non-resident passive income, resident passive income

Origin: 2004 No 35 ss BE 1(4)-(6), NF 4, NG 11, NH 3

**NA 7 Payment of tax by public authorities**

A public authority that pays an amount under this Act acts within its capacity, whether further appropriation is made or not.

Defined in this Act: amount, public authority, this Act

Origin: 2004 No 35 s MH 1

**NA 8 Liability of persons receiving payments or benefits**

Despite sections NA 5 and NA 6, a person receiving or deriving a payment or benefit in relation to which an amount of tax must be withheld or paid may be liable under this Part for payment of the tax.

Defined in this Act: amount of tax

Origin: 2004 No 35 ss NC 16, NE 2A, NF 3, NG 12

## **NA 9 Treatment of amounts withheld as received**

An amount withheld from a payment under this Part, unless a provision in this Part states otherwise,—

- (a) is treated as received at the time of payment by the person to whom the payment is made; and
- (b) is treated for the purposes of this Act as derived by the person at the same time and in the same way as they derive the payment from which the amount is withheld; and
- (c) includes a combined tax and earner-related payment.

Defined in this Act: amount, combined tax and earner-related payment, this Act

Origin: 2004 No 35 ss NC 19, NE 6, NF 12, NG 15

## **NA 10 When obligations not met**

### ***When this section applies***

- (1) This section applies when—
  - (a) a person liable to withhold an amount of tax for a PAYE payment, an employer's superannuation contribution, a payment of resident passive income, or a payment of non-resident passive income, does not withhold and pay the amount to the Commissioner; or
  - (b) a person liable to pay an amount of tax to the Commissioner for a fringe benefit does not pay the amount; or
  - (c) a person liable to make a payment for a foreign dividend does not pay the amount to the Commissioner.

### ***Debt payable to Commissioner***

- (2) The amount is a debt payable to the Commissioner.

### ***When payable***

- (3) The amount is due to be paid to the Commissioner on the relevant due date after the end date for the original liability set out in section NA 15.

### ***Premiums and levies***

- (4) The amount includes a combined tax and earner-related payment.

Defined in this Act: amount of tax, Commissioner, combined tax and earner-related payment, employer's superannuation contribution, foreign dividend, fringe benefit, non-resident passive income, PAYE payment, resident passive income

Origin: 2004 No 35 ss NC 5(2), NC 16, NC 20(1), ND 1, ND 1W(2), NE 5, NF 3, NF 4, NF 13, NG 12, NG 13



## **NA 11 Adjustment to correct errors: certain underpayments**

### *When this section applies*

- (1) This section applies when—
  - (a) a person (**payer**) is required to withhold and pay to the Commissioner an amount of tax for—
    - (i) a payment of resident passive income that is a payment of interest or a dividend having the nature of interest to another person (**payee**); or
    - (ii) a payment of non-resident passive income to the payee; and
  - (b) the payer, through an error, does not withhold some or all of the amount.

### *Amount withheld from later payment or recovered*

- (2) The payer may—
  - (a) subtract from a later payment to the payee an amount to correct the deficiency; or
  - (b) recover from the payee an amount to correct the deficiency.

### *Requirements when withholding from later payment*

- (3) For the purposes of subsection (2)(a),—
  - (a) the later payment must be a payment of interest, a dividend having the nature of interest, or a payment of non-resident passive income, as applicable; and
  - (b) the payment must be made in the same tax year in which the first payment is made.

Defined in this Act: amount of tax, Commissioner, dividend having the nature of interest, interest, non-resident passive income, resident passive income, tax year

Origin: 2004 No 35 ss NF 6(1), NG 16A(1)

## **NA 12 Adjustment to correct errors: certain excess amounts**

### *When this section applies*

- (1) This section applies when a person (**payer**) is required to withhold and pay to the Commissioner an amount of tax for a payment of resident passive income or non-resident passive income to another person (**payee**) and through an error, they withhold an amount (**excess amount**) that is more than the amount required under this Part.

***Refunding excess amount of resident passive income***

- (2) For a payment of resident passive income, the payer may pay the excess amount to the payee at any time before the end of the tax year in which the amount of tax is withheld if,—
- (a) for a payment of interest or a dividend having the nature of interest, an RWT withholding certificate relating to the amount has either not been sent out or has been returned and cancelled:
  - (b) for a payment of a dividend other than a dividend having the nature of interest, a shareholder dividend statement relating to the amount has either not been sent out for the purposes of section 29 of the Tax Administration Act 1994 or has been returned and cancelled:
  - (c) for a taxable Maori authority distribution, a notice relating to the amount has either not been given to a member of the Maori authority under section 31 of the Tax Administration Act 1994 or has been returned and cancelled.

***Treatment of amount***

- (3) For the purposes of this section, when the payer pays the excess amount under subsection (2), the amount is no longer treated as an amount of tax for resident passive income.

***Amendments to notices***

- (4) If the RWT withholding certificate, shareholder dividend statement, or notice referred to in subsection (2)(c) has been returned or cancelled, the payer must provide the payee with an amended certificate, statement, or notice, as applicable.

***Commissioner refunding overpayment***

- (5) If the excess amount has been paid to the Commissioner, the Commissioner must refund the amount of the overpayment to—
- (a) the payee; or
  - (b) the payer, if they have not subtracted the amount under subsection (6)(a) from a later payment made in relation to the payee.

***Payer's options***

- (6) For the purposes of subsection (5), if the excess amount has been refunded to the payee, the payer may—
- (a) subtract the amount from an amount paid later to the Commissioner under section NE 21 or NF 13 (which relate to resident passive income and non-resident passive income), noting the action in the statement required under section 50 of the Tax Administration Act 1994; or
  - (b) apply for a refund of the amount under section NM 8 (Overpaid tax for resident passive income or non-resident passive income).

***Overpayment through payee's act or omission***

- (7) Despite subsections (2) and (5), if the excess amount arises from an act or omission by the payee, the payer must pay the full amount withheld to the Commissioner and is not liable to repay the excess amount to the payee or another person.

Defined in this Act: amount of tax, Commissioner, dividend having the nature of interest, interest, non-resident passive income, notice, resident passive income, shareholder dividend statement, tax year, taxable Maori authority distribution

Origin: 2004 No 35 ss NF 6(2)-(4), NF 7(1), (2), NG 16A(2), (3)

***Payment dates***

**NA 13 Payment dates for terminal tax**

***When payment due***

- (1) A person must pay their terminal tax for a tax year by—
- (a) the 7th day of the month in schedule 13, part A, column G or H (Dates for payment of provisional tax and terminal tax) for the person's corresponding income year; and
  - (b) the 15th day of January, if December is the month in schedule 13, part A, column G or H, for the person's corresponding income year.

***Columns G and H***

- (2) For the purposes of subsection (1), the month in schedule 13, part A, column G or H, for the person's corresponding income year is—
- (a) the month in column H, if—
    - (i) the person's return of income for the income year was linked to a tax agent; or
    - (ii) the person has asked for an income statement under section 80C of the Tax Administration Act 1994 or has been sent an income statement under section 80D of that Act, and the Commissioner has been notified that a tax agent will respond to the income statement sent to the person; or
  - (b) the month in column G in any other case.

Defined in this Act: Commissioner, corresponding income year, income statement, provisional tax, return of income, tax agent, tax year, terminal tax

Origin: 2004 No 35 s MC 1

#### **NA 14 Payment dates for provisional tax**

A person must pay their provisional tax for a tax year under section NC 9 (Provisional tax payable in instalments) according to the relevant cycle of instalments set out in schedule 13, part A, columns A to F (Dates for payment of provisional tax and terminal tax).

Defined in this Act: provisional tax, tax year

Origin: 2004 No 35 s MB 5A

#### **NA 15 Payment dates for interim and other tax payments**

##### ***When this section applies***

- (1) This section applies when a person is required—
- (a) to withhold under section NA 5 an amount of tax for a payment and pay it to the Commissioner; or
  - (b) to withhold and pay, or pay under section NA 6 an amount to the Commissioner for a payment received or benefit provided by them.

##### ***When payment due***

- (2) The person must pay the amount to the Commissioner by the following dates:
- (a) when the period for which the payment is made is shorter than a month, by the 5th day after the relevant end date;
  - (b) when the period for which the payment is made is a month or a period that is longer than a month, by the 20th day after the relevant end date;
  - (c) when the period for which the payment is made is a tax year or income year or both, or the last quarter of a year, by 31 May;
  - (d) for a close company that pays FBT on a tax year basis, by terminal tax date.

##### ***Relevant end dates***

- (3) In this section, an **end date** means 1 of the following, as applicable:
- (a) for PAYE and ESCT payable for 2 payment periods in a month under section ND 4(1)(b) or ND 66(3) (which set out the basis for payment of PAYE and ESCT),—
    - (i) for the first payment period, the 15th day of the month; and
    - (ii) for the second payment period, the last day of the month:

- (b) for PAYE, RWT, and NRWT payable monthly under section ND 4(1)(a), NE 21(2) and (7), or NF 13(3) (which set out the basis for payment of PAYE, RWT and NRWT), as applicable, the last day of a month:
- (c) for FBT and FDP payable quarterly under sections ND 59 to ND 62 or NG 3 (which set out the basis for payment of FBT and FDP), as applicable, the last day of a quarter; and
- (d) for RWT and NRWT payable by instalment under section NE 21(3) or NF 13(2) (which set out the basis for payment of RWT and NRWT)—
  - (i) for the first instalment, the last day of September; and
  - (ii) for the second instalment, the last day of March.

***When payment due in December***

- (4) Despite subsection (2), for the purposes of this section and the payment of PAYE and ESCT to the Commissioner, if the month is December, the payment is due by 15 January.

***Discrepancies***

- (5) Subsection (6)—
  - (a) applies when a discrepancy arises in the information that a person is required to provide under—
    - (i) for resident passive income, section 51(1), (4), or (5) of the Tax Administration Act 1994:
    - (ii) for non-resident passive income, section 49(1) or (2) of that Act:
  - (b) does not apply to an unpaid amount that the Commissioner assesses for a particular return period.

***Payment dates***

- (6) If an amount of tax for resident passive income or non-resident passive income remains unpaid, the person required to withhold the amount must pay it to the Commissioner no later than—
  - (a) 20 April after the end of the tax year in relation to information provided under section 49(1) or 51(1) of the Tax Administration Act 1994:
  - (b) the last date for providing the information, in relation to information provided under section 49(2) or 51(4) or (5) of that Act.

***Non-resident passive income***

- (7) The Commissioner may extend the time for payment of an amount of tax for non-resident passive income.

Defined in this Act: amount of tax, close company, Commissioner, ESCT, FBT, FDP, income year, non-resident passive income, NRWT, PAYE, quarter, resident passive income, RWT, tax year, terminal tax

Origin: 2004 No 35 ss NC 15, ND 9, ND 10, ND 13, ND 14, NE 4, NF 4, NG 11, NH 3

## **NA 16 Payment date when taxable activity ends**

### ***When this section applies***

- (1) This section applies for a month when a registered person is required to withhold and pay under section NA 6 an amount of tax for a payment of resident passive income or non-resident passive income and the person—
  - (a) stops carrying on a taxable activity; or
  - (b) no longer carries on a taxable activity in New Zealand.

### ***Payment to Commissioner***

- (2) The person must pay to the Commissioner by the 20th day of the next month the total amount of tax for all payments relating to the taxable activity to the extent to which an amount of tax remains unpaid.

### ***Exemption continuing***

- (3) This section does not apply for resident passive income if the person continues to hold a certificate of exemption.

Defined in this Act: amount of tax, certificate of exemption, Commissioner, non-resident passive income, registered person, resident passive income, taxable activity

Origin: 2004 No 35 ss NF 4(5), NG 11(4)

## **NA 17 Payment date when certificate of exemption expires**

### ***When this section applies***

- (1) This section applies in relation to a month of a tax year when a certificate of exemption of a person expires.

### ***Payment to Commissioner***

- (2) The person must pay to the Commissioner by the 20th day of the next month after the certificate of exemption expires the total amount of tax withheld by them to the extent to which the amount remains unpaid.

### ***Exclusion***

- (3) This section does not apply if the person continues to be required to withhold an amount of tax for resident passive income through the carrying on of a taxable activity.

Defined in this Act: amount of tax, certificate of exemption, Commissioner, resident passive income, tax year, taxable activity

Origin: 2004 No 35 s NF 4(6)

## **NA 18 Payment date for emigrating companies**

### *When this section applies*

- (1) This section applies to an emigrating company that is treated under section FCB 2 (Emigrating company treated as paying distribution to shareholders) as paying a distribution to a shareholder.

### *Payment*

- (2) On or before the date that is 3 months after the emigration date, the company must pay to the Commissioner all amounts of tax for resident passive income or non-resident passive income withheld in relation to the distribution.

Defined in this Act: amount of tax, Commissioner, distribution, emigrating company, non-resident passive income, pay, resident passive income, shareholder

Origin: 2004 No 35 ss NF 4(6B), NG 11(4B)

## *Refunds*

## **NA 19 Refunds of excess amounts or when amounts mistakenly paid**

### *When this section applies*

- (1) This section applies for a person (**payer**) and the withholding of an amount of tax that is more than the amount required under this Part (**excess amount**) or an amount mistakenly paid, when—
  - (a) the payer withholds and pays to the Commissioner an excess amount for the following payments:
    - (i) a payment of resident passive income:
    - (ii) a payment of non-resident passive income:
  - (b) the payer makes a payment for a foreign dividend of an excess amount:
  - (c) a PAYE intermediary pays an amount of tax for an employer through an error, or when the payment is not funded by the employer, as described in section NM 7 (Refunds to PAYE intermediaries):
  - (d) the result of a calculation for FBT made by an employer under sections ND 51 to ND 54 (which relate to attributed benefits and non-attributed benefits) is negative.

### *Refunds*

- (2) The Commissioner must refund the excess amount to the payer.

Defined in this Act: amount of tax, Commissioner, employer, FBT, foreign dividend, non-resident passive income, PAYE intermediary, resident passive income

Origin: 2004 No 35 ss NBA 7, ND 10(4)(a), NF 7, NG 16, NH 4

### *Amalgamations*

#### **NA 20 Amalgamation of companies**

If an amalgamating company ends its existence on a qualifying amalgamation, an unsatisfied obligation that the amalgamating company has at the time of the amalgamation to withhold and pay an amount of tax to the Commissioner under this Part is treated as an obligation of the amalgamated company.

Defined in this Act: amalgamated company, amalgamating company, amount of tax, Commissioner, qualifying amalgamation

Origin: 2004 No 35 ss NC 15(7), ND 13(8), ND 14(8), NH 4(8)

### *Regulations*

#### **NA 21 Regulations**

##### *When this section applies*

- (1) This section applies for the purposes of the PAYE rules and the FBT rules.

##### *PAYE payments*

- (2) The Governor-General may make regulations by Order in Council to—
  - (a) declare a particular payment, or particular class of payments, to be included in, or excluded from, the definition of—
    - (i) salary or wages; or
    - (ii) extra pay; or
    - (iii) schedular payment:
  - (b) provide further rules in relation to schedular payments as set out in subsection (3):
  - (c) provide that the regulations do not apply to a particular person, or class or persons, on notification from the Commissioner.



*Schedular payments*

- (3) For the purposes of subsection (1)(b), regulations may be made under this Act or the Tax Administration Act 1994 in relation to schedular payments for the following purposes:
- (a) to set the amount of tax for a particular schedular payment or particular class of schedular payment:
  - (b) to provide that the Commissioner may, if a person asks, set the amount of tax or rate of tax for a schedular payment to the person:
  - (c) to provide that the amount of tax for a particular schedular payment, class of schedular payment, or schedular payments under a particular threshold is the person's income tax liability in relation to the relevant kind of income:
  - (d) to provide that an amount of tax must be withheld and paid despite any assignment or charge.

*Employment-related loans*

- (4) The Governor-General may make regulations by Order in Council to declare the rate of interest applying to employment-related loans.

*Application to quarters*

- (5) When regulations referred to in subsection (4) are made, they apply to quarters starting from a date at least 1 month after the date the regulations were made. Regulations that reduce the rate of interest from the prescribed rate of interest at the time, if made at least 1 month before the quarter ends, may apply for that quarter.

Defined in this Act: amount of tax, employment-related loan, extra pay, FBT rules, income tax liability, interest, notify, PAYE rules, quarter, salary or wages, schedular payment

Origin: 2004 No 35 ss NC 21, ND 1F

*Application of other provisions*

**NA 22 Limits on application of other provisions for purposes of PAYE rules**

*When section NA 2 does not apply*

- (1) Section NA 2 does not apply—
- (a) to an amount of earner premium payable under section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992 or section 285 of the Accident Insurance Act 1998:
  - (b) to an amount of earner's levy payable under section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001:

- (c) for the purposes of sections 120KB to 120KE of the Tax Administration Act 1994.

***Combined tax and earner-related payments***

- (2) Sections 156 to 165 and 211 of the Tax Administration Act 1994 apply in relation to a combined tax and earner-related payment as if the payment were income tax.

***Amounts not separated***

- (3) For an amount of tax not withheld and paid to the Commissioner, the provisions listed in subsection (4) do not require—
  - (a) the separate identification of the amounts of a combined tax and earner-related payment that are attributable to—
    - (i) an amount of tax for a PAYE payment that an employer or PAYE intermediary is required to make under the PAYE rules; or
    - (ii) an amount that an employer must subtract under the sections referred to in subsection (1)(a) and (b).
  - (b) the bringing of separate proceedings or separate treatment for the collection, recovery, or imposition of penalties in relation to an amount of a combined tax and earner-related payment.

***Provisions***

- (4) The sections referred to in subsection (3) are—
  - (a) sections 156 to 165, 143, and 143A of the Tax Administration Act 1994;
  - (b) section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992;
  - (c) section 285 of the Accident Insurance Act 1998;
  - (d) section 221 of the Injury Prevention, Rehabilitation, and Compensation Act 2001.

Defined in this Act: amount, combined tax and earner-related payment, Commissioner, employer, PAYE intermediary, PAYE payment, PAYE rules

Origin: 2004 No 35 s NC 20

## **NA 23 Application of other provisions for purposes of ESCT rules and NRWT rules**

### ***References***

- (1) For the purposes of the ESCT rules and the NRWT rules, section GC 18 (Agreements not to make tax deductions to be void) and sections 167 and 169 of the Tax Administration Act 1994 apply, modified as necessary, as if—
  - (a) a reference to an amount of tax withheld were a reference to an amount of tax for an employer's superannuation contribution or non-resident passive income, as applicable:
  - (b) a reference to an employer were a reference to a person required to withhold and pay an amount of tax for an employer's superannuation contribution or non-resident passive income, as applicable:
  - (c) a reference to the PAYE rules were a reference to the ESCT rules or the NRWT rules.

### ***Exclusion***

- (2) Sections 121 and 122 of the Tax Administration Act 1994 do not apply to an amount of tax for an employer's superannuation contribution.

Defined in this Act: amount of tax, employer, employer's superannuation contribution, ESCT rules, non-resident passive income, NTWT rules, PAYE rules

Origin: 2004 No 35 ss NE 7, NG 17(1)

## **Subpart NB—Terminal tax**

### **Contents**

- NB 1 Payment of terminal tax
- NB 2 Income tax liability for non-filing taxpayers for non-resident passive income
- NB 3 Schedular income tax liability for filing taxpayers for non-resident passive income
- NB 4 Using refunds to satisfy tax liabilities

### **NB 1 Payment of terminal tax**

A person must pay their terminal tax for a tax year on the due date set out in section NA 3 (Terminal tax obligations).

Defined in this Act: tax year, terminal tax

Origin: 2004 No 35 s MC 1

### **NB 2 Income tax liability for non-filing taxpayers for non-resident passive income**

For the purposes of calculating a person's terminal tax under section BC 9 (Satisfaction of income tax liability), the income tax liability of a non-filing taxpayer who derives non-resident passive income is determined under section BC 1 (Non-filing and filing taxpayers).

Defined in this Act: income tax liability, non-filing taxpayer, non-resident passive income, terminal tax

Origin: 2004 No 35 s BC 1

### **NB 3 Schedular income tax liability for filing taxpayers for non-resident passive income**

#### *When this section applies*

- (1) This section applies for the purposes of calculating a filing taxpayer's terminal tax under section BC 9 (Payment of terminal tax).

#### *Calculating amount of liability*

- (2) The schedular income tax liability of the filing taxpayer under section BC 7 (Income tax liability of person with schedular income) for each class of non-resident passive income that is schedular income under paragraph (h) of the definition of **schedular income** is equal to an amount calculated using the formula—

amount of income x rate.

#### *Definition of item in formula*

- (3) In the formula, **rate** is the rate set out in sections NF 7 to NF 9, NF 12, and NF 14 (which relate to the calculation of amounts of tax for non-resident passive income) that applies to the class of non-resident passive income.

***No imputation credits***

- (4) If the non-filing taxpayer derives a dividend to which subsection (2) applies, they are not entitled to a credit under section LB 2 (Credit of tax for imputation credit) for an imputation credit attached to the dividend.

Defined in this Act: amount, dividend, filing taxpayer, imputation credit, non-filing taxpayer, non-resident passive income, schedular income, terminal tax

Origin: 2004 No 35 ss BC 7, NG 3

**NB 4 Using refunds to satisfy tax liabilities**

If a person is entitled to a refund of an amount of tax from the Commissioner, the amount may be applied under section NM 10 (Using refund to satisfy tax liability) to satisfy a liability that the person has under the Inland Revenue Acts.

Defined in this Act: amount of tax, Commissioner, Inland Revenue Acts

Origin: 2004 No 35 s MD 1(3), (3A)

## **Subpart NC—Provisional tax**

### **Contents**

#### *Introductory provisions*

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- NC 2 Provisional tax rules and their application
- NC 3 Who is required to pay provisional tax?
- NC 4 Choosing to pay provisional tax

#### *Calculating provisional tax liability*

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- NC 9 Provisional tax payable in instalments
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- NC 15 Choosing to use GST ratio
- NC 16 Who may use GST ratio?
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- NC 20 Calculating residual income tax in transitional years
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- NC 22 Calculating instalments in transitional years: standard method
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*When persons start or stop paying GST, or change taxable periods*

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*Treatment of groups of companies and amalgamated companies*

- NC 28 Provisional tax rules and consolidated groups
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- NC 33 Amalgamated companies: calculating residual income tax

*Attribution rule for services*

- NC 34 Attribution rule for services

*Credits*

- NC 35 Further income tax credited to provisional tax liability

*Disaster relief*

- NC 36 Persons affected by adverse events



### *Introductory provisions*

#### **NC 1 What this subpart does**

##### *When this subpart applies*

- (1) Sections NC 3 to NC 35 apply, for the purposes of the provisional tax rules, to provide—
  - (a) when a person is required to pay provisional tax:
  - (b) a person's provisional tax liability for a tax year, and the methods for calculating the amount payable for the tax year:
  - (c) the number of instalments of provisional tax and the instalment dates for a corresponding income year:
  - (d) how the amount of an instalment of provisional tax is determined:
  - (e) the payment of provisional tax in a transitional year:
  - (f) the application of the rules relating to use of money interest in Part 7 of the Tax Administration Act 1994, and late payment penalties and shortfall penalties in Part 9 of that Act.

##### *Instalment dates*

- (2) In this subpart, a reference to an instalment classified by the letters A to F is a reference to a date in the table in schedule 13, part A (Dates for payment of provisional tax and terminal tax) on which an instalment of provisional tax is payable for an income year corresponding to a tax year.

Defined in this Act: amount, corresponding income year, income tax, income year, instalment date, provisional tax, provisional tax rules, shortfall penalty, tax year, terminal tax, transitional year

Origin: 2004 No 35 s MB 1

#### **NC 2 Provisional tax rules and their application**

##### *Meaning*

- (1) The **provisional tax rules** means—
  - (a) section LD 6 (Allowance for provisional tax paid by agent); and
  - (b) section LD 7 (Provisional tax to be credited against income tax liability);  
and
  - (c) this subpart; and
  - (d) sections 15N to 15S, 119, 120K to 120N, 120OE, 139B and 139C, 173P to 173R of the Tax Administration Act 1994.

***Application***

- (2) The provisional tax rules apply to a person who is required or who chooses to pay provisional tax.

Defined in this Act: provisional tax, provisional tax rules

Origin: 2004 No 35 s OB 1 “provisional tax rules”

**NC 3 Who is required to pay provisional tax?**

***Threshold or election***

- (1) A person who is liable to pay provisional tax for a tax year is—
- (a) a person whose residual income tax for the tax year is more than \$2,500;  
or
  - (b) a person who chooses under section NC 4 to pay provisional tax.

***Exclusions***

- (2) Despite subsection (1), the following persons do not pay provisional tax:
- (a) a company that does not have a fixed establishment in New Zealand and is not treated as resident in New Zealand;
  - (b) a person referred to in section 33A(1) of the Tax Administration Act 1994;
  - (c) a non-resident contractor who has not been given a certificate of exemption by the Commissioner for the tax year.

***No obligation***

- (3) A person has no obligation to pay provisional tax for a tax year if their residual income tax for the preceding tax year is \$2,500 or less.

Defined in this Act: company, fixed establishment, New Zealand, non-resident, non-resident contractor, provisional tax, resident in New Zealand, residual income tax, tax year

Origin: 2004 No 35 s MB 2

**NC 4 Choosing to pay provisional tax**

***Election***

- (1) A person, when first providing a return of income for a tax year, may choose to pay provisional tax for the tax year if—
- (a) they have paid provisional tax of more than \$2,500 on or before—
    - (i) the date of instalment F for the corresponding income year; or
    - (ii) the final instalment date in a transitional year; and

- (b) they have, on the day on which the first payment of provisional tax is made for the tax year, a reasonable expectation that they are liable to pay provisional tax for the tax year, other than by this election.

***Exclusion***

- (2) This section does not apply to a person described in section NC 3(2).

Defined in this Act: corresponding income year, final instalment, instalment date, provisional tax, return of income, tax year, transitional year

Origin: 2004 No 35 s MB 3

***Calculating provisional tax liability***

**NC 5 Methods for calculating provisional tax liability**

***Choice of method***

- (1) A person liable to pay provisional tax must calculate the amount payable for a tax year using 1 of the methods described in subsections (2) to (7).

***Standard method: 5% uplift***

- (2) Under the standard method, the amount of provisional tax payable for the tax year is 105% of the person's residual income tax for the preceding tax year, determined under section NC 6. Subsection (3) overrides this subsection.

***Standard method: 10% uplift***

- (3) Despite subsection (2), the amount of provisional tax payable for the tax year is 110% of the person's residual income tax for the tax year before the preceding tax year if—
  - (a) they are required to provide a return of income for the preceding tax year; and
  - (b) the return is not due on or before the date on which the first payment of provisional tax for the tax year is required through the application of section 37 of the Tax Administration Act 1994, or an extension granted under that section; and
  - (c) they have not provided the return on or before that date; and
  - (d) the date is not the date of instalment F for the corresponding income year.

***Other methods: relationship with standard method***

- (4) Subsections (5) to (7) override subsections (2) and (3).

***Estimation method***

- (5) The person may estimate their provisional tax liability for the tax year under section NC 7.

***GST ratio method***

- (6) A person who is eligible under section NC 16 and not excluded by section NC 17 may choose to use a GST ratio under section NC 8 to determine their provisional tax liability for the tax year.

***Commissioner's determination***

- (7) If the Commissioner determines a person's provisional tax liability under section 119 of the Tax Administration Act 1994, the amount or liability is that last determined by the Commissioner and notified to the person at least 30 days before the instalment date. The 30-day requirement does not apply in a case to which section 119(1)(d) of that Act applies (which relates to an estimate of residual income tax that is not fair and reasonable).

***Life insurance business***

- (8) A person who carries on a business of providing life insurance and who is liable for income tax under the life insurance rules, must at the time they determine their provisional tax liability provide the Commissioner with details of the calculation of that liability. In particular, they must detail the extent to which the amount of provisional tax relates to the policyholder base.

Defined in this Act: amount, business, Commissioner, corresponding income year, GST ratio, income tax, instalment date, life insurance, life insurance rules, notify, policyholder base, provisional tax, qualifying event, residual income tax, return of income, tax year

Origin: 2004 No 35 s MB 4

**NC 6 Standard method**

***When this section applies***

- (1) This section applies to a person liable to pay provisional tax for the purposes of section NC 5(2) and (3) and the calculation of the amount of provisional tax payable for a tax year under the standard method.

***Assessment for preceding tax year***

- (2) The person's residual income tax for a tax year is based on their assessment for the preceding tax year unless the Commissioner has sent out a notice of assessment for the tax year at least 30 days before the relevant instalment date, in which case the amount of residual income tax is based on the Commissioner's assessment for the preceding tax year.

***Commissioner's assessment for preceding tax year***

- (3) The person's residual income tax is based on the Commissioner's assessment for the preceding tax year, whenever the assessment is made, if—

- (a) they are required under sections 33 and 37 of the Tax Administration Act 1994 to provide a return of income for the preceding tax year but have failed to do so by the relevant instalment date; or
- (b) they are not required under sections 33 and 37 of that Act to provide a return by the relevant instalment date, and subsections (2) and (4) do not apply.

***Residual income tax for preceding tax year***

- (4) The amount of provisional tax payable for a tax year is the amount of the person's residual income tax for the preceding tax year if—
  - (a) they are not required to provide a return of income for the preceding tax year; or
  - (b) their residual income tax for the tax year before the preceding tax year was \$2,500 or less, and they were not required to provide, and have not provided, a return of income for the tax year by the date of instalment F for the corresponding income year.

***Later increased assessment***

- (5) If the Commissioner's assessment of a person's income tax liability occurs after the payment date for an instalment of provisional tax and would result in an increase in the person's residual income tax for the preceding tax year, the residual income tax is treated for the purposes of the provisional tax rules as if it had not been increased.

***Transitional years and consolidated groups***

- (6) A person's residual income tax in a transitional year is calculated under section NC 20. For consolidated groups, the calculation is made under section NC 29.

Defined in this Act: amount, assessment, Commissioner, consolidated group, corresponding income year, income tax liability, instalment date, notice, provisional tax, residual income tax, return of income, tax year, transitional year

Origin: 2004 No 35 s MB 5

**NC 7 Estimation method**

***When this section applies***

- (1) This section applies to a person who is liable to pay provisional tax under section NC 5(5) and to the calculation of the amount of their provisional tax payable for a tax year under the estimation method.

***Fair and reasonable estimate***

- (2) On or before an instalment date, the person may make a fair and reasonable estimate of their residual income tax for the tax year by informing the

Commissioner of the estimate. The amount of provisional tax payable for a tax year is the amount of the estimated residual income tax.

***Revising estimates***

- (3) The person may choose to revise an estimate made under subsection (2) before an instalment date. The amount last estimated is the amount taken into account under section NC 5(5).

***Reasonable care in making and maintaining assessment***

- (4) A person who makes an estimate under subsection (2) must take reasonable care in making it, and must revise the estimate for the tax year if, at some time in the tax year, the amount estimated is no longer fair and reasonable.

***Estimation higher than provisional tax payable***

- (5) If a person's estimate is more than the provisional tax that is payable for the tax year, they are treated as having taken reasonable care in making the estimate.

***Changing calculation method from GST ratio***

- (6) If, under section NC 18(5), a person changes the way they determine the amount of provisional tax after the date of an instalment, they must estimate their residual income tax for the corresponding income year, and must pay provisional tax on whichever of instalment dates B, D, and F for their income year occur after 30 days from their last ratio instalment date.

***Disaster relief***

- (7) A person who is significantly affected by a self-assessed adverse event or qualifying event may make an estimate of their provisional tax under section NC 36, and that section overrides this section.

Defined in this Act: amount, Commissioner, corresponding income year, GST ratio, instalment date, provisional tax, qualifying event, ratio instalment date, residual income tax, self-assessed adverse event, tax year

Origin: 2004 No 35 s MB 6

**NC 8 GST ratio method**

***Using GST ratio***

- (1) A person liable to pay provisional tax who meets the requirements of sections NC 16 and is not excluded by section NC 17 may choose to use a GST ratio to determine the amount of provisional tax payable for a tax year.

***Meaning of GST ratio***

- (2) The person's **GST ratio** is the percentage figure that is obtained by dividing their residual income tax for the preceding tax year by their total taxable supplies for the corresponding income year. The amount of residual income tax and the amount of total taxable supplies are called **base amounts** for the purposes of this section.

***When amounts based on tax year before preceding tax year***

- (3) If a base amount for the preceding tax year or corresponding income year is not known, the GST ratio is the percentage based on the assessment for the tax year and corresponding income year that are immediately before the preceding tax year and corresponding income year.

***Commissioner's calculation***

- (4) The Commissioner must calculate a person's GST ratio, informing them by—
- (a) including the percentage figure on the person's pre-printed GST return form; or
  - (b) advising them in writing or by telephone; or
  - (c) some other means.

***Adjustment to GST ratio***

- (5) The Commissioner must adjust a person's GST ratio if a base amount is revised through, among other reasons,—
- (a) an assessment or an amended assessment of the person's income tax return for the preceding tax year; or
  - (b) a change in the value of the total taxable supplies for the corresponding income year; or
  - (c) the disposal of an asset to which section NC 19 applies.

***New GST ratio***

- (6) When subsection (5) applies, the Commissioner must inform the person of the new GST ratio. The new ratio applies in relation to the relevant instalment dates that occur 30 days after the date on which the person is informed.

***Transitional years***

- (7) If a person has paid instalments of provisional tax in a transitional year, for the tax year that follows the transitional year, for the purposes of this section and section NC 11, they must—
- (a) ignore the transitional year when determining their residual income tax or total taxable supplies; and
  - (b) base their determination of residual income tax and total taxable supplies on the tax year preceding the transitional year.

***Total taxable supplies***

- (8) In subsections (2), (5), and (7), and in sections NC 11, NC 19, and NC 31, **total taxable supplies**, for a person and a period, means the amount that is the total value of taxable supplies by the person for the period. The amount includes the GST charged on the supplies.

Defined in this Act: amount, assessment, base amount, Commissioner, corresponding income year, GST, GST ratio, instalment date, provisional tax, residual income tax, tax year, taxable supply, total taxable supplies, transitional year

Origin: 2004 No 35 s MB 7

### *Instalments of provisional tax*

#### **NC 9 Provisional tax payable in instalments**

##### *General principle*

- (1) For a person liable to pay provisional tax using the standard and estimation methods, the amount of the provisional tax liability must be spread evenly over the applicable number of instalments, so that equal amounts are paid on each instalment date. If the full amount is not divisible into exactly equal instalments, the final instalment carries the difference.

##### *Provisional tax payable in 3 instalments*

- (2) A person pays provisional tax in 3 instalments on the interest instalment dates for the tax year in the months set out in schedule 13, part A, columns B, D, and F (Dates for payment of provisional tax and terminal tax) for the person's corresponding income year. The amount of each instalment is calculated under section NC 10. Subsection (3) overrides this subsection.

##### *Exclusions*

- (3) Subsection (2) does not apply—
- (a) to a person liable to pay provisional tax who—
    - (i) pays GST on a 6-monthly basis; or
    - (ii) uses a GST ratio to determine the amount of provisional tax payable, or who changes their calculation method under section NC 18(5); or
    - (iii) changes the cycle of their taxable periods under section 15C of the Goods and Services Tax Act 1985:
  - (b) to a person with an initial provisional tax liability who—
    - (i) pays GST on a 6-monthly basis; or
    - (ii) pays GST on a monthly or 2-monthly basis, and starts a taxable activity after 30 days from the date of instalment B in their corresponding income year:
  - (c) to a person liable to pay provisional tax who has not provided a return of income for the preceding tax year, and whose residual income tax for the tax year immediately before the preceding tax year was \$2,500 or less:
  - (d) in a transitional year.



***Provisional tax when GST paid on 6-monthly basis***

- (4) A person liable to pay provisional tax who pays GST on a 6-monthly basis must pay provisional tax on the 2 instalment dates for the tax year in the months set out in schedule 13, part A, columns C and F for their corresponding income year. This subsection applies to a person with an initial provisional tax liability other than 1 who pays GST on a 6-monthly basis and starts a taxable activity within 30 days of the date of instalment C.

***Provisional tax determined using GST ratio***

- (5) A person liable to pay provisional tax who uses a GST ratio to determine the amount of provisional tax payable for a tax year, must pay provisional tax on the 6 ratio instalment dates in the months set out in schedule 13, part A, columns A to F for their corresponding income year. The amount of each instalment is calculated under section NC 11.

***Changing calculation method***

- (6) A person who is unable or decides not to use a GST ratio, changing their calculation method under section NC 18, must pay the provisional tax payable for the tax year on the relevant instalment dates under the replacement method. The amount of each instalment is calculated under section NC 7 or NC 10, as applicable.

***Changing cycle of taxable periods***

- (7) A person who changes the cycle of their taxable periods under section 15C of the Goods and Services Tax Act 1985 must pay provisional tax for the tax year on the instalment dates specified in section NC 27 after the change in taxable period takes effect. The amount of each instalment is calculated under section NC 10.

***Persons with initial provisional tax liability***

- (8) A person with an initial provisional tax liability who starts a taxable activity in a tax year in relation to which they pay GST must pay provisional tax for the tax year—
- (a) in 3 instalments under subsection (2) if they start a taxable activity at some time in the period that starts at the beginning of the corresponding income year and ends 30 days before the date of instalment B:
  - (b) in 2 instalments—
    - (i) in a case to which section NC 13 applies; or
    - (ii) if they start a taxable activity at some time in the period that starts at the beginning of the corresponding income year and ends 30 days before the date of instalment C:
  - (c) in 1 instalment in a case to which section NC 14 applies.

***Extension of time for return***

- (9) A person who has not provided a return of income for a preceding tax year and whose residual income tax for the tax year before the preceding tax year was

\$2,500 or less must pay provisional tax for the tax year on the instalment dates set out in section NC 13 or NC 14, as applicable.

***Transitional years***

- (10) In a transitional year, provisional tax is payable as set out in section NC 21 and schedule 13, part B (Months for payment under sections NC 9 and NC 22 to NC 25). The amount of each instalment is calculated under sections NC 22 to NC 24.

***Voluntary payments***

- (11) A person liable to pay provisional tax may pay an instalment under section NC 12 at any time.

Defined in this Act: amount, corresponding income year, GST, GST ratio, income year, initial provisional tax liability, instalment date, interest instalment date, provisional tax, ratio instalment date, residual income tax, return of income, tax year, taxable activity, taxable period, transitional year

Origin: 2004 No 35 s MB 8

TABLE N1  
Summary of instalment dates and calculation methods for provisional tax

Categories: ordinary	Variables	Method	Instalments	Instalment dates	Calculation	Interest, penalties
Standard NC 5(2), (3)		NC 6	3 — NC 9(2)	B, D, F	NC 10	120KE(1), (2)
Estimation NC 5(5)		NC 7	3 — NC 9(2)	B, D, F	NC 10	120KB
GST ratio NC 5(6)	1 month	NC 8	6 — NC 9(5)	A to F	NC 11	120KE(3), 139C
	2 month	NC 8	6 — NC 9(5)	A to F	NC 11(3)	120KE(3), 139C
GST 6-month NC 9(4)	standard	NC 6	2 — NC 9(4)	C and F	NC 11	120KE(1)
	estimation	NC 7	2 — NC 9(4)	C and F	NC 11	120KB
<b>Categories: exceptional</b>						
Persons with initial provisional tax liability		NC 6 or NC 7	NC 9(8), NC 13(3), NC 14(2)	D and F, or F as required	NC 10 (NC 13(4)), NC 10 (NC 14(3))	120KC
Transitional years		NC 20	NC 22 (NC 9(10))	B, D, F, as required	NC 22 - NC 24	120KC
Changing taxable period (or starting and stopping GST registration)		NC 27, 15C, 15E	NC 27 (NC 9(7))	B, D, F, or C, F as required	NC 26, NC 27	120KD
Changing calculation method		NC 18	NC 7(6), NC 9(6)	B, D, F, or C, F as required	NC 18	120KE (5) -(7)
Voluntary payments		NC 12				120E

Note: references in the last column are to sections of the Tax Administration Act 1994.

## NC 10 Calculating amount of instalment under standard and estimation methods

### *When this section applies*

- (1) This section applies for the purposes of—
  - (a) section NC 5(2), (3), and (5) (which relates to the calculation of a provisional tax liability); and
  - (b) section NC 9(2) and (6) (which relates to payment of instalments); and
  - (c) sections NC 13 and NC 14 (which relate to persons with an initial provisional tax liability and those with an extension of time for providing a return); and
  - (d) sections NC 26 and NC 27 (which relate to changes in taxable periods).

### *Calculation*

- (2) The amount of an instalment of provisional tax is calculated using the formula—

$$\frac{\text{residual income tax} \times \text{instalment number}}{\text{total instalments}} - \text{provisional tax.}$$

### *Definition of items in formula*

- (3) In the formula,—
  - (a) **residual income tax** is a person's residual income tax, as applicable—
    - (i) for the preceding tax year, uplifted by 5%; or
    - (ii) for the tax year immediately before the preceding tax year, uplifted by 10%; or
    - (iii) the amount estimated by them:
  - (b) **instalment number** is the number of the instalment for the tax year, whether first, second, or third:
  - (c) **total instalments** is the total number of instalments for the tax year:
  - (d) **provisional tax** is the amount of a person's provisional tax liabilities for the tax year to date.

### *Instalment amounts after change in balance date or taxable period*

- (4) If a change occurs to the balance date or cycle of a person's taxable periods, the calculation of the amount of an instalment is made under this section, applying the updated figures to the items in the formula.

Defined in this Act: amount, balance date, initial provisional tax liability, provisional tax, residual income tax, return of income, tax year, taxable period

## NC 11 Calculating amount of instalment using GST ratio

### *Calculation*

- (1) For a person who uses a GST ratio, the amount of provisional tax payable on an instalment date for a tax year is calculated using the formula—

$$\text{GST ratio for tax year} \quad \times \quad \text{total taxable supplies.}$$

### *Item in formula: total taxable supplies*

- (2) In the formula, **total taxable supplies** is the amount of the person's total taxable supplies in the taxable period that matches the instalment period.

### *Taxable supplies when person pays on monthly basis*

- (3) For the purposes of subsection (1), a person who pays GST on a 1-month cycle under section 15 of the Goods and Services Tax Act 1985 must apply the GST ratio to the sum of their taxable supplies in the current taxable period and the preceding taxable period, that is, the taxable supplies in the 2-month period matching the instalment period.

Defined in this Act: amount, GST, GST ratio, instalment date, provisional tax, tax year, taxable period, taxable supply

Origin: 2004 No 35 s MB 10

## NC 12 Voluntary payments

A person who is liable to pay provisional tax may at any time make a voluntary payment of an amount of provisional tax that—

- (a) relates to their income tax liability for a tax year in which they are not liable for provisional tax; or
- (b) is more than the provisional tax payable by them for the tax year; or
- (c) is more than the income tax payable by them for the tax year.

Defined in this Act: amount, income tax, income tax liability, provisional tax, tax year

Origin: 2004 No 35 s MB 12

## NC 13 Paying 2 instalments for tax year

### *Who this section applies to*

- (1) This section applies for a tax year to—
- (a) a person with an initial provisional tax liability whose first business day occurs in the period that starts 30 days before the date of instalment B and ends 30 days before the date of instalment D; or

- (b) a person liable to pay provisional tax whose return of income for the preceding tax year is provided in the period that starts on the date of instalment B and ends on the date of instalment D if—
- (i) they were required to provide a return for the preceding tax year but, under section 37 of the Tax Administration Act 1994 or an extension under that section, are not required to provide the return by the date of instalment B; and
  - (ii) their residual income tax for the tax year before the preceding tax year was \$2,500 or less.

***Exclusion***

- (2) Despite subsection (1), this section does not apply to a person liable to pay provisional tax who pays GST on a 6-monthly basis.

***When instalments are payable***

- (3) For the purposes of section NC 9(8)(b), the instalments are payable on the date of instalments D and F for the person’s corresponding income year.

***Formula for amount of instalment***

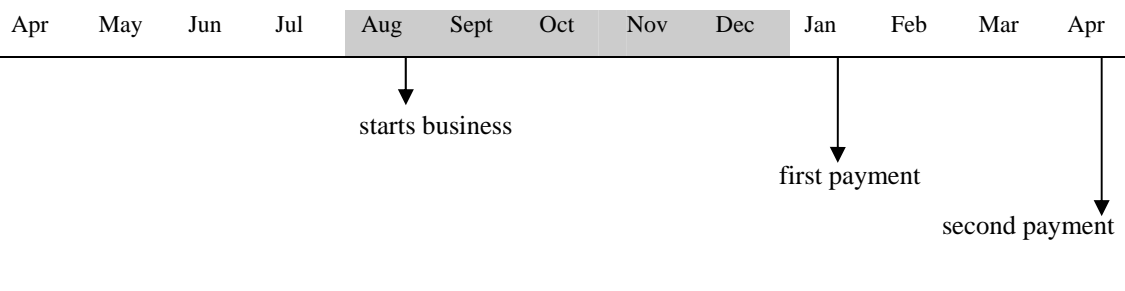
- (4) The amount of each instalment is calculated under section NC 10.

Defined in this Act: amount, corresponding income year, first business day, GST, initial provisional tax liability, residual income tax, return of income, tax year

Origin: 2004 No 35 s MB 13

**Reader’s notes:** example for section NC 13

Mr Red, who is not registered for GST, starts business on 20 August and has a March balance date. The first business day falls in the period that starts on 29 July (30 days before instalment B) and ends on 21 December (30 days before instalment D). Mr Red has 2 payments of provisional tax for the year, due on 20 January and 28 April.



## **NC 14 Paying 1 instalment for tax year**

### ***Who this section applies to***

- (1) This section applies for a tax year to—
  - (a) a person with an initial provisional tax liability whose first business day occurs in the period that starts 30 days before the date of instalment D and ends at the end of the corresponding income year; or
  - (b) a person liable to pay provisional tax whose return of income for the preceding tax year is not provided on or before the date of instalment D if—
    - (i) they were required to provide a return for the preceding tax year but, under section 37 of the Tax Administration Act 1994 or an extension under that section, are not required to provide the return by the date of instalment D; and
    - (ii) their residual income tax for the tax year before the preceding tax year was \$2,500 or less:
  - (c) a person who pays GST on a 6-monthly basis if—
    - (i) their first business day occurs in the period that starts 30 days before the date of instalment C and ends at the end of the corresponding income year; or
    - (ii) they meet the requirements of paragraph (b)(i) and (ii) as if the reference to instalment D in paragraph (b)(i) were a reference to instalment C.

### ***When instalment payable***

- (2) For the purposes of section NC 9(8)(c), the instalment is payable on the date of instalment F for the person's corresponding income year.

### ***Amount of instalment***

- (3) The amount of the instalment is calculated under section NC 10.

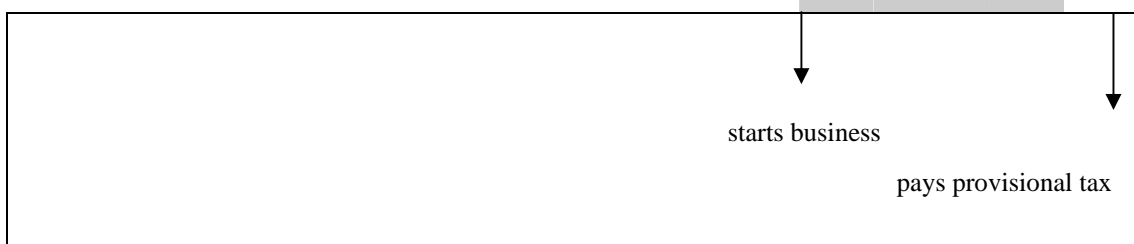
Defined in this Act: amount, corresponding income year, first business day, GST, initial provisional tax liability, provisional tax, residual income tax, return of income, tax year

Origin: 2004 No 35 s MB 14

**Reader’s notes:** example for section NC 14

Ms Orange, who is registered for GST on a 2-monthly basis, starts business on 1 January and has a March balance date. Ms Orange is ordinarily liable to pay provisional tax in 3 instalments aligned with her GST payment dates (s MB 8(2)). However, because her first business day falls in the period that starts on 21 December (30 days before instalment D) and ends on 31 March, Ms Orange has 1 payment of provisional tax for the year, due on 28 April.

Apr    May    Jun    Jul    Aug    Sept    Oct    Nov    Dec    Jan    Feb    Mar    Apr



### *Requirements for using GST ratio*

#### **NC 15 Choosing to use GST ratio**

A person who meets the requirements of section NC 16(2) and (3) for a tax year may choose to use a GST ratio for the corresponding income year if they inform the Commissioner of their election before the start of the income year.

Defined in this Act: Commissioner, corresponding income year, GST ratio, tax year

Origin: 2004 No 35 s MB 16

#### **NC 16 Who may use GST ratio?**

##### *General eligibility*

- (1) A person liable to pay provisional tax may choose to use a GST ratio to determine under section NC 5(6) the amount of provisional tax payable for a tax year only if they meet all the requirements in subsections (2) and (3) in relation to the same entity.

##### *Requirements for preceding tax year*

- (2) For the purposes of determining their eligibility for a tax year, the person must meet the following requirements in the preceding tax year:



- (a) their residual income tax, as calculated, was more than \$2,500 but no more than \$150,000; and
- (b) they were a registered person for the whole tax year, and provided a return under the Goods and Services Tax Act 1985 for an entity whose taxable activity did not begin operations in that tax year; and
- (c) the ratio of their residual income tax to total taxable supplies, as calculated under section NC 11 and expressed as a percentage, is between zero and 100%.

***Requirement for current year***

- (3) For the tax year in which the person uses a GST ratio, they must be liable to file a return under the Goods and Services Tax Act 1985 for a 2-month or a 1-month period under section 15(1)(b) and (c) of that Act.

***When election applies***

- (4) A person's election under section NC 15 to use a GST ratio applies for the tax year for which the election is made and in later tax years, unless the person changes their calculation method under section NC 18.

***References to preceding tax year***

- (5) In this section, a reference to a preceding tax year includes a reference to the tax year immediately before the preceding tax year if that earlier tax year is used for the purposes of calculating a GST ratio.

Defined in this Act: amount, assessment, business, corresponding income year, GST ratio, provisional tax, registered person, residual income tax, tax year, taxable activity, taxable period, total taxable supplies

Origin: 2004 No 35 s MB 15(1)-(4), (11)

**NC 17 When GST ratio must not be used**

***Requirement to discontinue use of GST ratio***

- (1) Despite section NC 16, a person must stop using a GST ratio for a tax year and must apply section NC 18(4) or (5) if—
  - (a) their GST registration ends under section 52 of the Goods and Services Tax Act 1985 in the tax year; or
  - (b) they no longer qualify under section NC 16(2) as a result of an amended assessment of their income tax liability or their GST liability for the preceding tax year; or
  - (c) they no longer qualify under section NC 16(3) as a result of a change in their taxable period.

***Failure to provide GST returns***

- (2) A person must not use, or must stop using, a GST ratio for a tax year if they—
- (a) are liable to provide a return under the Goods and Services Tax Act 1985 for a period in their corresponding income year; and
  - (b) fail to file the return within 60 days after the due date for filing the return.

***Instalments following default***

- (3) A person who is required by subsection (2) to stop using a GST ratio must pay the provisional tax instalments required under section NC 18 for an instalment period beginning on or after the due date for filing the return referred to in subsection (2) that is not the subject of notification under subsection (4).

***Further use of GST ratio***

- (4) Despite subsections (2) and (3), a person may use a GST ratio for an instalment period referred to in subsection (3) if—
- (a) they apply to the Commissioner; and
  - (b) the Commissioner considers—
    - (i) the failure to file the return is caused by an event or circumstance beyond the person's control; and
    - (ii) the event or circumstance provides reasonable justification or excuse for the failure; and
    - (iii) the person remedied the failure as soon as practicable; and
  - (c) the Commissioner notifies the person that they may use the GST ratio for the instalment period.

***Standard required***

- (5) For the purposes of subsection (4)(b), the Commissioner must use the same approach that would be used to justify the remission of a penalty under section 183A of the Tax Administration Act 1994.

***Later default***

- (6) Notification under subsection (4) does not apply to an instalment period if—
- (a) the person fails to file a return due after the date of the notice unless the failure is anticipated and referred to in the notice; and
  - (b) the instalment period begins on or after the due date of the return described in paragraph (a).

Defined in this Act: assessment, Commissioner, corresponding income year, GST ratio, income tax liability, instalment period, notify, provisional tax, tax year, taxable period

## **NC 18 Changing calculation method**

### ***When this section applies***

- (1) This section applies if, after having chosen to use a GST ratio for a tax year, a person liable to pay provisional tax either—
  - (a) chooses another way to calculate the amount of provisional tax payable for the tax year; or
  - (b) is required under section NC 17(1) or (2) to stop using a GST ratio for the corresponding income year.

### ***Informing Commissioner of decision to change***

- (2) The person must inform the Commissioner of their decision under subsection (1)(a), and may do this either in writing or by telephone. Subsection (3) or (4) then applies for the remaining instalments of provisional tax for the tax year.

### ***Date on which use of GST ratio stopped***

- (3) For the purposes of subsection (1)(b), the date on which the person stops using a GST ratio is, as applicable,—
  - (a) the date their GST registration ends; or
  - (b) the date of the amended assessment of their income tax liability or GST liability for the preceding tax year; or
  - (c) the first day of a new taxable period for a change in taxable period; or
  - (d) the last day of the period in which a return is liable to be provided under the Goods and Services Tax Act 1985.

### ***Changing method before date of instalment A***

- (4) If the person is unable or decides not to use a GST ratio before the date of instalment A, they may choose to determine the amount of provisional tax payable under section NC 5(2), (3) or (5), as if the election to use the GST ratio had not been made.

### ***Changing method after instalment date***

- (5) If the person is unable or decides not to use the GST ratio after an instalment date, they must determine the amount of provisional tax payable on instalment for the remainder of the income year under section NC 5(5) using the estimation method. For this purpose, the person may provide the estimate in writing or by telephone.

### ***Date of application when method changed***

- (6) If the person changes their calculation method under subsection (4) or (5), the date on which the change applies may be a future date agreed between the person and the Commissioner.

***Other consequences of changing method***

- (7) For the purposes of this section,—
- (a) the number of instalments and the instalment dates remaining for an income year depend on—
    - (i) the requirements of the method chosen by the person when they stop using the GST ratio; and
    - (ii) the cycle of taxable periods chosen by the person, being either a monthly or 2-monthly basis:
  - (b) a person may change from using a GST ratio to a 6-monthly cycle of taxable periods only if—
    - (i) the requirements in section 15C of the Goods and Services Tax Act 1985 are met; and
    - (ii) their 6-month taxable period is aligned with their balance date under section 15B of the Goods and Services Tax Act 1985:
  - (c) section 120KE(5) to (7) of the Tax Administration Act 1994 applies in deciding whether use of money interest is payable in relation to instalments under the new method.

Defined in this Act: amount, assessment, balance date, Commissioner, corresponding income year, GST ratio, income tax liability, instalment date, provisional tax, residual income tax, tax year, taxable period

Origin: 2004 No 35 s MB 17

**NC 19 Disposal of assets**

***When this section applies***

- (1) This section applies if, as part of the taxable activity of an entity referred to in section NC 16(2) and (3), a person who is liable to pay provisional tax, disposes of an asset—
- (a) that is not revenue account property; and
  - (b) the value of the supply of which is not less than the greater of—
    - (i) an amount equal to 5% of the total taxable supplies of the business for the previous 12 months; or
    - (ii) \$1,000.

***Adjustment to GST ratio for current and next income year***

- (2) The person may choose to take the disposal of the asset into account by adjusting their taxable supplies for the relevant taxable period and income year. The adjustment must be made to both—
- (a) the amount of their total taxable supplies for the purposes of the formula in section NC 11(1), by subtracting an amount that equals the value of the supply of the asset (as determined under section 10 of the Goods and

Services Tax Act 1985) plus the GST on the supply from the amount of taxable supplies for the relevant income year or taxable period; and

- (b) the base amount of the their total taxable supplies for the next income year, by subtracting the amount that equals the value of the supply of the asset and the GST on the supply referred to in paragraph (a) from total taxable supplies in working out the GST ratio under section NC 8(2).

***Informing Commissioner***

- (3) For the purposes of subsection (2), the person must inform the Commissioner of both the disposal of the asset and the value of its supply, and may do this either in writing or by telephone.

***Rounding percentages***

- (4) In the determination of the value of the supply of the asset under subsection (1)(b)(i), the amount must be rounded to a whole percentage number.

Defined in this Act: amount, base amount, business, Commissioner, GST ratio, income year, instalment date, revenue account property, taxable period, taxable supply, total taxable supplies

Origin: 2004 No 35 s MB 18

***Transitional years***

**NC 20 Calculating residual income tax in transitional years**

***Calculation for transitional year***

- (1) This section applies for the purposes of section NC 5(2) and (3) and the calculation of a person's residual income tax for a tax year if—
- (a) the preceding tax year is a transitional year:
- (b) the tax year before the preceding tax year is a transitional year.

***Amount increased or decreased***

- (2) The amount of residual income tax for the transitional year must be increased or decreased by the amount calculated under subsection (3) to reflect the amount that would apply in a 12-month period.

***Formula***

- (3) The amount of residual income tax is calculated using the formula—

$$\frac{\text{residual income tax} \times \text{days in current tax year}}{\text{days in transitional year}}$$

***Definition of items in formula***

- (4) In the formula,—

- (a) **residual income tax** is a person's residual income tax, as applicable—
  - (i) for the preceding tax year, uplifted by 5%; or
  - (ii) for the tax year immediately before the preceding tax year, uplifted by 10%; or
  - (iii) the amount estimated by them:
- (b) **days in current tax year** is the number of days in the current tax year:
- (c) **days in transitional year** is the number of days in the person's transitional year.

Defined in this Act: amount, first business day, residual income tax, tax year, transitional year

Origin: 2004 No 35 s MB 19

## NC 21 Paying provisional tax in transitional years

### *Total amount payable*

- (1) A person liable to pay provisional tax in a transitional year must pay the sum of all instalments of provisional tax payable for the transitional year, both interim instalments under subsection (2) and a final instalment under subsection (3).

### *When instalments payable*

- (2) The person must pay an instalment other than a final instalment on—
  - (a) the 28th day of the months set out in schedule 13, part B (Months for payment under sections NC 9 and NC 22 to NC 25) unless paragraph (b) applies:
  - (b) the 15th day of January, when the month set out in schedule 13, part A (Dates for payment of provisional tax and terminal tax) is December.

### *When final instalment payable*

- (3) The person must pay the final instalment on—
  - (a) the 28th day of the month following the final month in the transitional year; or
  - (b) the 15th day of January, when November is the final month.

### *Modifications to instalment dates*

- (4) For the purposes of subsection (2), provisional tax is not payable on—
  - (a) the date of instalment B, if section NC 13 would have applied; or
  - (b) the dates of instalments B and D, if section NC 14(1)(a) and (b) would have applied; or

- (c) the dates of instalments B, D, and F, if the person liable to pay provisional tax is a person with an initial provisional tax liability whose first business day occurs within 30 days of the date of instalment F; or
- (d) the date of instalment C, if section NC 14(1)(c) would have applied; or
- (e) the dates of instalments C and F, if the person liable to pay provisional tax is a person with an initial provisional tax liability who pays GST on a 6-monthly basis whose first business day occurs after the day that is 30 days before the date of instalment F.

***Counting months in transitional years***

- (5) In this section, and in sections NC 22 to NC 25, and in schedule 13, part B, the number of months in a transitional year is determined as follows:
  - (a) the first month in a person's transitional year is the first whole month in the transitional year:
  - (b) the final month in a person's transitional year is the month in which their new balance date under section 39 of the Tax Administration Act 1994 occurs:
  - (c) each month falling between the first and final months must be included in determining the length of the transitional year.

Defined in this Act: amount, final instalment, first business day, initial provisional tax liability, provisional tax, tax year, transitional year

Origin: 2004 No 35 s MB 20

**NC 22 Calculating instalments in transitional years: standard method**

***When this section applies***

- (1) This section applies to a person liable to pay provisional tax using the standard method in relation to instalments of provisional tax payable in a transitional year under section NC 21.

***Instalment other than final instalment***

- (2) For an instalment date other than the date of the final instalment, the person must pay an amount calculated using the formula—

$$\frac{\text{person's provisional tax} \times \text{instalments payable}}{\text{total instalments}} \quad - \quad \text{tax previously payable.}$$

***Definition of items in formula***

- (3) In the formula in subsection (2),—
  - (a) **person's provisional tax** is the person's provisional tax liability under section NC 5(2) or (3):

- (b) **instalments payable** is the number of instalments that the person has in the transitional year on or before the instalment date:
- (c) **total instalments** is whichever of the following applies:
  - (i) 3, for a person who pays on instalment dates B, D, and F; or
  - (ii) 2, for a person who pays on instalment dates C and F:
- (d) **tax previously payable** is the amount for the transitional year of the person's provisional tax payable before the instalment date.

***Final instalment***

- (4) For the final instalment, the person must pay an amount calculated using the formula—

$$\frac{\text{person's provisional tax} \times \text{transitional year days}}{\text{preceding year days}} - \text{tax previously payable.}$$

***Definition of items in formula***

- (5) In the formula in subsection (4),—
  - (a) **person's provisional tax** is the person's provisional tax liability under section NC 5(2) or (3):
  - (b) **transitional year days** is the number of days in the person's transitional year:
  - (c) **preceding year days** is the number of days in the person's preceding tax year:
  - (d) **tax previously payable** is the amount of provisional tax for a tax year calculated on the basis of the person's transitional year that is payable before the instalment date.

Defined in this Act: amount, instalment date, final instalment, provisional tax, tax year, transitional year

Origin: 2004 No 35 s MB 21

**NC 23 Calculating instalments in transitional years: estimation method**

***When this section applies***

- (1) This section applies to a person liable to pay provisional tax using the estimation method in relation to instalments of provisional tax payable in a transitional year under section NC 21.

***Instalment other than final instalment***

- (2) For an instalment date other than the date of the final instalment, the person must pay an amount calculated using the formula—

$$\frac{\text{tax estimate} \times \text{instalments payable}}{\text{transitional months}} - \text{tax previously payable.}$$



***Definition of items in formula***

- (3) In the formula,—
- (a) **tax estimate** is the person’s provisional tax liability last estimated by the person under section NC 5(5):
  - (b) **instalments payable** is either—
    - (i) 4 multiplied by the number of instalments in the person’s transitional year payable on or before the instalment date, for a person who pays on the equivalent of instalment dates B, D, and F; or
    - (ii) 6 multiplied by the number of instalments in the person’s transitional year payable on or before the instalment date, for a person who pays on the equivalent of instalment dates C and F:
  - (c) **transitional months** is the number of months in the person’s transitional year:
  - (d) **tax previously payable** is the amount of provisional tax for a tax year calculated on the basis of the person’s transitional year that is payable before the instalment date.

***Final instalment***

- (4) For the final instalment, the person must pay the amount calculated under section NC 5(5) less the amount of any instalment previously payable.

Defined in this Act: amount, final instalment, instalment date, provisional tax, transitional year

Origin: 2004 No 35 s MB 22

**NC 24 Calculating instalments in transitional years: GST ratio method**

***What this section applies to***

- (1) This section applies to a person liable to pay provisional tax using a GST ratio in relation to instalments of provisional tax payable in a transitional year.

***Adjustment if required***

- (2) For a period or part period before the start of the new income year, the person must apply the GST ratio under section NC 11 on whichever dates of instalments A to F for their corresponding income year occur in the transitional year.

Defined in this Act: GST ratio, income year, provisional tax, transitional year

Origin: 2004 No 35 s MB 23

## **NC 25 Consequences of change in balance date**

### ***Continuing frequency***

- (1) This section applies to a person liable to pay provisional tax who changes their balance date.

### ***Continuing to use instalment dates to new balance date***

- (2) The person must continue to use the instalment dates that applied before the change in balance date was approved until the new balance date is reached.

### ***How amounts determined***

- (3) Sections NC 20 to NC 24 and schedule 13, part B (Months for payment under sections NC 9 and NC 22 to NC 25) apply for the person's transitional year to determine the amount and payment date of the instalments.

### ***Estimation method***

- (4) In a transitional year, if the person uses the estimation method, they must,—
  - (a) before the date on which the Commissioner notifies a change in balance date, estimate the residual income tax as if no change in balance date is or will be approved; and
  - (b) after the date on which the Commissioner notifies a change in balance date, re-estimate the residual income tax.

### ***GST ratio method***

- (5) Subsection (6) applies if the person uses a GST ratio to determine the provisional tax payable for a tax year, and in changing their balance date, moves from—
  - (a) a set of instalment dates in even-numbered months to a set of instalment dates in odd-numbered months; or
  - (b) a set of instalment dates in odd-numbered months to a set of instalment dates in even-numbered months.

### ***Adjustment to liability***

- (6) The person must adjust their provisional tax liability for the income year for the part-period of 1 month before the start of the new income year. The part-period is their final taxable period, and the instalment of provisional tax is payable 28 days after the end of that period.

### ***Aligning taxable periods***

- (7) For a registered person, if a change in balance date means that their taxable period is not aligned with the balance date, an adjustment must be made to their taxable period under section 15B(3) or 15C of the Goods and Services Tax Act 1985.

Defined in this Act: amount, balance date, Commissioner, GST ratio, income year, instalment date, notify, provisional tax, registered person, residual income tax, tax year, taxable period



*When persons start or stop paying GST, or change taxable periods*

**NC 26 Registering for GST or cancelling registration**

*When this section applies*

- (1) This section applies if a person who uses the standard or estimation method to determine the amount of provisional tax payable for a tax year—
  - (a) applies to the Commissioner to become a registered person under section 51 of the Goods and Services Tax Act 1985; or
  - (b) is treated as registered under section 51B of that Act; or
  - (c) asks the Commissioner to cancel their GST registration, or has their GST registration cancelled under section 52 of that Act.

*Starting or ending GST registration: monthly or 2-monthly basis*

- (2) For a person liable to pay provisional tax who becomes registered for GST paying on a monthly or 2-monthly basis, or who cancels or has their GST registration cancelled having paid on that basis, the instalments of provisional tax payable by them for the tax year are unaffected.

*Starting GST registration: 6-monthly basis*

- (3) A person liable to pay provisional tax who becomes registered for GST paying on a 6-monthly basis must pay their instalments of provisional tax on whichever dates of instalments C and F for their corresponding income year coincide with the cycle of their taxable periods after they become a registered person.

*Ending GST registration: 6-monthly basis*

- (4) A person liable to pay provisional tax who pays GST on a 6-monthly basis and cancels their GST registration or has their registration cancelled, must pay their instalments of provisional tax on whichever dates of instalments B, D, and F for their corresponding income year occur after 30 days from the date of cancellation.

*Date of cancellation*

- (5) For the purposes of subsection (4) and the provisional tax rules, the date of cancellation is the date on which the cancellation of GST registration is notified.

*Formula for amount of instalment*

- (6) The amount of each instalment is calculated under section NC 10.

Defined in this Act: amount, corresponding income year, GST, provisional tax, registered person, tax year, taxable period

## **NC 27 Payment of provisional tax instalments when GST cycle changed**

### ***When subsection (2) applies***

- (1) Subsection (2) applies in a tax year to a person liable to pay provisional tax who—
  - (a) uses the standard or estimation method to determine the amount of provisional tax payable; and
  - (b) has been paying GST on a monthly or 2-monthly basis; and
  - (c) changes to a 6-monthly basis under section 15C(1) of the Goods and Services Tax Act 1985.

### ***Changing to 6-monthly basis***

- (2) The person must pay their instalments of provisional tax on whichever dates of instalments C and F for their corresponding income year occur after the change in taxable period takes effect.

### ***When subsection (4) applies***

- (3) Subsection (4) applies in a tax year to a person liable to pay provisional tax who—
  - (a) uses the standard or estimation method to determine the amount of provisional tax payable; and
  - (b) has been paying GST on a 6-monthly basis; and
  - (c) changes to a monthly or 2-monthly basis under section 15C(2) or (3) of the Goods and Services Tax Act 1985.

### ***Changing to monthly or 2-monthly basis***

- (4) The person must pay their instalments of provisional tax on whichever dates of instalments B, D, and F for the person's corresponding income year occur after the change in taxable period takes effect.

### ***Interest instalment dates in new cycle***

- (5) If an instalment of provisional tax that falls on an instalment date in the new cycle is payable in relation to a period in the person's original cycle that was, under that original cycle, an interest instalment date, it remains an interest instalment date in the new cycle. However, if the instalment falls on an instalment date other than an interest instalment date, the change does not affect the nature of the instalment.

### ***Formula for amount of instalment***

- (6) The amount of each instalment is calculated under section NC 10.

Defined in this Act: amount, corresponding income year, GST, provisional tax, tax year, taxable period

**Reader's notes:** examples for sections NC 26 and NC 27 (using March balance dates)

Apr    May    Jun    Jul    Aug    Sept    Oct    Nov    Dec    Jan    Feb    Mar    Apr

- 1    Professor Green starts the income year registered for GST on a monthly basis, and on 10 June asks to change to a 6-monthly basis:
  - the change takes effect on 30 September (s NC 28(2))
  - provisional tax instalment payable on old cycle on 28 August
  - payment of provisional tax instalment due on 28 April (s NC 29(2))
  
- 2    Ms Blue starts the income year registered for GST on a 6-monthly basis, and on 10 June asks to change to a monthly basis:
  - the change takes effect on 30 September (s NC 28(2))
  - provisional tax instalment payable on old cycle on 28 October
  - payments of provisional tax instalments due on 15 January, 28 April (s NC 29(4))
  
- 3    Mr Indigo starts the income year registered for GST on a monthly basis, and on 20 October asks to change to a 6-monthly basis:
  - the change takes effect on following 31 March
  - provisional tax instalments paid on old cycle on 28 August, 15 January, 28 April  
(ss NC 28(2), NC 29(5))
  
- 4    Miss Violet starts the income year registered for GST on a 6-monthly basis, and on 10 June ends her GST registration:
  - the change takes effect for provisional tax purposes on 10 June (s NC 26(5))
  - provisional tax instalments due on 28 August, 15 January, 28 April (s NC 26(4))

*Treatment of groups of companies and amalgamated companies*

**NC 28 Provisional tax rules and consolidated groups**

*Single company*

- (1) The provisional tax rules apply, modified as necessary, to a consolidated group of companies as if it were a single company.

*Joint and several liability*

- (2) Each company in a consolidated group in a tax year is jointly and severally liable for the amount of provisional tax payable by the consolidated group to be credited against the income tax liability of the group for the tax year. The liability of a group company for income tax for the tax year is substituted by that joint and several liability to the extent to which the liability arises while the company is a member of the consolidated group.

*Relationship with section HB 1*

- (3) Section HB 1(4) and (5) (Returns, assessments, and liability of consolidated group) overrides this section.

Defined in this Act: amount, company, consolidated group, income tax, income tax liability, provisional tax, provisional tax rules, tax year

Origin: 2004 No 35 s MB 29

**NC 29 Residual income tax of consolidated groups**

*When this section applies*

- (1) This section applies for the purposes of the provisional tax rules if a company is a member of a consolidated group of companies in a tax year but was not a member of the group for some or all of the preceding tax year.

*Increased residual income tax*

- (2) The residual income tax of the consolidated group for the preceding tax year is treated as increased by an amount equal to the residual income tax of the company for the preceding tax year. If the company is part of the group for part of the current tax year, the amount of residual income tax is increased as a proportion on the basis of the part of the tax year during which the company is part of the group.

*Instalments after company becomes member*

- (3) If the company is part of a group for part of the tax year, this section applies only to instalments of provisional tax payable after the date on which the company becomes part of the group.

Defined in this Act: amount, company, consolidated group, provisional tax, provisional tax rules, residual income tax, tax year

Origin: 2004 No 35 s MB 30

### **NC 30 Consolidated groups using estimation method**

#### ***When subsection (2) applies***

- (1) Subsection (2) applies for the purposes of the provisional tax rules if a company is part of a consolidated group of companies for some or all of a tax year but is not part of the group for some or all of the following tax year.

#### ***Estimation before final instalment date***

- (2) The company must estimate its residual income tax on or before the date of instalment F for the following income year that corresponds to the tax year, and the company is treated as a person to which section NC 7 applies for the purposes of its estimate.

#### ***When company member of another consolidated group***

- (3) The consolidated group, in the case of a company that is part of another consolidated group, must make an estimate of residual income tax on or before the date of instalment F for the following income year that corresponds to the tax year, and the consolidated group is treated as a person to which section NC 7 applies for the purposes of its estimate.

#### ***When company no longer member***

- (4) If a company stops being part of the consolidated group in the following tax year, the company's estimate applies only to instalments of provisional tax payable after the date on which it stopped being part of the group.

Defined in this Act: company, consolidated group, corresponding income year, provisional tax rules, residual income tax, tax year

Origin: 2004 No 35 s MB 31

### **NC 31 Consolidated groups using GST ratio method**

Sections NC 8, NC 9(5), NC 11, and NC 15 to NC 19 apply to a consolidated group of companies with the following modifications:

- (a) if a consolidated group that is eligible to use, or is using, a GST ratio for a tax year is joined by a company, the following subparagraphs apply:
  - (i) if the company joins at the start of the tax year and, as a result, the threshold in section NC 16(2)(a) is exceeded, the group is no longer eligible to use a GST ratio:



- (ii) if the company joins at the start of the tax year, and the group, allowing for the inclusion of the company, is eligible under section NC 16(1), the group may use a GST ratio, subject to the recalculation of the ratio under paragraph (c):
  - (iii) if the company joins at some time in the tax year, the group may continue to use a GST ratio for the tax year, as recalculated under paragraph (c), provided the requirements for eligibility other than the threshold in section NC 16(2)(a) are met:
- (b) if a consolidated group that does not determine provisional tax payable for a tax year using a GST ratio, is joined by a company that is using a GST ratio for the tax year, the group may not start using a GST ratio for this purpose for the tax year:
- (c) for the purposes of paragraph (a),—
  - (i) the group must recalculate the GST ratio applying for a tax year to include the residual income tax of the company for the preceding tax year and the total taxable supplies of the company for the corresponding income year, applying section NC 8(3) if required; and
  - (ii) the recalculated GST ratio applies to provisional tax payments made for the corresponding income year on or after the date on which the company joins the group:
- (d) sections NC 17(3) and NC 18(4) or (5), as applicable, apply to a company that leaves a consolidated group at some time in a tax year.

Defined in this Act: consolidated group, corresponding income year, GST ratio, provisional tax, residual income tax, tax year, total taxable supplies

Origin: 2004 No 35 s MB 32

## **NC 32 Wholly-owned groups of companies**

### ***When this section applies***

- (1) This section applies for the purposes of the provisional tax rules and Part 7 of the Tax Administration Act 1994 in relation to a company (**company A**) that is in a tax year part of a wholly-owned group of companies that includes another company (**company B**). Sections NM 13 to NM 17 (which relate to refunds) override this section.

### ***Company A transferring overpayment to company B***

- (2) If, for a tax year, company A has paid an amount that is more than the provisional tax payable for the tax year, the company may transfer some or all of the overpayment to company B to the extent to which the amount of provisional tax paid by company B is less than their residual income tax for the tax year. Company A must notify the Commissioner under subsection (4).

***When transfer made***

- (3) Company A may transfer an amount under subsection (2) on or after the later of—
- (a) the day on which company A overpays the provisional tax; or
  - (b) the day on which the first instalment of provisional tax for the tax year becomes payable by company B.

***Notice***

- (4) A notice under subsection (2) must—
- (a) name company B, and the amount to be transferred; and
  - (b) state the date on which the overpayment is treated as transferred to company B; and
  - (c) be provided to the Commissioner within—
    - (i) the time for providing a return of income for the tax year for company B; or
    - (ii) an extension of time allowed by the Commissioner.

***When transfer made, and how transfer treated***

- (5) For the purposes of this section,—
- (a) a transfer under subsection (2) is treated as made on the date stated in the notice; and
  - (b) provisional tax transferred by company A to company B is treated as provisional tax paid by company B and not by company A.

Defined in this Act: amount, Commissioner, company, notice, notify, provisional tax, provisional tax rules, residual income tax, return of income, tax year, wholly-owned group of companies

Origin: 2004 No 35 s MB 33

**NC 33 Amalgamated companies: calculating residual income tax**

***When this section applies***

- (1) This section applies for a tax year when an amalgamating company ends its existence on an amalgamation.

***Residual income tax for preceding tax year***

- (2) The residual income tax of the amalgamated company for the preceding tax year is treated as the amount that would have been the residual income tax of the amalgamated company for the preceding tax year if the amalgamating company and the amalgamated company had been 1 company.

***Exclusion***

- (3) Subsection (2) does not apply for the purposes of the provisional tax rules in relation to instalments of provisional tax payable before the amalgamation.

Defined in this Act: amalgamated company, amalgamating company, amalgamation, amount, provisional tax, provisional tax rules, residual income tax, tax year

Origin: 2004 No 35 s MB 34

***Attribution rule for services***

**NC 34 Attribution rule for services**

***When this section applies***

- (1) This section applies for the purposes of the provisional tax rules and Part 7 of the Tax Administration Act 1994 for provisional tax paid for income from personal services to which section GC 14B (Attribution rule for personal services) may apply.

***Person B transferring amount to person C***

- (2) If, in a tax year, person B pays an amount that is more than the provisional tax payable for the tax year, person B may transfer some or all of the overpayment to person C to the extent to which the amount of provisional tax paid by person C is less than their residual income tax for the tax year.

***Person C transferring amount to person B***

- (3) If, in a tax year, person C pays an amount tax that is more than the provisional tax payable for the tax year, person C may transfer some or all of the overpayment to person B to the extent to which the amount of provisional tax paid by person B is less than their residual income tax for the tax year.

***When transfer made***

- (4) Persons B and C may transfer an amount under subsection (2) or (3) on or after the later of—
- (a) the day on which the overpayment of provisional tax is paid by person B or person C, as applicable; or
  - (b) the day on which the first instalment of provisional tax payable for the tax year becomes payable by—
    - (i) person C, if person B is making the transfer; or
    - (ii) person B, if person C is making the transfer.

***Notice***

- (5) The Commissioner must be notified of a transfer under subsection (2) or (3) in a notice that—
- (a) names the person to whom a transfer is made, and the amount to be transferred; and
  - (b) states the date on which the overpayment is treated as transferred to person B or person C, as applicable; and
  - (c) is provided within the time for providing a return of income for the tax year for the person to whom the transfer is made, or an extended time allowed by the Commissioner.

***When transfer made, and how transfer treated***

- (6) For the purposes of this section,—
- (a) a transfer under subsection (2) or (3) is treated as made on the day stated in the notice; and
  - (b) provisional tax transferred by person B to person C for a tax year is treated as provisional tax paid by person C and not by person B; and
  - (c) provisional tax transferred by person C to person B is treated as provisional tax paid by person B and not by person C.

Defined in this Act: amount, Commissioner, notice, notify, provisional tax, provisional tax rules, residual income tax, return of income, tax year

Origin: 2004 No 35 s MB 35

***Credits***

**NC 35 Further income tax credited to provisional tax liability**

***When this section applies***

- (1) This section applies for the purposes of sections NC 9 to NC 11 if, under section ME 9 (Further tax payable where end of year debit balance or when company ceases to be imputation credit account company), a company applies an amount of further income tax to pay an instalment of provisional tax for which the company becomes liable after the date of payment of the further income tax.

***Amount treated as provisional tax***

- (2) The instalment is satisfied to the extent of the amount of further income tax. The amount is treated as provisional tax paid on the date on which the instalment was payable.

***Order***

- (3) The Commissioner must credit the amount of the further income tax in payment successively of—
- (a) the instalment of provisional tax that is first payable after the date of payment of the further income tax; and
  - (b) to the extent of the amount of further income tax, to later instalments in the order in which they are payable.

Defined in this Act: amount, Commissioner, company, further income tax, provisional tax

Origin: 2004 No 35 s MB 37

***Disaster relief***

**NC 36 Persons affected by adverse events**

***Who this section applies to***

- (1) This section applies to a person liable to pay provisional tax who has a business and is significantly affected by a self-assessed adverse event or qualifying event. This section overrides section NC 7.

***Provisional taxpayer's request***

- (2) The person may ask the Commissioner to accept an estimate or a revised estimate of the residual income tax payable by them for a tax year.

***Acceptance of estimate***

- (3) The Commissioner may accept an estimate or revised estimate described in subsection (2) if all the following requirements are met:
- (a) the business is significantly affected by the self-assessed adverse event or qualifying event; and
  - (b) it is not reasonable to require the person to provide under section NC 7 an estimate or revised estimate of residual income tax payable by them for the tax year; and
  - (c) the basis on which the person has chosen to pay provisional tax is now inappropriate; and
  - (d) the person asks to revise their estimate as soon as practicable.

***Treatment of revised estimate***

- (4) If a revised estimate is accepted under subsection (3), it is treated as the estimate applying on the date of instalment F.

Defined in this Act: business, Commissioner, provisional tax, qualifying event, self-assessed adverse event

Origin: 2004 No 35 s MB 38

## **ND—Employment-related taxes**

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*Introductory provision*

**ND 1 What this subpart does**

This subpart establishes and measures an employer's liability under—

- (a) the PAYE rules by—
  - (i) listing the types of payments to which the rules apply:
  - (ii) calculating the amounts of tax that must be withheld and paid to the Commissioner under the rules:
  - (iii) providing for certain adjustments to the amounts:
  - (iv) providing some rules related to the payment of the amounts:
- (b) the FBT rules by—
  - (i) calculating the value of the benefit provided:
  - (ii) attributing certain fringe benefits to employees:
  - (iii) setting out the taxable value of certain fringe benefits
  - (iv) providing options for the payment of FBT to the Commissioner:
- (c) the ESCT rules by setting out the payments to which the rules apply and calculating the amounts of tax that must be withheld and paid to the Commissioner under the rules.

Defined in this Act: amount of tax, Commissioner, ESCT rules, FBT, FBT rules, fringe benefit, pay, PAYE rules

Origin: new

## *PAYE rules and PAYE payments*

### *Introductory provisions*

#### **ND 2 PAYE rules and their application**

##### *Meaning*

- (1) The **PAYE rules** means—
- (a) section BC 1 (Non-filing and filing taxpayers); and
  - (b) section GC 18 (Agreements not to make tax deductions to be void); and
  - (c) section LD 1 (Tax deductions to be credited against tax assessed); and
  - (d) sections ND 2 to ND 25; and
  - (e) sections NP 2 to NP 16 (which relates to PAYE intermediaries); and
  - (f) sections 15C to 15M, 24, 24B to 24P, 48, and 133, Part 9, and sections 167 to 169 of the Tax Administration Act 1994.

##### *Application*

- (2) The PAYE rules apply to a person who makes or is required to make a PAYE payment and, in certain circumstances, to the person to whom the PAYE payment is made.

##### *Deceased employers*

- (3) The executor or administrator of a deceased employer must complete any uncompleted PAYE obligations of the employer.

Defined in this Act: employer, PAYE payment, PAYE rules

Origin: 2004 No 35 ss NC 15(4), OB 1 “PAYE rules”

#### **ND 3 PAYE payments**

##### *Meaning generally*

- (1) The PAYE rules apply to a **PAYE payment** which—
- (a) means—
    - (i) a payment of salary or wages (see section ND 6); or
    - (ii) extra pay (see section ND 8); or
    - (iii) a schedular payment (see section ND 9):

- (b) does not include—
  - (i) an amount attributed under section GC 14D (Attribution rule: calculation);
  - (ii) an amount paid to a shareholder-employee in the circumstances set out in subsection (2).

***When subsections (3) and (4) apply: close companies***

- (2) Subsections (3) and (4) apply for a tax year when a person is a shareholder-employee of a close company, and—
  - (a) they do not derive as an employee salary or wages of a regular amount for regular pay periods—
    - (i) of 1 month or less throughout the tax year; or
    - (ii) that total 66% or more of the annual gross income derived by the person in the tax year as an employee; or
  - (b) an amount is paid or credited to them, or applied on their behalf, as income that may later be allocated to them as an employee for the tax year.

***Income in current tax year***

- (3) The person may choose that an amount paid to them in the tax year in their capacity as employee of the close company is not a PAYE payment.

***Income in later tax years***

- (4) The person may choose that an amount that they derive in a later tax year in their capacity as an employee of the close company is treated as income derived otherwise than from a PAYE payment.

***If questions arise***

- (5) If a question arises whether the PAYE rules apply to all or part of a PAYE payment, other than an amount referred to in subsections (2) to (4), the Commissioner must determine the matter.

Defined in this Act: amount, annual gross income, close company, Commissioner, employee, extra pay, income, pay, pay period, PAYE payment, PAYE rules, salary or wages, schedular payment, shareholder-employee, tax year

Origin: 2004 No 35 ss NC 1(2), OB 2

**ND 4 Payment of amounts of tax to Commissioner**

***Payments monthly or fortnightly***

- (1) An employer or PAYE intermediary who withholds an amount of tax for a PAYE payment must pay the amount to the Commissioner as follows:
  - (a) on a monthly basis, if they are an employer to whom section ND 23(3) or (4) applies:

- (b) for 2 payment periods in a month if subsection (a) does not apply.

***Liability when amount not withheld***

- (2) If some or all of the amount of tax for a PAYE payment is not withheld and paid under subsection (1), the employee in relation to whom the payment is made must—
- (a) pay an amount equal to the amount of tax to the Commissioner by the 20th day of the month following that in which the PAYE payment was made; and
- (b) provide an employer's monthly schedule to the Commissioner by the date described in paragraph (a).

***When taxable activity ends***

- (3) Section NA 17 (Payment date when certificate of exemption expires) overrides subsection (1).

Defined in this Act: amount of tax, Commissioner, employer, pay, PAYE intermediary

Origin: 2004 No 35 ss NC 15(1), NC 16

**ND 5 When payment credited or applied**

A PAYE payment that is credited to or applied for an employee is treated as paid when it is credited or applied.

Defined in this Act: employee, pay, PAYE payment

Origin: 2004 No 35 s NC 3

*Types of PAYE payments*

**ND 6 Salary or wages**

***Meaning***

**(1) Salary or wages—**

- (a) means a payment of salary, wages, or allowances made to a person in connection with their employment; and
- (b) includes—
  - (i) a bonus, commission, gratuity, overtime pay, or other pay of any kind; and
  - (ii) a payment described in subsections (2) to (7); and
  - (iii) an accident compensation earnings-related payment; and
- (c) does not include—
  - (i) an amount of exempt income:
  - (ii) an extra pay:
  - (iii) a schedular payment:
  - (iv) an amount of income described in section ND 3(3) and (4):
  - (v) an employer's superannuation contribution:
  - (vi) a payment excluded by regulations made under this Act.

***Employees' expenditure on account***

- (2) A payment of expenditure on account of an employee is included in their salary or wages.

***Payments to working partners***

- (3) A payment to a working partner under section DC 4 (Payments to working partners) is included in their salary or wages.

***Payments to past employees***

- (4) A periodic payment of a pension, allowance, or annuity made to a person or their spouse, civil union partner, de facto partner, child, or dependant in connection with the past employment of the person is included in their salary or wages.

***Payments to members of Parliament and judicial officers***

- (5) The following payments made under a determination of the Remuneration Authority are included in salary or wages:
- (a) salary or allowances made to a member of Parliament:
  - (b) salary and principal allowances made to a judicial officer.

***Certain benefits and grants***

- (6) A payment of the following benefits or grants is included in salary or wages:
- (a) an amount of income under section CF 1 (Benefits, pensions, compensation, and government grants):
  - (b) a payment of—
    - (i) an income-tested benefit; or
    - (ii) a veteran’s pension; or
    - (iii) New Zealand superannuation; or
    - (iv) a living alone payment:
  - (c) a basic grant and independent circumstances grant made under regulations made under section 193 of the Education Act 1964 or section 303 of the Education Act 1989.

***Parental leave payments***

- (7) A parental leave payment made under Part 7A of the Parental Leave and Employment Protection Act 1987 is included in salary or wages.

Defined in this Act: accident compensation earnings-related payment, amount, employer’s superannuation contribution, employment, exempt income, expenditure on account of an employee, extra pay, income, income-tested benefit, living alone payment, New Zealand superannuation, pay, salary or wages, schedular payment, veteran’s pension

Origin: 2004 No 35 s OB 1 “salary or wages”

**ND 7 Certain benefits and payments**

***When this section applies***

- (1) This section applies when an employee receives—
- (a) a benefit under section CE 1(c) (Amounts derived in connection with employment) made in connection with their employment; or
  - (b) a benefit in kind that is included in their salary or wages; or
  - (c) 1 or more of the following payments:
    - (i) a superannuation payment:
    - (ii) a pension:
    - (iii) a retiring or other allowance:
    - (iv) an annuity.

***Value or amount included in salary or wages***

- (2) The value of the benefit or amount of the payment is treated as—
- (a) accruing from day to day; and
  - (b) included in the employee’s salary or wages for the pay period or, as applicable, as part of their salary or wages for the pay period.

***When non-cash benefit treated as paid***

- (3) If the employee receives the benefit otherwise than in cash, the value is treated as paid—
- (a) for a benefit that constitutes the only salary or wages of the employee, on the last day of the pay period; or
  - (b) for all other benefits, when the last amount of salary or wages for the pay period is paid.

Defined in this Act: employee, employment, pay, pay period, salary or wages

Origin: 2004 No 35 s NC 4

**ND 8 Extra pay**

***Meaning***

- (1) An **extra pay**—
- (a) means a payment that—
    - (i) is made to a person in connection with their employment; and
    - (ii) is not a payment regularly included in salary or wages payable to the person for a pay period; and
    - (iii) is not overtime pay; and
    - (iv) is made in 1 lump sum or in 2 or more instalments; and
  - (b) includes a payment of the kind described in paragraph (a) made—
    - (i) as a bonus, gratuity, or share of profits; or
    - (ii) as a redundancy payment; or
    - (iii) when the person retires from employment; or
    - (iv) as a result of a retrospective increase in salary or wages, but only to the extent described in subsection (2); and
  - (c) includes an amount of income that a person derives under section CE 9 (Restrictive covenants) or CE 10 (Exit inducements) if the income is derived in connection with an employment relationship between the person and the person who paid the amount; and
  - (d) does not include a payment of exempt income.

***Limit on retrospective increase in salary or wages***

- (2) A payment described in subsection (1)(b)(iv) is included in extra pay only to the extent to which,—
- (a) it accrues from the start of the increase until the start of the first pay period in which the increase is included in salary or wages;



- (b) when a week ends with a Saturday, the total of the increase for the week, and of the salary or wages for the week excluding the increase, and of any other salary or wages that the person earns for the week, is more than \$4.

Defined in this Act: amount, employment, exempt income, income, pay, pay period, salary or wages

Origin: 2004 No 35 s OB 1 “extra pay”

## **ND 9 Scheduling payments**

### ***Meaning***

#### **(1) A scheduling payment—**

- (a) means—
  - (i) a payment of a class set out in schedule 1B (Basic amounts of tax for scheduling payments); and
  - (ii) in relation to a sale, the net amount paid after subtracting from the purchase price all commission, insurance, freight, classing charges and other expenses incurred by the seller in connection with the sale; and
- (b) does not include—
  - (i) salary or wages; or
  - (ii) an extra pay; or
  - (iii) a payment for services provided by a public authority, a local authority, a Maori authority, or a company (other than a non-resident contractor, a non-resident entertainer, or an agricultural, horticultural, or viticultural company); or
  - (iv) a payment covered by a certificate of exemption provided under section 24M of the Tax Administration Act 1994; or
  - (v) a payment for services provided by a non-resident contractor who does not have full relief from tax under a double tax agreement, and is present in New Zealand for 92 or fewer days in a 12-month period; or
  - (vi) a contract payment for a contract activity or service of a non-resident contractor when the total amount paid for those activities to the contractor or another person on their behalf is \$15,000 or less in a 12-month period.

### ***Protected payments***

- (2) The fact that a scheduling payment may be protected against assignment or charge does not override a person’s obligation to withhold the amount of tax for the payment.

*Determination of expenditure incurred*

- (3) The Commissioner may determine from time to time the amount or proportion of expenditure that a person incurs in deriving a particular schedular payment or class of schedular payments.

Defined in this Act: agricultural, horticultural, or viticultural company, amount, amount of tax, certificate of exemption, Commissioner, company, contract activity or service, contract payment, double tax agreement, extra pay, local authority, Maori authority, non-resident contractor, non-resident entertainer, pay, public authority, salary or wages, schedular payment

Origin: Income Tax (Withholding Payments) Regulations 1979, regs 2, 4, 6, 8

*Calculating amounts of tax*

**ND 10 Maximum amount**

An amount of tax for a PAYE payment must be the maximum amount at the time unless this Act states otherwise.

Defined in this Act: amount of tax, PAYE payment, this Act

Origin: 2004 No 35 s NC 6(3)

**ND 11 Amounts of tax for PAYE payments**

*PAYE payments other than schedular payments*

- (1) The amount of tax for a PAYE payment that a person must withhold and pay to the Commissioner under section NA 5 (Tax obligations for employment-related taxes) is the relevant amount determined under schedule 19 (Basic amounts of tax for PAYE payments). Subsections (2) and (3) and sections ND 13 to ND 21 override this subsection.

*Choosing rate for extra pay*

- (2) An employee who notifies their employer of their tax code may choose to have the amount of tax for an extra pay fixed as follows:
- (a) for an employee whose taxable income for the income year is expected to be no more than \$60,000, the rate set out in schedule 19, clause 8(b); or
  - (b) for other employees, the rate set out in schedule 19, clause 8(c).

***Schedular payments***

- (3) The amount of tax for a schedular payment is determined—
- (a) at the relevant rate set out in schedule 1B (Basic amounts of tax for schedular payments); and
  - (b) on the basis of the gross amount of the payment, whether—
    - (i) some or all of the payment is income; and
    - (ii) the full income tax liability lies with the person receiving the payment, or lies partly with an employee or subcontractor of the person.

Defined in this Act: amount of tax, Commissioner, employee, employer, extra pay, income, income tax liability, income year, notify, pay, PAYE payment, tax code, taxable income

Origin: 2004 No 35 ss NC 6, NC 8(1A)

**ND 12 Reduction in certain circumstances**

***Special circumstances***

- (1) Despite sections ND 2 to ND 11, the Commissioner may, in special circumstances, reduce the amount of tax for a PAYE payment to an employee or a class of employees. The PAYE rules then apply as if amended.

***When schedule or regulations inapplicable***

- (2) If the amount of tax for a PAYE payment cannot be determined under schedule 19 (Basic amounts of tax for PAYE payments) or under regulations made under this Act because of the size of the PAYE payment, or the number of the employee's dependants, or for any other reason, the amount of tax for the payment must be determined by the Commissioner, taking into account the factors considered in fixing the amount of tax for other similar payments.

***Income-tested benefits and education allowances***

- (3) The amount of tax for a PAYE payment that is an income-tested benefit or an allowance paid under regulations made under section 303 of the Education Act 1989 must be determined by the Commissioner in consultation with the chief executive of the department currently responsible for administering the Social Security Act 1964 and the Secretary of Education.

Defined in this Act: amount of tax, chief executive of the department currently responsible for administering the Social Security Act 1964, Commissioner, employee, income-tested benefit, PAYE payment, this Act

Origin: 2004 No 35 ss NC 6(1C), (1D), NC 13

*Adjustments for certain PAYE payments*

**ND 13 Multiple payments of salary or wages**

*When this section applies*

- (1) This section applies when an employee receives more than 1 payment of salary or wages in a week or part of a week.

*When this section does not apply*

- (2) This section does not apply—
- (a) when an employee leaves regular full-time employment before engaging in another regular full-time employment; or
  - (b) to salary or wages from employment as casual agricultural employee or an election-day worker.

*Treatment as 1 payment*

- (3) The total amount of tax for all payments of salary or wages is the amount that would be required to be withheld if all the payments were treated as 1 payment made by 1 employer for the week.

Defined in this Act: amount of tax, casual agricultural employee, election day worker, employee, employer, employment, pay, salary or wages

Origin: 2004 No 35 s NC 10

**ND 14 Advance payments of salary or wages**

*When this section applies: increase in amount of tax*

- (1) This section applies when—
- (a) an employee receives a payment of salary or wages from an employer; and
  - (b) the amount of tax under schedule 19 (Basic amounts of tax for PAYE payments) for all or part of the payment is increased; and
  - (c) the payment is made before the date of the increase.

*When this section applies: becoming subject to PAYE rules*

- (2) This section also applies when all or part a payment of salary or wages becomes subject to the PAYE rules, but the payment is made before the date on which it becomes subject to the rules.

*Addition to amount of tax for next payment*

- (3) The amount of the difference is added to the amount of tax for the next payment of salary or wages made by the employer to the employee.

Defined in this Act: amount of tax, employee, employer, pay, PAYE rules, salary or wages

Origin: 2004 No 35 s NC 11

## **ND 15 Changes to tax rates for salary or wages**

### ***When subsection (2) applies***

- (1) Subsection (2) applies when a change occurs to the amounts of tax for PAYE payments set out in schedule 19 (Basic amounts of tax for PAYE payments).

### ***Determining amount of tax***

- (2) The amount of tax for a payment of salary or wages for the pay period in which the change occurs is determined as follows:
- (a) for a pay period of 1 month or less, the amount of tax for the full payment for the pay period is the altered amount:
  - (b) for a pay period of more than 1 month, the amount of tax is determined on the basis set out in schedule 19, clause 3, by—
    - (i) determining the proportionate parts of the payment before and after the change; and
    - (ii) calculating each part of the relevant amount of tax; and
    - (iii) adding together the relevant amounts of tax.

### ***When subsection (4) applies***

- (3) Subsection (4) applies for a week when—
- (a) a change occurs to the amounts of tax for PAYE payments set out in schedule 19; and
  - (b) an employee receives more than 1 payment of salary or wages for the week as described in section ND 13.

### ***Determining amount of tax***

- (4) The total amount of tax for all payments of salary or wages for the week in which the change occurs is the amount determined under section ND 13.

### ***Later payment for earlier services***

- (5) The amount of tax for a payment of salary or wages made after the date of the change for a pay period ending before the date in relation to services provided before the date must be calculated using the basic amounts of tax for PAYE payments applicable at the relevant time.

Defined in this Act: amount of tax, pay, pay period, PAYE payment, salary or wages

Origin: 2004 No 35 s NC 12

## **ND 16 Payments of salary or wages in pay periods**

### ***Payment for part of period***

- (1) If an employee who is in regular full-time employment is paid salary or wages for part of a pay period, the payment is treated as a payment for a full pay period.

### ***Payment on production basis***

- (2) If an employee who is paid on a production basis for work performed as a piece worker or out-worker is paid salary or wages, the payment is treated as payment for the period that runs from the date the work starts to the date of its completion.

### ***Payments in several sums***

- (3) If a PAYE payment for a pay period is paid in 2 or more separate sums, those sums must be added together to determine the amount of tax for the payment.

### ***When impractical to make payments at same time***

- (4) Despite subsection (3), if it is impractical for an employer to pay an employee overtime pay and other salary or wages for a pay period at the same time, the employer may add the amount of the overtime pay of the employee to their salary or wages for a later pay period (but not their overtime pay) if, for both pay periods,—
  - (a) the amounts of the employee's salary or wages are more or less the same; and
  - (b) the amounts of tax withheld from the employee's salary or wages are the same; and
  - (c) the employee has the same tax code.

### ***Periods not coinciding***

- (5) For the purposes of subsection (4), if overtime pay is paid for a particular period that is the same length as a pay period but does not coincide with a pay period, it may be treated as overtime pay for the pay period in which the particular period ends.

Defined in this Act: amount of tax, employee, employment, pay, pay period, PAYE payment, salary or wages, tax code

Origin: 2004 No 35 s NC 2(2)-(4)

## **ND 17 Payments to private domestic workers**

For an employee who is a private domestic worker, no amount of tax is required to be withheld for a PAYE payment relating to their employment as a private domestic worker when sections NA 8 (Liability of persons receiving payments or benefits) and ND 4(2) apply.

Defined in this Act: amount of tax, employment, PAYE payment, private domestic worker

Origin: 2004 No 35 s NC 2(1)

## **ND 18 Payment of extra pay with other PAYE payments**

### *When this section applies*

- (1) This section applies when a person pays an amount of extra pay to an employee who also receives a PAYE payment from the person. The amount of tax for the extra pay is based on the sum of the extra pay and the annualised value of all PAYE payments made to the employee in the period that starts 4 weeks before the date of the payment of the extra pay and ends on the date of that payment.

### *Between \$38,000 and \$60,000*

- (2) If the sum of the amounts referred to in subsection (1) is more than \$38,000 but not more than \$60,000, the amount of tax for the extra pay that must be withheld is the amount determined using the basic amounts of tax for PAYE payments set out in schedule 19, clause 8(b) (Basic amounts of tax for PAYE payments).

### *Over \$60,000*

- (3) If the sum of the amounts referred to in subsection (1) is more than \$60,000, the amount of tax for the extra pay that must be withheld is the amount determined using the basic amounts of tax for PAYE payments set out in schedule 19, clause 8(c).

Defined in this Act: amount, employee, extra pay, pay, PAYE payment

Origin: 2004 No 35 s NC 2(5)

## **ND 19 Scheduling payments without notification**

### *When this section applies*

- (1) This section applies when a person makes a scheduling payment but the notification required under section 24L of the Tax Administration Act 1994 has not been provided to them.

### *Amount of tax*

- (2) The person must withhold the amount of tax for the scheduling payment of an amount determined as follows:
- (a) 5% of the amount of the scheduling payment if—
    - (i) the person receiving the payment is a company that is a non-resident contractor; and
    - (ii) paragraph (b) does not apply:
  - (b) zero, if the scheduling payment is of the class set out in part B, clause 4(b) of schedule 1B (Basic amounts of tax for scheduling payments):

- (c) 15% of the amount of the schedular payment if paragraphs (a) and (b) do not apply.

Defined in this Act: amount of tax, company, non-resident contractor, notify, schedular payment

Origin: 2004 No 35 s NC 7(2)

## **ND 20 Schedular payments to non-resident entertainers**

### *When this section applies*

- (1) This section applies when a non-resident entertainer derives income from an activity or performance connected with any of the activities or performances described in the definition of **non-resident entertainer**.

### *Amounts withheld*

- (2) If the only amount of income derived by the entertainer in a tax year is from a schedular payment from which the amount of tax has been withheld, their income tax liability is treated as equal to the total amount withheld.

### *Amounts not withheld*

- (3) If the entertainer has received a schedular payment from which no amount of tax has been withheld, the entertainer must pay the amount of tax to the Commissioner by the 20th day of the month following that in which the payment was made, or by the date of their departure from New Zealand if that is earlier.

Defined in this Act: amount, amount of tax, Commissioner, income, income tax liability, New Zealand, non-resident entertainer, pay, schedular payment, tax year

Origin: Income Tax (Withholding Payments) Regulations 1979, regs 10, 11

## **ND 21 Schedular payments to subcontractors**

### *When this section applies*

- (1) This section applies when a contractor is paid a schedular payment for services provided under a contract, and a subcontractor has provided services under the contract.

### *Obligation to retain amount*

- (2) The PAYE rules apply to the contractor in relation to a payment made to the subcontractor in relation to the work carried out under the contract.

Defined in this Act: pay, PAYE rules, schedular payment

Origin: Income Tax (Withholding Payments) Regulations 1979, reg 12



*Paying amounts of tax*

**ND 22 When amounts of tax not withheld or payment insufficient**

***Employees' obligations***

- (1) If, for any reason, some or all of the amount of tax for a PAYE payment is not withheld at the time it is paid to an employee, the employee must—
  - (a) provide an employer's monthly schedule with the relevant details; and
  - (b) pay the amount of the deficiency.

***When person exempt or not liable to pay***

- (2) Subsection (1)(b) does not apply if the employee is exempt from paying the amount or is not liable for the amount of tax.

***When payment less than amount of tax***

- (3) If the amount of a PAYE payment is less than the amount of tax for the payment, the employee must pay the amount of the deficiency to their employer or PAYE intermediary. If the employee does not pay the amount of the deficiency to their employer or PAYE intermediary, they must pay the amount to the Commissioner under section ND 4(2).

Defined in this Act: amount, amount of tax, Commissioner, employee, employer, employer's monthly schedule, pay, PAYE intermediary, PAYE payment

Origin: 2004 No 35 s NC 5

**ND 23 PAYE payment forms for amounts of tax paid to Commissioner**

***Paying amount withheld with payment form***

- (1) An employer or a PAYE intermediary who withholds an amount of tax from a PAYE payment must pay the amount to the Commissioner under section ND 4 and provide a PAYE payment form in relation to the amount.

***General rule***

- (2) The employer or PAYE intermediary must provide the PAYE payment form referred to in subsection (1) by—
  - (a) the 20th day of the month in which they withhold an amount of tax for a PAYE payment in a first payment period described in section NA 15(3) (Payment dates for interim and other tax payments):

- (b) the 5th day of the month following that in which they withhold an amount of tax for a PAYE payment in a second payment period described in section NA 13(3), or if the month is December, by the 15th of January.

***When gross amounts of tax less than \$100,000***

- (3) Despite subsection (2), an employer who is not a new employer whose gross amounts of tax for PAYE payments and employer's superannuation contributions payable for the preceding tax year are less than \$100,000, must provide the PAYE payment form by the 20th of the month following that in which an amount of tax is withheld.

***New employers***

- (4) Despite subsection (2), an employer who is a new employer, must provide the PAYE payment form by the 20th of the month following that in which an amount of tax is withheld until their gross amounts of tax for PAYE payments and employer's superannuation contributions payable for the tax year are more than \$100,000.

***Thresholds***

- (5) For the purposes of determining whether the threshold referred to in subsections (3) and (4) is reached, if the employer ends their business and starts a new business, or operates 2 or more businesses at the same time, all amounts of tax withheld must be aggregated.

***When business ended***

- (6) Despite subsections (2) to (4), if the employer stops carrying on a business in relation to which an amount of tax for a PAYE payment has been withheld, they must notify the Commissioner and provide a PAYE payment form by the 15th day of the second month after the month in which the business is ended.

***Single employer***

- (7) For the purposes of subsections (3) and (4), the following are treated as 1 employer:
  - (a) 2 or more companies if they were a group of companies at a time in the relevant tax year:
  - (b) all partners in a partnership:
  - (c) all persons in whom property has become vested, or to whom the control of property has passed in the case of—
    - (i) an estate of a deceased person; or
    - (ii) a trust; or
    - (iii) a company in liquidation; or
    - (iv) an assigned estate; or
    - (v) another fiduciary relationship.

Defined in this Act: amount of tax, business, Commissioner, company, employer, employer's superannuation contribution, first payment period, group of companies, liquidation, PAYE intermediary, PAYE payment, PAYE payment form, second payment period, tax year

Origin: 2004 No 35 s NC 15(1), (5), (6)

## **ND 24 Bonds given by certain non-resident employees**

### ***When this section applies***

- (1) This section applies if it cannot reasonably be determined at the time an employer or PAYE intermediary is required to withhold the amount of tax for a PAYE payment whether the payment will be exempt income of an employee under either section CW 15 (Amounts derived during short term visits) or a double tax agreement.

### ***Providing bond***

- (2) The employer or PAYE intermediary may apply to the Commissioner to be released from their obligation to withhold the amount by providing a bond or other security for the amount that would be required to be withheld but for this section.

### ***Consequences of acceptance of bond***

- (3) If the Commissioner accepts the bond or security referred to in subsection (2),—
  - (a) the employer or PAYE intermediary must not withhold the amount of tax for a PAYE payment to the employee; and
  - (b) information concerning the employee must not be included in an employer's monthly schedule; and
  - (c) the **no notification** rate referred to in section 24B(3)(h) must not be used in relation to the PAYE payment.

### ***When subsection (3) no longer applies***

- (4) If the employee later becomes liable to pay income tax because of an event provided for in an arrangement made under section BH 1 (Double tax agreements) or section CW 15, the application of subsection (3) ends, and the employer or PAYE intermediary must withhold the amount of tax for a PAYE payment made to the employee.

### ***Employee's liability***

- (5) If the Commissioner considers that the employee is liable for income tax in relation to a PAYE payment from which no amount of tax is withheld because of the application of subsection (3), the Commissioner must notify the employer or PAYE intermediary, as applicable. The employer or intermediary must then account for and pay the total amount of tax for all PAYE payments that would have been due, or a lesser amount as the Commissioner determines.

***Treatment of amount paid under subsection (5)***

- (6) An amount paid to the Commissioner under subsection (5) is treated as the amount of tax for a PAYE payment made on the date of the Commissioner's notice. Section 120U of the Tax Administration Act 1994 overrides this subsection.

Defined in this Act: amount of tax, Commissioner, double tax agreement, employee, employer, employer's monthly schedule, exempt income, income tax, notify, pay, PAYE intermediary, PAYE payment

Origin: 2004 No 35 s NC 18

**ND 25 Bonds given by non-resident contractors**

***When this section applies***

- (1) This section applies when—
- (a) a non-resident contractor derives an amount from a contract activity or service that is not income, whether because of a double tax agreement or for another reason; or
  - (b) the contractor provides a bond or other security for the payment of any income tax payable on an amount derived by them from a contract activity or service; or
  - (c) the contractor has in the period of 24 months before the date of the application referred to in subsection (2) paid all income tax payable by them and complied with their obligations under the Inland Revenue Acts, and the Commissioner is satisfied that the contractor will continue to do this.

***Exemption certificate***

- (2) The non-resident contractor may apply to the Commissioner to provide them with a certificate of exemption under section 24M of the Tax Administration Act 1994 for a contract payment made to them or another person acting on their behalf in relation to a contract activity or service set out in the certificate for which no amount of tax is to be withheld.

Defined in this Act: amount, amount of tax, certificate of exemption, Commissioner, contract activity or service, contract payment, double tax agreement, income, income tax, Inland Revenue Acts, non-resident contractor, pay

Origin: 2004 No 35 s NC 18

## *FBT rules and fringe benefits*

### *Introductory provisions*

#### **ND 26 FBT rules and their application**

##### *Meaning*

- (1) The **FBT rules** means—
- (a) sections CX 2 to CX 32 (which relate to fringe benefits); and
  - (b) sections GC 15 to GC 17 (which relate to FBT); and
  - (c) sections ND 27 to ND 64; and
  - (d) schedule 2 (Fringe benefit values); and
  - (e) sections 46B to 46E, 93, Part 7, and section 139B of the Tax Administration Act 1994.

##### *Application*

- (2) The FBT rules apply to an employer who provides a fringe benefit to their employee in connection with their employment.

Defined in this Act: employee, employer, employment, FBT rules, fringe benefit

Origin: 2004 No 35 s OB 1 “FBT rules”

#### **ND 27 Liability for FBT**

##### *Liability*

- (1) An employer who provides a fringe benefit to an employee is liable to pay FBT under sections ND 28 to ND 58, choosing a method of payment described in subsection (2).

##### *Payment options*

- (2) An employer must choose 1 of the following options for the payment of FBT:
- (a) the single rate option (section ND 59); or
  - (b) the alternate rate option (section ND 60); or
  - (c) if eligible, the close company option (section ND 61); or
  - (d) if eligible, the small business option (section ND 62).

Defined in this Act: business, close company, employee, employer, FBT, fringe benefit, pay

Origin: 2004 No 35 s ND 1(1), (2)

*Value of fringe benefits*

**ND 28 Determining fringe benefit values**

*What sections ND 29 to ND 54 do*

- (1) Sections ND 29 to ND 54 set out the rules for determining the value of a fringe benefit provided by an employer to an employee in connection with their employment. The taxable value of a fringe benefit when an employee pays an amount for receiving the benefit is dealt with in sections ND 55 to ND 58.

*When value cannot be ascertained*

- (2) If, under sections ND 29, ND 30, and ND 34 to ND 42, the value of a fringe benefit cannot be ascertained, the value is the market value or otherwise as the Commissioner determines.

*Meaning of market value*

- (3) In subsection (2), **market value** means the price, at the time at which the goods or services were provided to the employee, for which the goods or services would normally be sold in a sale—
  - (a) in the open market in New Zealand; and
  - (b) freely offered; and
  - (c) made on ordinary trade terms; and
  - (d) to a member of the public at arm's length.

Defined in this Act: amount, Commissioner, employee, employer, employment, fringe benefit, goods, market value, New Zealand, services

Origin: 2004 No 35 ss ND 1A(1), ND 1L

**ND 29 Private use of motor vehicle: calculation methods**

*What this section does*

- (1) This section limits the way an employer may use a method for calculating the value of the benefit that they provide to an employee by making a motor vehicle available for the employee's private use.

*Choosing method in first return*

- (2) When a person first files a return relating to a vehicle for the purposes of this section, they may calculate the value of the benefit using either of the valuation methods set out in schedule 2, part A (Fringe benefit values).

***Using method in first return***

- (3) The person must use the method chosen in the first return referred to in subsection (2) in calculating the value of the benefit for the length of time—
- (a) starting after the end of the period of the first return; and
  - (b) continuing to the earliest of the following dates:
    - (i) the date of the disposal of the vehicle;
    - (ii) the date on which the vehicle ceases to be leased;
    - (iii) the date that is 5 years after start of the period of the first return.

***Returns after 5 years***

- (4) In a return relating to the vehicle for a period beginning 5 years or more after the start of the period of the first return, the person may calculate the value of the benefit using either of the valuation methods set out in schedule 2, part A.

Defined in this Act: employee, employer, motor vehicle, private use

Origin: 2004 No 35 s ND 1A(1)-(1D)

**ND 30 Private use of motor vehicle: formulas**

***What this section does***

- (1) This section sets out the formulas for calculating the value of the benefit that an employer provides to an employee by making a motor vehicle available for their private use.

***Quarterly payment***

- (2) If FBT is paid quarterly, the value of the benefit is calculated using the formula—

$$\frac{\text{days x schedule 2 amount}}{90}.$$

***Annual payment***

- (3) If FBT is paid on an annual basis, the value of the benefit is the total of the amounts calculated under subsection (2) for the 4 quarters in the applicable tax year.

***Payment by income year***

- (4) If FBT is paid on an income year basis, the value of the benefit is calculated using the formula—

$$\frac{\text{days x schedule 2 amount}}{365}.$$

***Definition of items in formulas***

- (5) In the formula,—
- (a) in subsection (2), **days** refers to the number of days in the quarter on which the vehicle is made available for private use, reduced by the number of days on which the vehicle was a work-related vehicle, or 90, whichever is less;
  - (b) in subsection (4), **days** refers to the number of days in the income year on which the vehicle is made available for private use, reduced by the number of days on which the vehicle was a work-related vehicle;
  - (c) in subsections (2) and (4), **schedule 2 amount** refers to the amount calculated under schedule 2, part A, (Fringe benefit values) as the value of the benefit that would have been received for unlimited private use of the vehicle in that quarter or income year, as applicable.

***Test period***

- (6) To calculate the value of the benefit, an employer may choose to use a test period under section ND 32 to establish private use.

Defined in this Act: amount, employee, employer, FBT, income year, motor vehicle, private use, quarter, work-related vehicle

Origin: 2004 No 35 s ND 1A(2)-(6)

**ND 31 Private use of motor vehicle: 24-hour period**

***When this section applies***

- (1) This section applies for the purposes of a calculation of the value of a benefit under section ND 30.

***Day***

- (2) In section ND 30(5)(a) and (b), in relation to a motor vehicle and the item **days** in the formulas, a day is—
- (a) a 24-hour period starting from a time in a day that a person who owns or leases the vehicle chooses; or
  - (b) a 24-hour period starting at midnight if paragraph (a) does not apply.

***Choosing starting point and notifying Commissioner***

- (3) For the purposes of subsection (2)(a), the person must—
- (a) choose a starting point for the day that is a whole number of an hour after midnight; and
  - (b) notify the Commissioner of their election when filing the next return relating to the vehicle.



***Elections***

- (4) An election under subsection (2)(a)—
- (a) is effective from the start of the quarter, income year, or tax year to which a return relates; and
  - (b) applies to all vehicles in relation to which the person files a return.

***Hour applying for 2 income years***

- (5) If the person chooses under subsection (3)(a) a particular hour in the 24-hour period as the starting point of the day, that hour continues to apply to the use of the vehicle from the start of the relevant quarter, income year, or tax year, as applicable, for a minimum period of 2 income years.

***When circumstances change***

- (6) An employer may ask the Commissioner to amend the starting point of the 24-hour period, or to treat the election as revoked, if the employer's circumstances have changed in a way that—
- (a) is more than minor; and
  - (b) makes the starting point no longer relevant to the employer's business.

Defined in this Act: business, Commissioner, employer, income year, motor vehicle, notify, quarter, tax year

Origin: 2004 No 35 s ND 1AB

**ND 32 Motor vehicle test period**

***Recording details for test period***

- (1) To establish the value of the benefit provided through a motor vehicle being made available to an employee for their private use, an employer may choose to record the details of the use of the vehicle by the employee for a test period.

***Number used in calculations***

- (2) The number of days on which a vehicle is available for an employee's private use that is ascertained in the test period is the number used in the calculation in section ND 30(2). For the calculation in section ND 30(4), the relevant number is the number of days ascertained in the test period multiplied by 4.

***Quarter or 3 months for test period***

- (3) If FBT is paid quarterly or annually, the test period is a quarter. If FBT is paid on an income year basis, the test period is 3 consecutive months of an income year.

***Period showing pattern of use***

- (4) The employer must—
- (a) choose a test period that shows, or is likely to show, a pattern of use of the motor vehicle by the employee that fairly represents the use of the vehicle by the employee over the whole of the applicable term; and
  - (b) keep a record of the test period, including accurate details of the days in the period on which the vehicle is available for the employee's private use.

***Work-related vehicles***

- (5) In subsection (4), a day on which the vehicle is a work-related vehicle is treated as a day on which the vehicle is not available for private use.

***Term of 3 years***

- (6) The number of days of availability for private use ascertained in the test period applies for a term of 3 years. The term starts, as applicable, as follows:
- (a) if FBT is paid quarterly, on the first day of the test period:
  - (b) if FBT is paid on an annual basis, on the first day of the tax year in which the test period occurs:
  - (c) if FBT is paid on an income year basis, on the first day of the income year in which the test period occurs.

***Reduction of term***

- (7) The term referred to in subsection (6) is reduced if the number of days of actual private use of the motor vehicle is 20% or higher than the number ascertained in the test period. In this case, the term ends on the last day of the applicable quarter, year, or income year. If the employer chooses to start another test period, the existing term ends immediately before the start of the new term.

***When test period no longer representative***

- (8) If the Commissioner considers that the result ascertained in the test period does not, or does no longer, fairly represent the actual private use of the motor vehicle by the employee, the Commissioner may notify the employer that the term will end on a particular date. Following notification, the employer must not use that result again.

Defined in this Act: Commissioner, employee, employer, FBT, income year, motor vehicle, notify, private use, quarter, work-related vehicle

Origin: 2004 No 35 s ND 1B(1)-(6)

### **ND 33 Replacement motor vehicles**

For the purposes of section ND 32, a replacement motor vehicle is treated in the same way as the vehicle it replaces if the result ascertained in the test period is likely to be fairly representative of the average availability for the private use of the vehicle during the term.

Defined in this Act: motor vehicle, private use

Origin: 2004 No 35 s ND 1B(7)

### **ND 34 Subsidised transport**

#### ***Percentage of highest public fare***

- (1) The value of a benefit that an employer provides to their employee in subsidised transport is 25% of the highest fare the employer charges the public for the equivalent transport in terms of class, extent, and occasion. This subsection is overridden by subsection (2).

#### ***When benefit provided under arrangement***

- (2) Despite section CX 2(2) (Meaning of fringe benefit), if the fringe benefit is provided under an arrangement with a third person, the value of the benefit is determined under subsection (3).

#### ***Percentage or actual payment***

- (3) If a third person provides the employee with subsidised transport under an arrangement with their employer, the value of the benefit is the greater of—
  - (a) 25% of the highest fare the employer charges the public for the equivalent transport in terms of class, extent, and occasion; and
  - (b) the amount that the employer has paid or is liable to pay the person for the benefit provided.

#### ***GST***

- (4) In this section, for a registered person who may claim input tax for subsidised transport, amount means the GST-inclusive amount.

Defined in this Act: amount, arrangement, employee, employer, fringe benefit, GST, input tax, subsidised transport

Origin: 2004 No 35 s ND 1C

### **ND 35 Employment-related loans: value using prescribed interest rates**

#### *When this section applies*

- (1) This section applies when an employer provides a benefit to their employee in an employment-related loan and the employer does not choose to determine the value of the benefit under section ND 36.

#### *Amount of interest or amount under financial arrangement*

- (2) The value of the benefit in a period is the amount by which the prescribed interest on the loan is more than—
- (a) the amount of interest that accrued on the loan in the period; or
  - (b) when the loan is a financial arrangement and it is appropriate for the nature of the loan, the income that would have accrued to the employer's benefit in the period as calculated under the yield to maturity method.

#### *Meaning of prescribed interest*

- (3) For the purposes of this section, **prescribed interest** means,—
- (a) except as provided in paragraph (b), the amount of interest that would have accrued on the loan during the quarter or tax year had the interest been calculated on the daily balance of that loan at the prescribed rate of interest;
  - (b) for loans made on or before 31 March 1985, the interest on which is not subject to review, the amount of interest that would have accrued on the loan during the quarter or tax year had the interest been calculated on the daily balance of the loan at the non-concessionary rate of interest for—
    - (i) the tax year in which the agreement to make the loan was signed; or
    - (ii) if the agreement was not in writing, the year in which the loan was agreed to by all parties.

Defined in this Act: amount, employee, employer, employment-related loan, financial arrangement, interest, non-concessionary rate of interest, prescribed interest, quarter, tax year

Origin: 2004 No 35 ss ND 1D, ND 1G

### **ND 36 Employment-related loans: value using market interest rates**

#### *Choosing to use market interest rate*

- (1) An employer who is in the business of lending money to the public may choose to value a benefit provided to their employee in an employment-related loan using the market interest on the loan.

#### *Value of benefit*

- (2) The value of the benefit referred to in subsection (1) in a period is the amount by which the market interest on the loan is more than—

- (a) the amount of interest that accrued on the loan in the period; or
- (b) when the loan is a financial arrangement and it is appropriate having regard to the nature of the loan, the income that would have accrued to the employer's benefit in the period as calculated under the yield to maturity method.

*Using method for 2 income years*

- (3) Having made an election under subsection (1), the employer must use the method for the income year to which the election relates and for the next income year.

*Notifying Commissioner of change to method*

- (4) An employer may not change the method of calculating the value of the benefit for an income year unless the employer notifies the Commissioner of the proposed change at least 1 year before the start of the income year in which the change is to occur.

*Market interest*

- (5) In this section, **market interest** means the amount of interest calculated at the interest rate that would apply to a borrower belonging to a group of persons to whom a loan of the kind provided to the employee is offered when the group meets the following requirements:
  - (a) the group has a comparable credit risk to the group to which the employee belongs; and
  - (b) membership of the group arises from a factor or factors that do not include a connection between a member and the employer; and
  - (c) the group is sufficient in number to ensure a transaction on an arm's-length basis.

*Calculating amount of interest*

- (6) For the purposes of subsection (5), the amount of interest is the amount accrued on the loan during the quarter or tax year calculated on the daily balance of the loan at the rate referred to in the subsection.

Defined in this Act: amount, business, employee, employer, employment-related loan, financial arrangement, income year, interest, market interest, quarter, tax year

Origin: 2004 No 35 s ND 1DB

**ND 37 Repayment of employment-related loans**

*Repayment at start of tax year*

- (1) For the purposes of sections ND 35 and ND 36, an amount of income of an employee applied in a tax year to repay an employment-related loan provided to

the employee is treated as applied towards repayment on the first day of the tax year or, if the date of the advance of the loan falls after that day, the later date.

***Limitation***

- (2) Subsection (1) applies only when an employee derives income that—
- (a) is salary or wages, an extra pay, a dividend, or interest; and
  - (b) is not resident passive income, non-resident passive income, or an amount subject to a withholding obligation under the PAYE rules; and
  - (c) is income of the employee in the tax year in which it is applied to repay the loan, or in an earlier tax year.

***Amounts derived and applied in different tax years***

- (3) Subsection (4) applies when an employee derives income that—
- (a) is applied to repay an employment-related loan; and
  - (b) relates to a tax year after the tax year in which it is applied to repay the loan.

***Treatment of amount***

- (4) The employee may treat the amount as derived in the earlier tax year, but must notify the Commissioner of their decision within the time allowed to the employer for providing a return of income for the tax year, or a longer time if the Commissioner allows.

Defined in this Act: amount, Commissioner, dividend, employee, employer, employment-related loan, extra pay, income, interest, non-resident passive income, notify, pay, PAYE rules, resident passive income, return of income, salary or wages, tax year

Origin: 2004 No 35 s ND 1E

**ND 38 Contributions to superannuation schemes**

***Amount of contribution***

- (1) The value of a benefit that an employer provides in contributing to a superannuation scheme for an employee is the amount of the contribution made by the employer.

***GST***

- (2) In this section, for a registered person who may claim input tax for a contribution to a superannuation scheme, amount means the GST-inclusive amount.

Defined in this Act: amount, GST, employee, employer, input tax, superannuation scheme

Origin: 2004 No 35 s ND 1H

### **ND 39 Contributions to funds, trusts, and insurance premiums**

#### ***Sickness, accident, or death benefit fund***

- (1) The value of the benefit that an employer provides in contributing to a sickness, accident, or death benefit fund for an employee is the amount of the contribution made by the employer.

#### ***Funeral trust***

- (2) The value of the benefit that an employer provides in contributing to a funeral trust for an employee is the amount of the contribution made by the employer.

#### ***Specified insurance premium***

- (3) The value of the benefit that an employer provides in paying an insurance premium described in section CX 15 (Contributions to life or health insurance) for an employee is the amount of the premium paid by the employer.

#### ***Insurance fund of friendly society***

- (4) The value of the benefit that an employer provides in contributing to an insurance fund of a friendly society for an employee is the amount of the contribution made by the employer.

Defined in this Act: amount, employee, employer, friendly society, sickness, accident, or death benefit fund

Origin: 2004 No 35 s ND 11

### **ND 40 Benefits provided by charitable organisations**

#### ***Value of benefit***

- (1) The value of a benefit under section CX 21(2) (Benefits provided by charitable organisations) that a charitable organisation provides in a short-term charge facility is the sum of—
  - (a) the amount that the organisation pays for or towards buying or hiring the goods and services obtained by the employee under the short-term charge facility;
  - (b) any interest incurred in relation to buying or hiring the goods and services;
  - (c) when the short-term charge facility is a credit card or charge card provided for an employee's use solely for purposes unconnected with the organisation or its operations, the associated account or service fee.

#### ***When subsections (3) and (4) apply***

- (2) Subsections (3) and (4) apply in a tax year to an employer that is a charitable organisation when—
  - (a) the employer provides a benefit to their employee in a short-term charge facility that is a fringe benefit under section CX 21(1); and

- (b) the employer is required to pay FBT for the tax year on a quarterly basis; and
- (c) the value of the benefit in the short-term charge facility in the first quarter of the tax year is not more than 5% of the employee's salary or wages for the tax year.

***Employer's liability***

- (3) The employer's liability to pay FBT on a benefit provided in a quarter of the tax year depends on whether the taxable value of all the benefits (**accumulated value**) that the employer provides to the employee in the period from the start of the tax year to the end of the quarter is more than 5% of the employee's salary or wages for the tax year (**threshold value**).

***Calculation of liability***

- (4) The employer is liable to pay FBT for a quarter of a tax year on the following amounts:
  - (a) zero, if the accumulated value for the quarter is not more than the threshold value;
  - (b) the accumulated value if the quarter is the first in the tax year for which the accumulated value is more than the threshold value;
  - (c) the taxable value of all the benefits provided in the quarter, if neither paragraph (a) or (b) applies.

Defined in this Act: amount, charitable organisation, employee, employer, FBT, goods, interest, quarter, salary or wages, services, short-term charge facility, tax year

Origin: 2004 No 35 ss ND 11B, ND 8B

**ND 41 Goods**

***Market value or cost***

- (1) The value of a fringe benefit that an employer provides to an employee in goods is determined as follows:
  - (a) when the person providing the goods manufactured, produced, or processed them, their market value;
  - (b) when the person providing the goods bought them, or paid for them to be bought, dealing at arm's length with the supplier of the goods, the cost of the goods to the person;
  - (c) if the person providing the goods is a company included in a group of companies, then, as the person chooses, the value of the benefit under either paragraph (a) or (b), applying the provisions as if the group of companies were 1 company.



***Sale in open market***

- (2) Despite subsection (1), if the value of the fringe benefit as determined under that subsection would be more than the amount that would have been paid to the employer for the purchase of the goods in a sale described in paragraphs (a) to (d), then the value is treated as that amount. The sale must be—
- (a) at retail in the open market in New Zealand; and
  - (b) freely offered; and
  - (c) made on ordinary trade terms; and
  - (d) to a member of the public with whom the employer is at arm's length.

***Definitions for this section***

- (3) In this section,—

**cost**, for a registered person who may claim input tax for the goods, means the GST-inclusive cost of the goods bought or the amount that the person paid for the goods

**market value** means the lowest price, at the time at which the goods were provided to the employee, for which identical goods were sold by the same person to an arm's length buyer (whether wholesaler, retailer, or the public) in the open market in New Zealand in a sale freely offered and made on ordinary trade terms

**price**, for a registered person who may claim input tax for goods that they manufacture, produce, or process, means the GST-inclusive price of those goods to that person.

Defined in this Act: amount, company, cost, employee, employer, goods, group of companies, GST, identical goods, input tax, market value, New Zealand, price

Origin: 2004 No 35 s ND 1J

**ND 42 Services**

***Price, amount paid, or fee***

- (1) The value of a fringe benefit that benefit that an employer provides to an employee in services is,—
- (a) when an employer normally provides the services as part of their business, the price charged by the employer—
    - (i) at the time they provided the services; and
    - (ii) for the same or similar services to the public in the open market in New Zealand; and
    - (iii) on ordinary trade or professional terms between buyers and sellers independent of each other:
  - (b) when an employer pays for the services to be provided, dealing at arm's length with the supplier of the services, the amount paid or payable:

- (c) if neither paragraph (a) nor (b) applies, the price or fee that the employer or supplier providing the services would at that time have charged the public, had they provided the same or similar services to the public in the open market in New Zealand on ordinary trade or professional terms.

***Exclusions***

- (2) This section does not apply to a service that consists of making available a motor vehicle for private use, providing an employment-related loan, or providing subsidised transport.

***Services provided to group of employees***

- (3) For the purposes of this section, a person who provides services to an employee belonging to a group of employees is treated as providing the same or similar services to the public in the open market in New Zealand on ordinary trade or professional terms if the person provides the same or similar services to a group of persons that—
  - (a) negotiates the transaction on an arm's-length basis; and
  - (b) is comparable in number to the group of employees.

***Defined terms for this section***

- (4) In this section,—

**amount**, for a registered person who may claim input tax for that service, means the GST-inclusive amount

**fee** and **price**, for a registered person who may claim input tax for that service, means the GST-inclusive fee or price.

Defined in this Act: amount, business, employee, employer, employment-related loan, fee, GST, input tax, motor vehicle, New Zealand, pay, price, private use, services, subsidised transport

Origin: 2004 No 35 s ND 1K

**ND 43 Goods at staff discount**

***Goods discounted for employees***

- (1) This section applies when an employer sells goods in the normal course of their business to an employee when all the following apply:
  - (a) the retail price of identical goods is \$200 or less to an arm's length buyer in the open market in New Zealand in a sale freely offered and made on ordinary trade terms; and
  - (b) the price of the goods to the employee is lower than their cost to the employer, the difference resulting from a staff discount that the employer normally provides to employees; and

- (c) at the time of the sale, the staff discount is no more than 5% of the price of identical goods in the circumstances referred to in paragraph (a).

***Cost price***

- (2) The goods are treated as having been sold at a price equal to the cost of the goods to the employer.

Defined in this Act: cost, employee, employer, goods, identical goods, New Zealand, price

Origin: 2004 No 35 ss ND 1M, ND 1N

**ND 44 Goods on special with staff discount**

***Sale of identical goods***

- (1) This section applies when an employer sells goods to an employee on a day when the employer is offering identical goods for sale in the normal course of their business at a special price and when all the following apply:
  - (a) the price of the identical goods is \$200 or less to an arm's length buyer in the open market in New Zealand in a sale freely offered and made on ordinary trade terms; and
  - (b) the price of the goods to the employee is lower than their cost to the employer, the difference resulting from a staff discount that the employer offers to the employee in addition to any other discount; and
  - (c) immediately before or immediately after the sale to the employee, a reasonable quantity of the identical goods is available in the open market in New Zealand; and
  - (d) the price is at least 95% of the cost of the goods to the employer, or at least 95% of the price on the day of the sale of the identical goods to the public in the open market in New Zealand, whichever is less.

***Cost price***

- (2) The goods are treated as having been sold at a price equal to the cost of the goods to the employer.

Defined in this Act: business, goods, employee, employer, identical goods, New Zealand, price

Origin: 2004 No 35 s ND 1O

**ND 45 Goods sold by group companies**

For the purposes of sections ND 43 and ND 44, if a company that is included in a group of companies sells goods to an employee of another company in the group, the sale is treated as if it were made directly from employer to employee.

Defined in this Act: company, employee, employer, goods, group of companies

Origin: 2004 No 35 s ND 1P

## **ND 46 Unclassified benefits**

### ***Liability limited***

- (1) An employer is liable to pay FBT on an unclassified benefit only within the limits described in this section.

### ***Quarterly payment***

- (2) When FBT is paid quarterly, an employer is liable for FBT on an unclassified benefit provided to an employee in a quarter only if—
  - (a) the total taxable value of all unclassified benefits provided in the quarter by the employer to the employee is more than \$200; or
  - (b) the total taxable value of all unclassified benefits provided in the last 4 quarters including the current quarter by the employer to all employees of the employer (whether accounted for on a quarterly or an income year basis) is more than \$15,000.

### ***Yearly payment***

- (3) When FBT is paid on either an annual basis or an income year basis (except when subsection (4) applies), an employer is liable for FBT on unclassified benefits provided to an employee in the tax year or income year only if—
  - (a) the total taxable value of all unclassified benefits provided in the tax year or income year by the employer to the employee is more than \$800; or
  - (b) the total taxable value of all unclassified benefits provided in the tax year or income year by the employer to all employees of the employer is more than \$15,000.

### ***Period longer or shorter than income year***

- (4) When an employer accounts for FBT on an income year basis, and the period for which they have accounted under section ND 61 differs from an income year for the reasons described in subsection (5), an employer is liable for FBT on unclassified benefits provided in the period only if—
  - (a) the total taxable value of all unclassified benefits provided in the period by the employer to an employee is more than the figure that is the same fraction or multiple of \$800 as the number of days in the period is a fraction or multiple of 365; or
  - (b) the total taxable value of all unclassified benefits provided in the period by the employer to all employees of the employer is more than the figure that is the same fraction or multiple of \$15,000 as the number of days in the period is a fraction or multiple of 365.

***Reasons for difference***

- (5) In subsection (4), the income year for which the employer has accounted may be longer or shorter than the normal income year because the employer has either—
- (a) started or ceased business during that income year; or
  - (b) chosen (with the agreement of the Commissioner) to file a return under this subpart for the income year ending with the date of the annual balance of their accounts.

***Employer and associated persons***

- (6) In this section, **employer** includes a person associated with them at any time in the relevant period.

Defined in this Act: associated person, balance date, business, Commissioner, employee, employer, FBT, income year, quarter, return of income, unclassified benefit

Origin: 2004 No 35 s ND 1Q

**ND 47 Adjustments for unclassified benefits on amalgamation**

***When employer ceases to exist***

- (1) This section applies when a company that is an employer ceases to exist through amalgamation or when a new company is established on amalgamation. An adjustment is allowed for unclassified benefits in the period in which the amalgamation occurs.

***Quarterly payment***

- (2) If the amalgamating company pays FBT quarterly, an adjustment must be made in the quarter in which the amalgamation occurs reducing the figure of \$15,000 referred to in section ND 46(2)(b) by an amount calculated using the formula—

$$\frac{\$15,000 \times \text{number of days in the quarter after amalgamation}}{\text{days in the quarter.}}$$

***Adjustment in quarter of amalgamation***

- (3) If the amalgamated company pays FBT quarterly, and the amalgamated company is a new company established on amalgamation, an adjustment must be made in the quarter in which the amalgamation occurs reducing the figure of \$15,000 referred to in section ND 46(2)(b) by an amount calculated using the formula—

$$\frac{\$15,000 \times \text{number of days in the quarter before amalgamation}}{\text{days in the quarter.}}$$

***Annual payment***

- (4) If the amalgamating company pays FBT annually, an adjustment must be made for the year in which the amalgamation occurs reducing the figure of \$15,000 referred to in section ND 46(3)(b) by an amount calculated using the formula—

$$\frac{\$15,000 \times \text{number of days in the year after amalgamation}}{365}.$$

***Adjustment in year of amalgamation***

- (5) If the amalgamated company pays FBT annually, and the amalgamated company is a new company established on amalgamation, an adjustment must be made for the year in which the amalgamation occurs reducing the figure of \$15,000 referred to in section ND 46(3)(b) by an amount calculated using the formula—

$$\frac{\$15,000 \times \text{number of days in the year before amalgamation}}{365}.$$

Defined in this Act: amount, amalgamated company, amalgamating company, amalgamation, company, employer, FBT, quarter, unclassified benefit, year

Origin: 2004 No 35 s ND 1R

*Attributing fringe benefits to employees*

**ND 48 Attribution of certain fringe benefits**

***What this section applies to***

- (1) This section applies when an employer provides a fringe benefit by—
- (a) making available a motor vehicle for an employee's private use under section CX 6 (Private use of motor vehicle); or
  - (b) providing an employment-related loan to an employee under section CX 9 (Employment-related loans) but not a loan by a life insurer under section CX 10 (Employment-related loans: loans by life insurers); and
  - (c) providing to an employee a benefit with a taxable value of \$1,000 or more in a year for each of the following categories:

- (i) subsidised transport under section CX 8 (Subsidised transport); and
  - (ii) a contribution to a superannuation scheme under section CX 12 (Contributions to superannuation schemes); and
  - (iii) a contribution to a sickness, accident, or death benefit fund under section CX 13 (Contributions to sickness, accident or death benefit funds); or
  - (iv) a contribution to a funeral trust under section CX 14 (Contributions to funeral trusts); and
  - (v) the payment of a specified insurance premium or a contribution to an insurance fund of a friendly society under section CX 15 (Contributions to life or health insurance); and
- (d) providing unclassified benefits to an employee under section CX 2(1)(b)(ii) (Meaning of fringe benefit) with a total taxable value of \$2,000 or more in a year.

***Attributing fringe benefit to employee***

- (2) The employer must attribute the fringe benefit to the employee, calculating the FBT liability under section ND 51.

Defined in this Act: employee, employer, employment-related loan, friendly society, fringe benefit, life insurer, motor vehicle, private use, sickness, accident, or death benefit fund, subsidised transport, superannuation scheme, unclassified benefit

Origin: 2004 No 35 s ND 3(1), (1A)

**ND 49 When attributed benefits provided to more than 1 employee**

If an employer provides a fringe benefit to which section ND 48 applies to more than 1 employee, the employer must attribute the benefit to the employee who mainly uses or receives it in a quarter or income year, as applicable. If the employer cannot determine which employee mainly uses or receives the benefit, they must pool the benefit under section ND 54.

Defined in this Act: employee, employer, fringe benefit, income year, quarter

Origin: 2004 No 35 s ND 3(2)

**ND 50 Application of thresholds to attributed benefits**

***When this section applies***

- (1) This section applies when the value of a fringe benefit described in section ND 48 is above or below the threshold referred to in that section.

***Below threshold***

- (2) If the taxable value of a benefit under section ND 48(1)(c) and (d) is under the relevant threshold, the employer must either—
- (a) attribute all fringe benefits with an annual taxable value under the relevant threshold that fall within the particular category; or
  - (b) pool the value of the benefit under section ND 54.

***Exception for subsidised transport***

- (3) Despite section ND 48(1)(c)(i), if the employer provides subsidised transport under section CX 8 (Subsidised transport) with a taxable value over the threshold, they may pool the value of the benefit under section ND 54 if all their employees have the same or a similar entitlement to the fringe benefit.

***Amending thresholds***

- (4) The Governor-General by Order in Council may determine the amount of the thresholds referred to in section ND 48, setting out the tax year in which the threshold is to apply.

Defined in this Act: amount, employee, employer, fringe benefit, subsidised transport, tax year

Origin: 2004 No 35 ss ND 3(4)-(7), ND 4, ND 16

**ND 51 Employer's liability for attributed benefits**

***When this section applies***

- (1) This section applies when an employer is required to attribute the value of a fringe benefit to an employee under section ND 48.

***Tax liability***

- (2) The employer's FBT liability in relation to the employee is the amount calculated using the formula—

tax on all-inclusive pay - tax on cash pay.

***Definition of items in formula***

- (3) In the formula,—
- (a) **tax on all-inclusive pay** is the amount determined at the rate set out in schedule 2, part B (Fringe benefit values) on the amount of the employee's all-inclusive pay calculated using the formula in section ND 52(2):



- (b) **tax on cash pay** is the amount calculated under section ND 52(3)(b) or (4)(b).

***Exception for shareholder-employees and persons with attributed income***

- (4) If the employer has an exception for an employee under section ND 53 in a tax year, and the employer pays FBT at the rate of 49% of the taxable value of the attributed fringe benefits under section ND 52(3)(a), the employer must deduct the FBT payable in the tax year from the result of the formula in subsection (2).

***Further option***

- (5) Instead of calculating FBT under subsections (2) and (4), an employer may choose to pay FBT at the rate of 63.93% on the taxable value of the attributed fringe benefits.

Defined in this Act: amount, employee, employer, FBT, fringe benefit, pay, tax year

Origin: 2004 No 35 s ND 5(3)-(6)

**ND 52 Calculation of all-inclusive pay**

***When this section applies***

- (1) This section applies to determine the amount of an employee's all-inclusive pay for the purposes of section ND 51.

***Calculation***

- (2) The amount of an employee's all-inclusive pay is calculated using the formula—  
cash pay - tax on cash pay + taxable value of all fringe benefits.

***Definition of items in formula for major shareholder***

- (3) If the employee is a major shareholder, the items in the formula are defined as follows:
- (a) **cash pay** is the cash pay of the employee for the income year in which the fringe benefit is attributed that is paid to the employee or applied on their account by the employer or a related employer, and includes—
- (i) a dividend and interest derived by the employee from their employer; and
- (ii) a dividend and interest derived by the employee from a related employer:
- (b) **tax on cash pay** is the tax on the cash pay of the employee calculated using the basic rate of tax for every \$1 of taxable income set out in schedule 1, part B (Basic rates of income tax and ESCT),—
- (i) treating the cash pay as if it were the only taxable income of the employee; and

- (ii) taking into account any rebate of tax under section KC 1 (Low income rebate), applying the section as if the employee were resident in New Zealand for the whole income year:
- (c) **taxable value of all fringe benefits** is—
  - (i) the taxable value of all fringe benefits attributed to the employee in the tax year; and
  - (ii) the taxable value of all fringe benefits attributed to a person associated with the employee in the income year if the person does not receive the fringe benefits as an employee of the employer.

***Definition of items in formula for person who is not major shareholder***

- (4) If the employee is not a major shareholder, the items in the formula are defined as follows:
  - (a) **cash pay** is the cash pay of the employee for the tax year in which the fringe benefit is attributed that is paid to the employee or applied on their account by the employer or a related employer:
  - (b) **tax on cash pay** is the tax on the cash pay of the employee calculated using the basic rate of tax for every \$1 of taxable income set out in schedule 1, part B,—
    - (i) treating the cash pay as if it were the only taxable income of the employee; and
    - (ii) taking into account any rebate of tax under section KC 1, applying the section as if the employee were resident in New Zealand for the whole tax year:
  - (c) **taxable value of all fringe benefits** is the taxable value of all fringe benefits attributed to the employee in the tax year.

***Timing of amounts***

- (5) In this section, the cash pay of a shareholder-employee who derives an amount of pay referred to in paragraph (b) or (c) of the definition of **pay** in subsection (6) is treated as derived in the income year following the income year in which it was received or attributed.

***Meaning of pay and related employer***

- (6) In this section,—

**pay** means—

  - (a) salary or wages; and
  - (b) income to which section ND 3(2) to (4) applies; and
  - (c) an amount attributed under section GC 14D (Attribution rule: calculation); and
  - (d) an extra pay; and
  - (e) a schedular payment

**related employer** means person separate from an employer that is a branch or division of the employer or a person associated with the employer.

Defined in this Act: amount, dividend, employee, employer, extra pay, income year, interest, major shareholder, pay, related employer, resident in New Zealand, salary or wages, schedular payment, shareholder-employee, tax year, taxable income

Origin: 2004 No 35 ss ND 5(1), (2), ND 7, ND 7A

### **ND 53 Calculation for certain employees when information lacking**

#### *When this section applies*

- (1) This section applies in relation to the following persons when an employer does not have sufficient information to complete a calculation under section ND 51 or ND 52:
  - (a) a shareholder-employee who derives salary or wages, or income to which section ND 3(2) to (4) applies; or
  - (b) an employee receiving attributed income under section GC 14D (Attribution rule: calculation) from a company or trust that is their employer.

#### *Calculations under sections ND 51 and ND 52 not required*

- (2) Sections ND 51 and ND 52 do not apply in the tax year or income year, as applicable, in which the employer is required to attribute a fringe benefit to the employee.

#### *Alternative rates*

- (3) The employer must either—
  - (a) pay FBT at the rate of 49% of the taxable value of the fringe benefits attributed for the tax year, and apply sections ND 51 and ND 52 to the benefits in the next tax year; or
  - (b) pay FBT at the rate of 64% of the taxable value of the fringe benefits attributed for the tax year.

Defined in this Act: company, employee, employer, FBT, fringe benefit, income, income year, salary or wages, shareholder-employee, tax year

Origin: 2004 No 35 s ND 5A

### **ND 54 Pooling non-attributed benefits**

#### *When this section applies*

- (1) This section applies in a tax year when an employer provides a fringe benefit that is—

- (a) a benefit provided to a former employee; or
- (b) an employment-related loan provided by a life insurer under section CX 10 (Employment-related loans: loans by life insurers); or
- (c) a benefit to which section ND 49 applies that cannot be attributed to a particular employee; or
- (d) an attributed benefit to which section ND 50(2) applies; or
- (e) subsidised transport to which section ND 50(3) applies.

***Pooling value***

- (2) The employer must pool the value of the benefits.

***Final quarter pooling***

- (3) For the final quarter of the tax year, the employer must create 2 pools, 1 for each of the following groups of persons:
  - (a) the first pool is for an employee who is a major shareholder, or a person associated with an employee who is a major shareholder (unless that person receives the fringe benefit as an employee of the employer):
  - (b) the second pool is for all other employees.

***Final quarter calculation***

- (4) The employer must calculate FBT for the final quarter of the tax year on the annual taxable value of the pooled fringe benefits—
  - (a) at the rate of 64% for the first pool; and
  - (b) at the rate of 49% for the second pool.

Defined in this Act: associated person, employee, employer, employment-related loan, FBT, fringe benefit, life insurer, major shareholder, quarter, subsidised transport, tax year

Origin: 2004 No 35 s ND 6

*Taxable value of fringe benefits*

**ND 55 Value of and payments towards fringe benefits**

***Value of benefit***

- (1) The taxable value of a fringe benefit is the value of the benefit. Subsection (2) overrides this subsection.

***Reduction for payment by employee***

- (2) If an employee pays an amount for receiving a fringe benefit, the value of the benefit is reduced by the amount paid.

***When associate pays amount***

- (3) If section GC 15(1) (Benefit given to associated person of employee) applies, the value of the benefit is reduced when a person associated with the employee pays an amount for the benefit.

***What this section does not apply to***

- (4) This section does not apply to—
- (a) an employment-related loan:
  - (b) a payment to acquire or improve an asset if receiving or using the asset does not constitute a fringe benefit.

Defined in this Act: amount, associated person, employee, employment-related loan, fringe benefit, pay

Origin: 2004 No 35 s ND 1S

**ND 56 Private use of motor vehicle: taxable value in cases of part ownership**

If a fringe benefit is provided by making available a motor vehicle to an employee for their private use, and the vehicle is owned in part by the employee (or, if section GC 15(1) (Benefit given to associated person of employee) applies, a person associated with the employee), the taxable value of the fringe benefit is determined under section ND 57 or ND 58.

Defined in this Act: employee, fringe benefit, motor vehicle, private use

Origin: 2004 No 35 s ND 1T

**ND 57 Private use of motor vehicle: when schedular value not used**

***When this section applies***

- (1) This section applies when the employer has not valued the motor vehicle at cost price or market value (excluding GST) under schedule 2, part A, clause 3 (Fringe benefit values).

***Reduction***

- (2) In the calculation of the taxable value of the fringe benefit, the value of the benefit determined under sections ND 29 to ND 31 is reduced by an amount that is the applicable percentage of the cost price (determined including GST under schedule 2, part A, clause 2) of the motor vehicle to the employee or the associated person as follows:
- (a) if FBT is paid quarterly, 2.5%:

- (b) if FBT is paid on an annual basis, 2.5% for each quarter in which the vehicle was part-owned by the employee or the associated person:
- (c) if FBT is paid on an income year basis, 10%.

***When period longer or shorter than income year***

- (3) In subsection (2)(c) and section ND 58(2)(c) and (3), if the period for which the employer accounts for FBT differs from a normal income year for the reasons described in subsection (4), the amount by which the taxable value of the fringe benefit is reduced is a percentage of the cost price (determined including GST under schedule 2, part A, clause 2) of the motor vehicle to the employer or the associated person equal to the amount calculated using the formula—

$$\frac{10\% \times \text{number of days in period}}{365}.$$

***Reasons for difference***

- (4) The period for which the employer has accounted may be longer or shorter than the normal income year because the employer has either—
  - (a) started or ceased business during that income year; or
  - (b) chosen (with the agreement of the Commissioner) to provide a fringe benefit return for the income year ending with the date of the annual balance of their accounts.

***When vehicle owned less than whole year***

- (5) If an employee has not been part-owner of the motor vehicle for the whole of the income year (or the period referred to in subsection (4)), a reduction under this section is reduced by the proportion of the number of days of the income year or period for which the employee was not a part-owner to the total number of days of that income year or period.

Defined in this Act: amount, associated person, employee, employer, FBT, fringe benefit, GST, income year, motor vehicle

Origin: 2004 No 35 s ND 1U

**ND 58 Private use of motor vehicle: when schedular value used**

***When this section applies***

- (1) This section applies when the employer has valued the motor vehicle on a cost price or market value (excluding GST) under schedule 2, part A, clause 3 (Fringe benefit values).

***Reduction***

- (2) In the calculation of the taxable value of the fringe benefit, the value of the benefit determined under sections ND 29 to ND 31 is reduced by an amount that

is the applicable percentage of the cost price (determined excluding GST) under schedule 2, part A, clause 3(b)(i) in the following way:

- (a) when FBT is paid quarterly, by a percentage calculated using the formula—

$$2.5 + (2.5 \times \text{schedule 2 rate});$$

- (b) when FBT is paid on an annual basis, by a percentage for each quarter in which the vehicle was part-owned by the employee or associated person calculated using the formula—

$$2.5 + (2.5 \times \text{schedule 2 rate});$$

- (c) when FBT is paid on an income year basis, by a percentage calculated using the formula—

$$10 + (10 \times \text{schedule 2 rate}).$$

***Schedule 2 rate***

- (3) In the formulas, **schedule 2 rate** is the rate of GST specified in schedule 2, part A, clause 3(b)(ii) or (iii), for the employer and the relevant quarter and relevant income year, as applicable.

Defined in this Act: associated person, employee, employer, FBT, fringe benefit, income year, motor vehicle, quarter

Origin: 2004 No 35 s ND 1V

*Options for payment of FBT*

**ND 59 Single rate option**

***Rate for all quarters***

- (1) An employer who chooses to pay their fringe benefit liability under the single rate option must pay FBT at the rate of 64% of the taxable value of a fringe benefit for each of the 4 quarters of a tax year.

***Replacing final quarter calculation***

- (2) Despite subsection (1), an employer may ask the Commissioner to replace the FBT liability determined for the final quarter under this section with an amount calculated under section ND 60(4). The employer must provide the information necessary for the calculation.

Defined in this Act: amount, Commissioner, employer, fringe benefit, quarter, tax year

Origin: 2004 No 35 ss ND 1(2)(b), (4), ND 2(2)

## **ND 60 Alternate rate option**

### ***Election***

- (1) This section applies when an employer chooses to pay their fringe benefit liability under the alternate rate option.

### ***First three quarters***

- (2) The employer may pay FBT for any or all of the first 3 quarters of a tax year at 49% of the taxable value of a fringe benefit.

### ***Alternate rate***

- (3) The employer must pay FBT at the rate of 64% of the taxable value of a fringe benefit for any of the first 3 quarters of a tax year for which they do not pay at the rate of 49% under subsection (2).

### ***Final quarter***

- (4) For the final quarter of the tax year, the employer must calculate the total pay of each employee under sections ND 51 and ND 54 for the tax year and subtract the amount of FBT payable for the previous 3 quarters of the tax year.

Defined in this Act: employer, FBT, fringe benefit, pay, quarter, tax year

Origin: 2004 No 35 ss ND 1(2)(a), ND 2, ND 10(1)

## **ND 61 Close company option**

### ***When this section applies***

- (1) This section applies in an income year when an employer that is a close company provides a fringe benefit to a shareholder-employee if, in the preceding income year,—
  - (a) the gross amounts of tax for both PAYE payments and employer's superannuation contributions for the tax year were not more than \$100,000; or
  - (b) the employer did not employ any employees.

### ***Income year basis***

- (2) The employer may choose to pay their FBT liability on an income year basis, informing the Commissioner of their decision in writing or by telephone no later than—
  - (a) the last day of the first quarter of the relevant income year; or
  - (b) the last day of the quarter in which the employer first starts employing employees if subsection (1)(b) applies.



***Rate or calculation***

- (3) The employer must pay FBT on the taxable value of fringe benefits in the income year in which they make their election and in later income years either—
- (a) at the rate of 64% of the taxable value of a fringe benefit; or
  - (b) by calculating for the relevant income year the total pay of each employee under sections ND 51 and ND 54.

***Replacing rate with calculated liability***

- (4) Despite subsection (3), the employer may ask the Commissioner to replace the FBT liability determined under subsection (3)(a) with a calculation under subsection (3)(b). The employer must provide the information necessary for the calculation.

***Part-periods***

- (5) If an income year for which an employer chooses to pay FBT on an income year basis does not start on the same day as the first day of a quarter, the employer must treat the period between the first day of the quarter in which the first day of the income year falls and the first day of the income year as if it were a quarter.

***More than 1 business***

- (6) If an employer ceases business and starts a new business, or operates 2 or more businesses at the same time, the total of all amounts of tax referred to in subsection (1) must be aggregated.

Defined in this Act: amount of tax, business, close company, employee, employer, employer's superannuation contribution, FBT, fringe benefit, income year, PAYE payment, quarter, shareholder-employee, tax year

Origin: 2004 No 35 ss ND 1(2), (5), ND 14, ND 15(7), (8)

**ND 62 Small business option**

***When this section applies***

- (1) This section applies when an employer provides a fringe benefit to an employee who is not a shareholder-employee in a tax year if, for the preceding tax year,—
- (a) the gross amounts of tax for both PAYE payments and employer's superannuation contributions for the tax year were not more than \$100,000; or
  - (b) the employer did not employ any employees.

***Annual basis***

- (2) The employer may choose to pay their FBT liability on an annual basis, informing the Commissioner of their decision in writing or by telephone no later than—
- (a) 30 June in the relevant tax year; or

- (b) the last day of the quarter in which the employer first starts employing employees if subsection (1)(b) applies.

***Rate or calculation***

- (3) The employer must pay FBT on the taxable value of fringe benefits in the tax year in which they make their election and in later tax years either—
  - (a) at the rate of 64% of the taxable value of a fringe benefit; or
  - (b) by calculating for the relevant tax year the total pay of each employee under sections ND 51 and ND 54.

***Replacing rate with calculated amount***

- (4) Despite subsection (3), the employer may ask the Commissioner to replace the FBT liability determined under subsection (3)(a) with a calculation under subsection (3)(b). The employer must provide the information necessary for the calculation.

***Quarters in year***

- (5) For the purposes of subsection (3), the tax year is treated as if it were 4 consecutive quarters.

***More than 1 business***

- (6) If an employer ceases business and starts a new business, or operates 2 or more businesses at the same time, the total of all amounts of tax referred to in subsection (1) must be aggregated.

Defined in this Act: amount of tax, business, Commissioner, employee, employer, employer's superannuation contribution, FBT, fringe benefit, PAYE payment, shareholder-employee, tax year

Origin: 2004 No 35 ss ND 1(2), (5), ND 13

**ND 63 Changes in payment periods**

***No changes for simple or alternate rate options***

- (1) A employer's decision to pay FBT on a quarterly basis under the single rate option or the alternate rate option cannot be changed.

***When requirements for yearly basis no longer met***

- (2) If an employer who has chosen for a tax year to pay FBT on an income year basis or on an annual basis no longer meets the relevant requirements in section ND 61(1) or ND 62(1), the employer must pay their FBT liability for fringe benefits provided to employees on or after the first day of the tax year under the single rate option or the alternate rate option.

***Choosing to change to quarterly basis***

- (3) An employer who has chosen for a tax year to pay FBT on an income year basis or on an annual basis, may choose at any time to pay FBT on a quarterly basis.

***When change takes effect***

- (4) An employer who chooses to change their payment period under subsection (3) must pay their FBT liability on a quarterly basis for a fringe benefit provided from—
- (a) the first day of the next tax year, if the employer previously paid on an annual basis; or
  - (b) the first day of the next income year of the employer, if the employer previously paid on an income year basis; or
  - (c) another date agreed by the employer and the Commissioner.

***Choosing to change to income year basis***

- (5) If an employer who is eligible to use the close company option has been paying FBT on a quarterly basis, and chooses to change to payment on an income year basis, a calculation must be made under section ND 60 for the period—
- (a) beginning immediately after the end of the last full tax year for which the employer pays FBT on a quarterly basis;
  - (b) ending immediately before the start of the first income year for which the election applies.

***Part-periods***

- (6) If an employer changes their payment period from an income year to a quarter, and the day referred to in subsection (4)(b) is not the same day as the first day of a quarter, then for the purposes of the payment of FBT, the employer must treat the period between that day and the first day of the next quarter as if it were a quarter.

Defined in this Act: Commissioner, employee, employer, FBT, income year, quarter, tax year

Origin: 2004 No 35 ss ND 2(4), ND 15

**ND 64 When employer stops employing staff**

***Who this section applies to***

- (1) This section applies in a tax year to an employer who stops employing staff and does not intend to replace them. But this section does not apply to an employer who continues to provide a fringe benefit to a former employee.

***Treated as final quarter***

- (2) The employer must pay FBT under section ND 60, treating the quarter of the tax year in which the employment ended as if it were the final quarter.

***Single rate option***

- (3) As an alternative to the application of section ND 51(2) or ND 54(3), the employer may choose to pay FBT under the single rate option—

- (a) making the calculation in relation to the period from the start of the tax year to the date on which the employer stops employing staff; and
- (b) taking into account any earlier payments of FBT made in relation to an employee.

Defined in this Act: employer, FBT, fringe benefit, quarter, tax year

Origin: 2004 No 35 s ND 8

### *ESCT rules and employer's superannuation contributions*

#### *Introductory provisions*

#### **ND 65 ESCT rules and their application**

##### *Meaning*

- (1) The **ESCT rules** means—
  - (a) section CX 42 (Employer's superannuation contributions); and
  - (b) sections ND 66 to ND 71; and
  - (c) sections 15C to 15M, 24J to 24P, 47, 48, and Part 9 of the Tax Administration Act 1994.

##### *Application*

- (2) The ESCT rules apply to an employer who makes an employer's superannuation contribution.

Defined in this Act: employer, employer's superannuation contribution, ESCT rules

Origin: 2004 No 35 s OB 1 "SSCWT rules"

#### **ND 66 Employer's superannuation contributions**

##### *Contribution in money for benefit of employees*

- (1) An **employer's superannuation contribution** means a contribution in money made to a superannuation fund by an employer for the benefit of 1 or more of their employees.

***Determining amount of contribution***

- (2) The amount of an employer’s superannuation contribution is the sum of the amount of the contribution received by the superannuation fund and the amount of tax for the employer’s superannuation contribution.

***Payment of amount of tax***

- (3) An employer who makes an employer’s superannuation contribution on behalf of an employee must pay to the Commissioner the amount of tax for the contribution. The amount is payable in 2 payment periods in a month as set out in section NA 15 (Payment dates for interim and other tax payments) unless they are an employer to whom section ND 23(3) applies.

***When contribution paid***

- (4) The amount of tax for an employer’s superannuation contribution is treated for tax purposes as paid by the employer and received by the superannuation fund at the time the employer makes the contribution.

Defined in this Act: amount, amount of tax, Commissioner, employee, employer, employer’s superannuation fund, superannuation fund

Origin: 2004 No 35 ss NE 2(2), NE 6, OB 1 “employer’s superannuation contribution”, “specified superannuation contribution”

*Calculating amounts of tax*

**ND 67 Calculating amounts of tax for employer’s superannuation contribution**

The amount of tax for an employer’s superannuation contribution is the amount determined under 1 of the following paragraphs, as applicable:

- (a) if the employee chooses under section ND 69(1), the amount determined under schedule 1, part A, clause 10(a) (Basic rates of income tax and ESCT); or
- (b) if the employer chooses under section ND 69(3), the amount determined under schedule 1, part A, clause 10(aa); or
- (c) the amount determined under schedule 1, part A, clause 10(b).

Defined in this Act: amount, amount of tax, employee, employer, employer’s superannuation contribution

Origin: 2004 No 35 ss NE 2, NE 2AA, NE 2AB

### **ND 68 Choosing to have amount treated as salary or wages**

With the agreement of their employer who makes an employer's superannuation contribution on their behalf, an employee may choose to have some or all of an employer's superannuation contribution made on their behalf treated as salary or wages under the PAYE rules.

Defined in this Act: employee, employer's superannuation contribution, PAYE rules, salary or wages

Origin: 2004 No 35 s NE 2A

### **ND 69 Choosing to apply different rates of tax**

#### ***Agreement for rate to apply***

- (1) With the agreement of an employer who makes an employer's superannuation contribution on their behalf, an employee may choose to have the amount of tax for some or all of the amount of the contribution withheld at the rate set out in schedule 1, part A, clause 10(a) (Basic rates of income tax and ESCT).

#### ***When subsection (3) applies***

- (2) Subsection (3) applies when an employer makes an employer's superannuation contribution on behalf of an employee who has not made an election under subsection (1).

#### ***Employer's election***

- (3) The employer may choose to withhold the amount of tax for the contribution at the rate set out in schedule 1, part A, clause 10(aa) for the amount of salary or wages that—
  - (a) the employee derives in the tax year that is immediately before the tax year to which the contribution relates, if the employee has been employed by the employer for the whole of that preceding tax year; or
  - (b) the employer estimates will be derived by the employee in the tax year to which the contribution relates.

#### ***PAYE intermediaries***

- (4) For the purposes of subsection (3), an employer includes a PAYE intermediary.

Defined in this Act: amount of tax, employee, employer, employer's superannuation contribution, PAYE intermediary, salary or wages, tax year

Origin: 2004 No 35 ss NE 2AA, NE 2AB, NE 2A

## ND 70 Calculating amounts of tax on failure to withhold

### *When this section applies*

- (1) This section applies if an employer or PAYE intermediary does not withhold an amount of tax for an employer's superannuation contribution under section ND 66(3).

### *Formula for amount of tax*

- (2) The amount of tax is calculated using the formula—

$$\frac{\text{rate}}{1 - \text{rate}} \times \text{contribution to fund} - \text{amount of tax already paid.}$$

### *Definition of items in formula*

- (3) In the formula,—
- (a) **rate** is the percentage that is the withholding rate set out in schedule 1, part A, clause 10 (Basic rates of income tax and ESCT) that applies at the time the contribution was made;
  - (b) **contribution to fund** is the amount of the contribution received by the superannuation fund excluding the amount of tax;
  - (c) **amount of tax already paid** is any amount of tax for the contribution that has already been paid.

Defined in this Act: amount, amount of tax, employer, employer's superannuation contribution, PAYE intermediary, superannuation fund

Origin: 2004 No 35 s NE 5

## ND 71 Amounts of tax treated as paid to and received by superannuation funds

In determining whether an employer has met their obligation to pay a contribution to a superannuation fund—

- (a) the employer or their PAYE intermediary is treated as having paid to the superannuation fund an amount of tax under the ESCT rules or the PAYE rules, if applicable; and
- (b) the fund is treated as having received the amount referred to under paragraph (a); and
- (c) the payment and receipt are treated as having occurred when the superannuation fund received the employer's superannuation contribution.

Defined in this Act: amount of tax, employer, employer's superannuation contribution, ESCT rules, pay, PAYE intermediary, PAYE rules, superannuation fund

Origin: 2004 No 35 s NE 6

*Tax on certain withdrawals from superannuation funds*

**ND 72 Recovery of tax paid by superannuation funds**

*When this section applies*

- (1) This section applies for the purposes of section CS 1 (Withdrawals) when a person who is a member of a superannuation fund makes a withdrawal from the fund.

*Amount of recovery*

- (2) The trustee of the fund may subtract from the amount of the withdrawal an amount calculated using the formula—

rate x superannuation fund's income.

*Definition of items in formula*

- (3) In the formula,—
- (a) **rate** is the percentage that is the basic rate of income tax set out in schedule 1, part A, clause 4 (Basic rates of income tax and ESCT):
- (b) **superannuation fund's income** is the income of the superannuation fund calculated under section CS 1.

Defined in this Act: amount, income, income tax, superannuation fund, trustee

Origin: 2004 No 35 s NEA 1



## **Subpart NE—Tax on resident passive income**

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- NE 22 When payment treated as non-resident passive income
- NE 23 When amount of tax treated as FDP credit

- NE 24 When amount of tax treated as Maori authority credit
- NE 25 When amount of tax treated as imputation credit
- NE 26 Payment by proxy

*Certificates of exemption*

- NE 27 Certificates of exemption
- NE 28 When certificates of exemption expire
- NE 29 Establishing whether person holds certificate of exemption
- NE 30 When unincorporated bodies hold certificates of exemption

### *Introductory provisions*

#### **NE 1 RWT rules and their application**

##### *Meaning*

- (1) The **RWT rules** means—
- (a) section GC 19 (Resident withholding tax); and
  - (b) section GC 20 (Agreements not to make resident withholding tax deductions to be void); and
  - (c) section LD 3 (Resident withholding tax deductions to be credited against income tax assessed); and
  - (d) this subpart; and
  - (e) sections 15T, 25 to 28, 32E to 32L, 50 to 55, Part 9, sections 170 to 172, and 185 of the Tax Administration Act 1994.

##### *Application*

- (2) The RWT rules apply to a person who pays an amount of resident passive income.

Defined in this Act: amount, resident passive income, RWT rules

Origin: 2004 No 35 s OB 1 “RWT rules”

#### **NE 2 Resident passive income**

##### *Interest, dividends, and certain distributions*

- (1) **Resident passive income** means an amount paid to a person resident in New Zealand to the extent to which it consists of—
- (a) interest:
  - (b) a dividend:
  - (c) a taxable Maori authority distribution:
  - (d) a replacement payment paid to a person under a share-lending arrangement.

##### *Exclusions and inclusions*

- (2) Subsections (3) to (5) override subsection (1).

##### *Exclusions from interest*

- (3) The following amounts are excluded from interest under this section:
- (a) exempt interest:

- (b) interest derived by a person who holds a certificate of exemption issued under section NE 27:
- (c) interest that is non-resident passive income paid to a person resident in New Zealand who is acting as the agent or nominee of a non-resident:
- (d) interest derived from outside New Zealand by a non-resident:
- (e) interest paid by a company and derived by another company when both companies are members of the same group of companies at the time of the payment:
- (f) interest paid to an intermediary—
  - (i) by a client in relation to the operation of a tax pooling account; or
  - (ii) by the Commissioner under section NP 18 (Deposits in tax pooling accounts):
- (g) interest payable under the Tax Administration Act 1994 under section 120D or Part 7 of that Act.

***Inclusions in interest***

- (4) For the purposes of this section, the following amounts are treated as interest and not as a dividend:
  - (a) a dividend that a building society pays to a member in relation to a withdrawable share in the society:
  - (b) a dividend that a friendly society pays to its member in relation to a share in the society.

***Exclusions from dividends***

- (5) The following amounts are excluded from a dividend under this section:
  - (a) a dividend that is exempt income—
    - (i) through the application of any of sections CW 9 to CW 11 (which relate to income from equity); or
    - (ii) under section CW 50 (Exemption under other Acts):
  - (b) an amount treated as a dividend under—
    - (i) section GD 3 or GD 5 (which relate to excessive remuneration); or
    - (ii) section HF 1(5) (Profits of mutual associations in respect of transactions with members):
  - (c) an amount of attributed repatriation:
  - (d) a dividend derived by a person who holds a certificate of exemption issued under section NE 27:
  - (e) a dividend that is non-resident passive income:
  - (f) a dividend derived by a non-resident other than a dividend derived from New Zealand:
  - (g) a dividend paid by a company and derived by another company when both are members of the same group of companies at the time of the payment.

***Beneficiary income***

- (6) If a person derives an amount described in this section in their capacity as trustee and the amount is beneficiary income, the amount is treated as not derived by the trustee.

Defined in this Act: amount, attributed repatriation, beneficiary income, building society, certificate of exemption, Commissioner, company, dividend, derived from New Zealand, exempt income, friendly society, group of companies, interest, New Zealand, nominee, non-resident, non-resident passive income, pay, replacement payment, resident in New Zealand, resident passive income, share, share-lending arrangement, tax pooling account, taxable Maori authority distribution, trustee, withdrawable share

Origin: 2004 No 35 s NF 1(2), (4), (5)

***Withholding obligations***

**NE 3 Obligation to withhold amounts of tax for resident passive income**

***Obligation to withhold and pay***

- (1) A person to whom section NE 1(2) applies is liable to withhold the amount of tax for a payment of resident passive income and pay the amount to the Commissioner if—
- (a) they make the payment and are not excluded under sections NE 5 and NE 6 from the obligation to withhold:
  - (b) they are an RWT proxy in relation to the payment.

***Non-cash dividends***

- (2) For the purposes of subsection (1), if the payment is a non-cash dividend, the person must calculate the amount of tax under section NE 14 and pay the amount to the Commissioner.

Defined in this Act: amount of tax, Commissioner, non-cash dividend, pay, resident passive income, RWT proxy

Origin: 2004 No 35 s NF 2(1A), (1AB)

#### **NE 4 Persons who have withholding obligations**

##### ***Requirements***

- (1) A person referred to in section NE 3(1)(a) must meet at least 1 requirement under each of subsections (2) and (3) in relation to an amount of resident passive income.

##### ***Requirement for person***

- (2) The person must be, at the time the payment is made,—
- (a) resident in New Zealand; or
  - (b) if not resident in New Zealand,—
    - (i) carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand; and
    - (ii) not excluded under subsection (4).

##### ***Requirements for person and payment***

- (3) In addition to meeting a requirement under subsection (2), 1 of the following requirements must be met at the time the payment is made:
- (a) the person holds a certificate of exemption;
  - (b) the payment is made in whole or in part in carrying on a taxable activity, whether or not the person acts as agent or trustee for another person;
  - (c) the payment is a dividend;
  - (d) the payment is a taxable Maori authority distribution;
  - (e) the payment is a replacement payment under a share-lending arrangement.

##### ***When person not treated as resident or carrying on taxable activity***

- (4) For the purposes of subsection (2), a person who is not resident in New Zealand and is carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand, is treated as not meeting the requirements of the subsection if they establish that, at the time the payment is made,—
- (a) either,—
    - (i) for interest or a dividend, the payment is attributable to or effectively connected with a fixed establishment of the person outside New Zealand; or
    - (ii) for a dividend, the company is not resident in New Zealand; and
  - (b) all amounts payable in relation to money lent or shares to which the payment relates are payable in a currency other than New Zealand currency.

Defined in this Act: amount, certificate of exemption, dividend, fixed establishment, interest, money lent, New Zealand, pay, replacement payment, resident in New Zealand, resident passive income, share, share-lending arrangement, taxable activity, taxable Maori authority distribution, trustee

## **NE 5 No withholding obligation in certain circumstances**

### *When this section applies*

- (1) This section applies when a person (**person A**)—
  - (a) pays an amount to another person (**person B**); or
  - (b) receives a payment while acting as agent or bare trustee for person B.

### *No obligation if person B exempt*

- (2) For the purposes of determining whether person A is required under section NE 4 to withhold an amount of tax, the payment is treated as not consisting of resident passive income if person A has established that person B holds a certificate of exemption issued under section NE 27.

Defined in this Act: amount, amount of tax, certificate of exemption, pay, resident passive income, trustee

Origin: 2004 No 35 s NF 2(7)

## **NE 6 When obligation to withhold unreasonable**

### *When this section applies*

- (1) This section applies when a person (**person A**) who is a person listed in a paragraph in section 32E(2)(a) to (h) of the Tax Administration Act 1994—
  - (a) receives an amount from another person (**person B**); or
  - (b) makes a payment at person B's request.

### *No obligation if unreasonable*

- (2) For the purposes of determining whether person A is required under section NE 4 to withhold an amount of tax, the payment is treated as not consisting of resident passive income of person B to the extent to which—
  - (a) person A could not reasonably be expected to be aware that the payment was resident passive income; or
  - (b) for an amount that is a redemption payment, person A could not reasonably be expected to be aware of the amount that consisted of resident passive income.

Defined in this Act: amount, amount of tax, pay, redemption payment, resident passive income

Origin: 2004 No 35 s NF 2(8)

## **NE 7 When resident passive income paid to trustees**

### ***Who this section applies to***

- (1) This section applies when—
- (a) an amount is paid to a person (**person A**) who is acting as trustee for another person (**person B**) at the time; and
  - (b) some or all of the amount is resident passive income other than a replacement payment under a share-lending arrangement; and
  - (c) person A—
    - (i) does not hold a certificate of exemption at the time of the payment; and
    - (ii) is paid the amount in the conduct of a taxable activity carried on by them.

### ***Obligation to withhold***

- (2) At the time the payment is made and to the extent to which it has not already been withheld, person A must withhold the amount of tax for the payment and pay it to the Commissioner.

### ***Relationship with section NE 9***

- (3) Section NE 9 overrides this section.

Defined in this Act: amount, amount of tax, certificate of exemption, Commissioner, pay, replacement payment, resident passive income, share-lending arrangement, taxable activity, trustee

Origin: 2004 No 35 s NF 3(1), (2)

## **NE 8 When resident passive income paid to agents**

### ***Who this section applies to***

- (1) This section applies when—
- (a) an amount is paid to a person (**person A**) who is acting as agent for another person (**person B**) at the time; and
  - (b) some or all of the amount is resident passive income; and
  - (c) person A—
    - (i) holds a certificate of exemption at the time of the payment; or
    - (ii) is paid the amount in the conduct of a taxable activity carried on by them.

### ***Obligation to withhold***

- (2) At the time the payment is received and to the extent to which it has not already been withheld, person A must withhold the amount of tax for the payment and pay it to the Commissioner.



***Relationship with section NE 9***

- (3) Section NE 9 overrides this section.

Defined in this Act: amount, amount of tax, certificate of exemption, Commissioner, pay, resident passive income, taxable activity

Origin: 2004 No 35 s NF 3(1)

**NE 9 Agents' or trustees' obligations in relation to certain dividends**

***When this section applies***

- (1) This section applies for the purposes of sections NE 7 and NE 8 when an agent or trustee is required to withhold an amount of tax for resident passive income.

***Dividends other than specified dividends***

- (2) To the extent to which the resident passive income consists of a dividend other than a dividend having the nature of interest, an amount of tax that must be withheld under section NE 3 is treated as an amount to which the RWT rules apply and not as an amount to which the FDP rules apply.

***Non-cash dividends***

- (3) To the extent to which the resident passive income consists of a non-cash dividend, the trustee or agent must pay to the Commissioner an amount equal to the amount of tax for the dividend as if it were the amount of tax required to be withheld and paid under the RWT rules.

***Obligation of person paying not overridden***

- (4) This section does not override the obligation of the person who pays the resident passive income to the agent or trustee to withhold the amount of tax for the payment under section NE 4.

Defined in this Act: amount, amount of tax, dividend, dividend having the nature of interest, FDP rules, non-cash dividend, pay, resident passive income, RWT rules, trustee

Origin: 2004 No 35 s NF 3(3), (4), (5)

**NE 10 Special rule relating to payments of interest**

***Threshold for amounts of interest***

- (1) This section applies to a person who—  
(a) pays resident passive income consisting of interest; and

- (b) either does not hold a certificate of exemption at the time of the payment, or is described in section 32E(2)(k) or (l) of the Tax Administration Act 1994 or holds a certificate under section 32I of that Act; and
- (c) has paid an amount of resident passive income consisting of interest that totals less than \$5,000 in the tax year immediately before the tax year in which the payment is made; and
- (d) would be liable to withhold the amount of tax for the resident passive income if this section did not exist.

***Minimum amount***

- (2) Despite section NE 4(3), the person is required to withhold the amount of tax for the payment only if the total resident passive income consisting of interest paid by the person in the tax year in which the payment is made is more than \$5,000.

Defined in this Act: amount of tax, certificate of exemption, interest, pay, resident passive income, tax year

Origin: 2004 No 35 s NF 2(5)

**NE 11 Notification by companies**

***When this section applies***

- (1) This section applies when a company that is not a trustee or a Maori authority is entitled to receive a payment of resident passive income other than a replacement payment under a share-lending arrangement.

***Notification required***

- (2) The company must notify the person making the payment that they are a company.

***Withholding rate***

- (3) The person making the payment must withhold the amount of tax for the payment at the applicable rate set out in schedule 14, clause 1C (Basic amounts of tax for resident passive income) for a payment made on or after the date of notification.

***Consequence of failure to notify***

- (4) If the company does not notify the person making the payment, the person must apply the higher withholding rate set out in section NE 19(3).

Defined in this Act: amount of tax, company, Maori authority, notify, pay, replacement payment, resident passive income, share-lending arrangement, trustee

Origin: 2004 No 35 s NF 2B

### *Calculating amounts of tax*

#### **NE 12 Interest**

##### *When this section applies*

- (1) This section applies when a person makes a payment of resident passive income that consists of interest.

##### *Calculation of amount of tax*

- (2) The amount of tax for the payment that the person must withhold and pay to the Commissioner is calculated using the formula—

$$(\text{rate} \times (\text{interest paid} + \text{foreign withholding tax})) - \text{foreign withholding tax.}$$

##### *Definition of items in formula*

- (3) In the formula,—
- (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 1 or 1C (Basic amounts of tax for resident passive income):
  - (b) **interest paid** is the interest paid before the amount of tax is determined:
  - (c) **foreign withholding tax** is the amount of foreign withholding tax paid or payable on the interest paid.

Defined in this Act: amount of tax, Commissioner, foreign withholding tax, interest, pay, resident passive income

Origin: 2004 No 35 s NF 2(1)(a)

#### **NE 13 Dividends other than non-cash dividends**

##### *When this section applies*

- (1) This section applies when a person makes a payment of resident passive income that consists of a dividend other than a non-cash dividend.

##### *Calculation of amount of tax*

- (2) The amount of tax for the payment that the person must withhold and pay to the Commissioner is calculated using the formula—

$$(\text{rate} \times (\text{dividend paid} + \text{tax paid or credit attached})) - \text{tax paid or credit attached.}$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 2 (Basic amounts of tax for resident passive income):
  - (b) **dividend paid** is the amount of the dividend paid before the amount of tax is determined:
  - (c) **tax paid or credit attached** is the total of the following amounts:
    - (i) if the dividend is paid in relation to shares issued by an ICA company, the amount of an imputation credit attached to the dividend:
    - (ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable on the amount of dividend:
    - (iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of an FDP credit attached to the dividend.

Defined in this Act: amount, amount of tax, Commissioner, dividend, FDP credit, foreign withholding tax, ICA company, imputation credit, non-cash dividend, pay, resident in New Zealand, resident passive income, share

Origin: 2004 No 35 s NF 2(1)(b)

**NE 14 Non-cash dividends other than bonus issues in lieu**

*When this section applies*

- (1) This section applies when a person makes a payment of resident passive income that consists of a non-cash dividend other than a bonus issue in lieu.

*Calculation of amount of tax*

- (2) The amount of tax for the payment that the person must pay under subsection (4) to the Commissioner is calculated using the formula—

$$\left( \frac{\text{rate}}{1 - \text{rate}} \times \text{dividend paid} \right) - \text{tax paid or credit attached.}$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 2 (Basic amounts of tax for resident passive income):
  - (b) **dividend paid** is the amount of the dividend paid before the amount of tax is determined:

- (c) **tax paid or credit attached** is the total of the following amounts:
- (i) if the dividend is paid in relation to shares issued by an ICA company, the amount of an imputation credit attached to the dividend:
  - (ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable on the amount of dividend:
  - (iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of an FDP credit attached to the dividend.

*Treatment as if amount of tax withheld*

- (4) For the purposes of subsection (2), the person must pay to the Commissioner the amount calculated as if it were the amount of tax required to be withheld and paid under the RWT rules.

Defined in this Act: amount, amount of tax, bonus issue in lieu, Commissioner, FDP credit, foreign withholding tax, ICA company, imputation credit, non-cash dividend, pay, resident in New Zealand, resident passive income, RWT rules, share

Origin: 2004 No 35 s NF 2(1)(c), (2)

**NE 15 Bonus issues in lieu**

*When this section applies*

- (1) This section applies when a person makes a payment of resident passive income that consists of a dividend that is a bonus issue in lieu.

*Calculation of amount of tax*

- (2) The amount of tax for the payment is calculated using the formula—  
 $(\text{rate} \times (\text{alternative amount} + \text{tax paid or credit attached})) - \text{tax paid or credit attached}.$

*Definition of items in formula*

- (3) In the formula,—
- (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 2 (Basic amounts of tax for resident passive income):
  - (b) **alternative amount** is the amount of money offered as an alternative to the bonus issue before the amount of tax is determined:
  - (c) **tax paid or credit attached** is the total of the following amounts:
    - (i) if the dividend is paid in relation to shares issued by an ICA company, the amount of an imputation credit attached to the dividend:

- (ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable on the amount of dividend:
- (iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of an FDP credit attached to the dividend.

Defined in this Act: amount, amount of tax, bonus issue in lieu, dividend, FDP credit, foreign withholding tax, ICA company, imputation credit, pay, resident in New Zealand, resident passive income, share

Origin: 2004 No 35 s NF 2(1)(d)

## NE 16 Taxable Maori authority distributions

### *When this section applies*

- (1) This section applies when a Maori authority makes a payment of resident passive income that consists of a taxable Maori authority distribution in the form of a sum of money or an amount of a credit in the balance of an account with the Maori authority.

### *Calculation of amount of tax*

- (2) The amount of tax for the payment that the Maori authority must withhold and pay to the Commissioner is calculated using the formula—

$$(\text{rate} \times (\text{distribution amount} + \text{credit attached})) - \text{credit attached}.$$

### *Non-cash amounts*

- (3) Despite subsection (2), if the resident passive income is not paid in cash, the amount of tax for the payment that the Maori authority must pay to the Commissioner is calculated using the formula—

$$\left( \frac{\text{rate}}{1 - \text{rate}} \times \text{distribution amount} \right) - \text{credit attached}.$$

### *Definition of items in formulas*

- (4) In the formulas in subsections (2) and (3),—
  - (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 3 (Basic amounts of tax for resident passive income):
  - (b) **distribution amount** is the amount of the distribution before the amount of tax is determined:
  - (c) **credit attached** is the amount of the Maori authority credit attached to the distribution.

Defined in this Act: amount, amount of tax, bonus issue, Commissioner, Maori authority, Maori authority credit, pay, resident passive income, taxable Maori authority distribution,

Origin: 2004 No 35 s NF 2(1)(e), (f)

## NE 17 Replacement payments under share-lending arrangements

### *When this section applies*

- (1) This section applies when a person makes a payment of resident passive income that consists of a replacement payment under a share-lending arrangement.

### *Calculation of amount of tax*

- (2) The amount of tax for the payment is calculated using the formula—

$$\frac{\text{rate} \times \text{payment}}{1 - \text{rate}} - \text{credit attached} - \text{credit transferred} - \text{FDP credit transferred}.$$

### *Definition of items in formula*

- (3) In the formula,—
- (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 2 (Basic amounts of tax for resident passive income):
  - (b) **payment** is the amount of the replacement payment excluding an imputation credit attached under section ME 6B (Share user may attach imputation credit to replacement payment):
  - (c) **credit attached** is the amount of an imputation credit attached to the replacement payment under section ME 6B:
  - (d) **credit transferred** is the amount of an imputation credit shown in a credit transfer notice relating to the replacement payment:
  - (e) **FDP credit transferred** is the amount of an FDP credit shown in a credit transfer notice relating to the replacement payment.

Defined in this Act: amount of tax, credit transfer notice, imputation credit, pay, replacement payment, resident passive income, share-lending arrangement

Origin: 2004 No 35 s NF 2(1)(g)

## NE 18 Payments made by RWT proxies

### *Calculation of amount of tax*

- (1) A person who is an RWT proxy for a person paying resident passive income that consists of a dividend must withhold an amount of tax for the payment calculated using the formula—

$$\frac{\text{rate} \times \text{amount paid}}{1 - \text{rate.}}$$

***Definition of items in formula***

- (2) In the formula,—
- (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 1 (Basic amounts of tax for resident passive income):
  - (b) **amount paid** is the amount of the dividend paid.

Defined in this Act: amount, amount of tax, dividend, pay, resident passive income, RWT proxy

Origin: 2004 No 35 s NF 2(1B)

**NE 19 Choosing higher rates**

***When this section applies***

- (1) This section applies when a person (**person A**) is entitled to receive resident passive income other than a replacement payment under a share-lending arrangement.

***Person choosing rate***

- (2) Person A may notify the person who is required to withhold the amount of tax for the payment to use 1 of the rates set out in schedule 14, clause 1(a), (b), or (c) (Basic amounts of tax for resident passive income).

***Company choosing rate***

- (3) Despite subsection (1), if person A is a company, they may notify the person making the payment to withhold the amount of tax for the payment at the rate set out in schedule 14, clause 1C (a) or (b).

***Application of rate***

- (4) The rate chosen under subsection (1) or (2) applies to amounts of tax withheld from the date on which notice is given.

Defined in this Act: amount of tax, company, notify, pay, replacement payment, resident passive income, share-lending arrangement

Origin: 2004 No 35 ss NF 2A, NF 2D

***Paying amounts of tax***



## **NE 20 Paying amounts of tax for resident passive income**

A person who is required under the RWT rules to withhold an amount of tax for a payment of resident passive income must pay the amount of tax to the Commissioner under sections NA 15 and NA 16 (which relate to payment dates and the basis on which the payment dates are set).

Defined in this Act: amount of tax, Commissioner, pay, resident passive income, RWT rules

Origin: 2004 No 35

## **NE 21 Basis for payment of amounts of tax for resident passive income**

### ***When this section applies***

- (1) Subsections (2) to (5) apply for the purposes of section NA 6(1) (Withholding and payment obligations for passive income) to a person who is required under the RWT rules to withhold an amount of tax for a payment of resident passive income consisting of interest.

### ***Interest of more than \$500 in total***

- (2) If the person estimates for a tax year that they will be required to withhold more than \$500 in total for each month of the tax year, they must pay the amount of tax to the Commissioner on a monthly basis.

### ***Interest of less than \$500 in total***

- (3) If the person estimates for a tax year that they will be required to withhold less than \$500 in total for each month of the tax year, they must pay the amount of tax to the Commissioner in 2 instalments as described in section NA 15 (Payment dates for interim and other tax payments).

### ***When subsection (5) applies***

- (4) Subsection (5) applies when the person has withheld more than \$500 in total amounts of tax for a 2 month-period from the start of 1 month in a tax year to the end of the month following that month.

### ***Total in 2-month period***

- (5) Despite subsections (2) and (3), the person must pay the total amount of tax to the Commissioner for the 2 month-period by the 20th day of the month following the end of the period.

### ***When subsection (7) applies***

- (6) Subsection (7) applies for the purposes of section NA 6(1) to a person who is required under the RWT rules to withhold an amount of tax for a payment of resident passive income consisting of a dividend, a replacement payment, or a taxable Maori authority distribution.

*Dividends, replacement payments, and taxable Maori authority distributions*

- (7) The person must pay the amount of tax to the Commissioner on a monthly basis.

Defined in this Act: amount of tax, Commissioner, dividend, interest, pay, replacement payment, resident passive income, RWT rules, tax year, taxable Maori authority distribution

Origin: 2004 No 35 s NF 4

**NE 22 When payment treated as non-resident passive income**

*When this section applies*

- (1) This section applies when—
- (a) a person (**person A**) is liable to pay resident passive income to a person not resident in New Zealand (**person B**); or
  - (b) person A receives resident passive income as agent or trustee for person B.

*No liability*

- (2) If person A concludes on reasonable grounds after making reasonable inquiries that an amount is non-resident passive income derived by person B, and person A has complied with their obligations under this Act and the Tax Administration Act 1994 in relation to paying to the Commissioner an amount of tax for non-resident passive income, they have no liability under the RWT rules in relation to the amount.

*Payment derived by non-resident*

- (3) For the purposes of determining person A's liability under the RWT rules, the amount is treated as derived by a non-resident.

Defined in this Act: amount, Commissioner, pay, non-resident, non-resident passive income, resident in New Zealand, resident passive income, RWT rules, this Act, trustee

Origin: 2004 No 35 s NF 5

**NE 23 When amount of tax treated as FDP credit**

*When this section applies*

- (1) This section applies when a company withholds an amount of tax for resident passive income that consists of a dividend other than a dividend having the nature of interest.

***FDP credit***

- (2) The amount is treated as an FDP credit attached to the dividend by the company which is treated as a FDP account company for the purposes of sections LB 1 (Determination of amount of credit in certain cases), and LD 9 (Refund to non-resident or exempt shareholders), and section 185 of the Tax Administration Act 1994.

Defined in this Act: amount of tax, company, dividend, dividend having the nature of interest, FDP account company, FDP credit, resident passive income

Origin: 2004 No 35 s NF 8(1)

**NE 24 When amount of tax treated as Maori authority credit**

***When this section applies***

- (1) This section applies when a Maori authority withholds an amount of tax for a taxable Maori authority distribution.

***Maori authority credit***

- (2) The amount is treated as a Maori authority credit attached to the distribution by the Maori authority for the purposes of sections LB 1, LD 3A, and MK 7 (which relate to the amount and treatment of Maori authority credits).

Defined in this Act: amount of tax, Maori authority, Maori authority credit, taxable Maori authority distribution

Origin: 2004 No 35 s NF 8A(1)

**NE 25 When amount of tax treated as imputation credit**

***When this section applies***

- (1) This section applies when a share user under a share-lending arrangement withholds under the RWT rules an amount of tax for a replacement payment.

***Imputation credit***

- (2) The amount of tax withheld—
- (a) is treated for the share supplier as an imputation credit attached to the replacement payment in addition to an imputation credit that the share user attached to the payment under section ME 6B (Share user may attach imputation credit to replacement payment); and
  - (b) does not give rise under section LD 3 (Resident withholding tax deductions to be credited against income tax assessed) to a credit of tax or refund for the share supplier.

Defined in this Act: amount of tax, imputation credit, replacement payment, RWT rules, share-lending arrangement, share supplier, share user

Origin: 2004 No 35 s NF 8B

## **NE 26 Payment by proxy**

An RWT proxy who is required to withhold an amount of tax for resident passive income is treated as having withheld the amount from the payment at the time the payment is made.

Defined in this Act: amount of tax, pay, resident passive income, RWT proxy

Origin: 2004 No 35 s NF 4(9)

### *Certificates of exemption*

## **NE 27 Certificates of exemption**

### *Application*

- (1) A person may apply to the Commissioner for a certificate of exemption if—
  - (a) they are a person listed in section 32E(2) of the Tax Administration Act 1994; and
  - (b) they meet the requirements of section 32G of that Act.

### *When certificate expires*

- (2) A certificate of exemption expires if—
  - (a) the holder loses the basis of their exemption; or
  - (b) the Commissioner cancels the certificate under section 32L of the Tax Administration Act 1994.

### *Notifying Commissioner*

- (3) If the holder of a certificate of exemption becomes aware they no longer meet the requirements, they must notify the Commissioner under section 32K of the Tax Administration Act 1994.

Defined in this Act: certificate of exemption, Commissioner, notify

Origin: 2004 No 35 ss NF 9(1), NF 11(1), (2)

## **NE 28 When certificates of exemption expire**

### *When this section applies*

- (1) This section applies in a month when a person's certification of exemption expires. But the section does not apply if the person continues to be required to withhold an amount of tax for resident passive income in the course of carrying out a taxable activity.

### *Payment of outstanding amounts of tax*

- (2) The person must pay to the Commissioner all amounts of tax for resident passive income withheld and not paid to the Commissioner by the 20th day of the month following the month in which the certificate of exemption expired.

Defined in this Act: amount of tax, certificate of exemption, Commissioner, resident passive income, taxable activity

Origin: 2004 No 35 s NF 4(6)

## **NE 29 Establishing whether person holds certificate of exemption**

### *When this section applies*

- (1) This section applies for the purposes of section NE 5(2) to set out the ways available to person A to establish whether person B is a person holding a certificate of exemption.

### *Requirements*

- (2) Person A may establish that—
  - (a) they have taken reasonable steps to confirm that person B is a person listed in section 32E(2)(a) to (h) of the Tax Administration Act 1994; or
  - (b) except in relation to a person listed in section 32E(2)(k) or (l) or to whom a certificate has been provided under section 32I, they have been given person B's tax file number and have been notified that person B holds a certificate of exemption; or
  - (c) they have seen person B's certificate of exemption and have taken reasonable steps to confirm that person B is the person named in the certificate.

### *Additional requirements*

- (3) In addition to the requirements set out in subsection (2), the following requirements must be met in relation to person B's certificate of exemption:
  - (a) no notice of cancellation has been published in the Gazette—

- (i) for interest, more than 5 working days before the date on which the money was lent:
- (ii) for a dividend or a taxable Maori authority distribution, more than 5 working days before the date on which payment was made:
- (b) person A has not been advised by the Commissioner or person B of a cancellation of a certificate more than 5 working days before the date on which payment is made:
- (c) person A has no other grounds for believing that person B is not eligible for a certificate.

***Later certificate***

- (4) For the purposes of subsection (3)(a) and (b), if a notice of cancellation has been published or if person A has been advised as described, the requirements are still met if—
- (a) a certificate has been provided to person B and notified in the Gazette in the period that is after the notice of cancellation and more than 5 working days before the date on which the payment is made; or
  - (b) person A has seen a certificate provided to person B after the date of publication of the notice of cancellation.

***When person B listed or income of particular type***

- (5) For the purposes of this section, person A has no ground for believing that the payment is income derived by a person other than person B when—
- (a) person B is a person listed in section 32E(2)(a) to (h) of the Tax Administration Act 1994; and
  - (b) the payment is not interest, a dividend, or a taxable Maori authority distribution derived by person B as trustee on behalf of a third person.

Defined in this Act: certificate of exemption, Commissioner, dividend, interest, notice, pay, tax file number, taxable Maori authority distribution, trustee

Origin: 2004 No 35 s NF 2(7)

**NE 30 When unincorporated bodies hold certificates of exemption**

***When this section applies***

- (1) This section applies when—
- (a) an unincorporated body that is carrying on a taxable activity holds a certificate of exemption; and
  - (b) the exemption relates to the carrying on of the taxable activity.

***Treatment of payments made by unincorporated bodies***

- (2) For the purposes of the RWT rules, a payment that the body makes in the course of carrying on the taxable activity is treated as a payment made by the body and not by a member of the body. This subsection overrides subsection (7).

***Treatment of payments to members of unincorporated bodies***

- (3) For the purposes of the RWT rules, a payment made to a member of the body in their capacity as a member and in the course of carrying on the taxable activity of the body is treated as a payment made to the body and not to the member.

***Joint and several liability for amounts of tax***

- (4) Each member of the body is jointly and severally liable for the amount of tax for resident passive income that the body is required to pay for as long as the member remains part of the body.

***Natural persons, partnerships, joint ventures, trustees***

- (5) For the purposes of subsection (4),—
- (a) if the member is a natural person, their estate is liable after their death for an amount payable that remains unpaid:
  - (b) if the body is a partnership, joint venture, or the trustees of a trust, a member continues as a member until the date the Commissioner is notified of a change of membership.

***Members and committees***

- (6) Subsection (7) applies to an unincorporated body other than a partnership, joint venture, or the trustees of a trust, when the business of the body is managed by the members or a committee of its members.

***Responsibility of committee officers and members***

- (7) If something is required to be done under the RWT rules by or on behalf of the body, each member holding office as president, chair, treasurer, secretary, or a similar office is jointly and severally responsible. In default, each member holding office bears the responsibility. Action taken by 1 officer or committee member is sufficient.

***Joint and several liability for actions required***

- (8) If something is required to be done under the RWT rules by or on behalf of the body, each member is jointly and severally liable to do it. However, action taken by 1 member is sufficient. Subsection (7) overrides this subsection.

***Changes in membership***

- (9) A change in membership of the unincorporated body has no effect for the purposes of the RWT rules. Subsection (5)(b) overrides this subsection.

***Some definitions***

- (10) In this section,—

**member** means a partner, joint venturer, a trustee, or a member of a body

**partnership** and **partner** have the meanings given in the Partnership Act 1908.

Defined in this Act: amount of tax, certificate of exemption, member, partnership, pay, RWT rules, taxable activity, trustee

Origin: 2004 No 35 s NF 10



## **NF—Tax on non-resident passive income**

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### *Introductory provisions*

#### **NF 1 NRWT rules and their application**

##### *Meaning*

- (1) The **NRWT rules** means—
- (a) sections LC 1, LC 4, and LD 2 (which relate to foreign tax credits); and
  - (b) this subpart; and
  - (c) sections 32M, 49, 100, Part 9, and sections 165B and 185 of the Tax Administration Act 1994.

##### *Application*

- (2) The NRWT rules apply to a person who makes a payment that consists of non-resident passive income.

Defined in this Act: non-resident passive income, NRWT rules, pay

Origin: 2004 No 35 s OB 1 “NRWT rules”

#### **NF 2 Non-resident passive income**

##### *Certain interest and dividends*

- (1) **Non-resident passive income** which means income derived from New Zealand by a non-resident consisting of—
- (a) a dividend:
  - (b) a royalty:
  - (c) an investment society dividend when the non-resident is not engaged in business in New Zealand through a fixed establishment in New Zealand:
  - (d) interest when the non-resident is not engaged in business in New Zealand through a fixed establishment in New Zealand.

##### *Exclusions*

- (2) The following amounts derived by a non-resident are excluded from non-resident passive income:
- (a) an amount of exempt income:
  - (b) an amount of income to which section FC 21 (Amounts derived by non-residents from renting films) applies.

***When subsection (4) applies***

- (3) Subsection (4) applies in a tax year when a person derives non-resident passive income consisting of—
- (a) a dividend other than an investment society dividend:
  - (b) a royalty for the use, production, or reproduction of, or for the right to use, produce, or reproduce, a literary, dramatic, musical, or artistic work in which copyright subsists:
  - (c) interest or a royalty derived by a life insurer from a company resident in New Zealand when the interest or royalty is treated as arising as a result of the life insurer's election under section EY 48 (Non-resident life insurer may become resident):
  - (d) interest or an investment society dividend when the person paying and the person deriving the interest or dividend are not associated persons.

***Final withholding***

- (4) If the person is a filing taxpayer, the income tax liability under section BC 7 (Income tax liability of person with schedular income) for each class of schedular income is determined by the amount of tax required to be withheld under this Part.

***Application of financial arrangements rules***

- (5) The financial arrangements rules do not apply to the calculation of an amount of non-resident passive income.

***Interest paid under registered securities***

- (6) For the purposes of this section, an amount of interest is paid by an approved issuer under a registered security only if it is treated as paid under section 86I of the Stamp and Cheque Duties Act 1971.

***Interest payable by Commissioner***

- (7) For interest payable under Part 7 of the Tax Administration Act 1994, an amount of tax for non-resident passive income withheld by the Commissioner is treated as paid on the date it is withheld. Sections 50, 55, 100, and Part 9 of that Act do not apply to the Commissioner and that interest, but the other provisions of the NRWT rules do apply.

Defined in this Act: amount, amount of tax, approved issuer, associated person, business, Commissioner, company, derived from New Zealand, dividend, exempt income, filing taxpayer, financial arrangements rules, fixed establishment, income, income tax liability, interest, investment society dividend, life insurer, non-resident, non-resident passive income, NRWT rules, pay, registered security, resident in New Zealand, royalty, schedular income

### *Withholding obligations*

#### **NF 3 Obligation to withhold amounts of tax for non-resident passive income**

##### *Obligation to withhold: person paying*

- (1) A person who makes a payment of non-resident passive income must withhold the amount of tax for the payment and pay it to the Commissioner. The obligation to withhold arises under section NA 6(2) (Withholding and payment obligations for passive income) at the time of payment.

##### *When agent or other person receives amount*

- (2) Subsection (3) applies if—
- (a) an agent or other person in New Zealand receives a payment of non-resident passive income on behalf of a person entitled to the payment; and
  - (b) some or all of the amount of tax for the payment has not been withheld.

##### *Obligation to withhold: agent or other person*

- (3) The agent or other person must withhold the amount of tax referred to in subsection (2)(b) for the payment and pay it to the Commissioner. The obligation to withhold arises at the time of receipt.

##### *Notifying agent or other person*

- (4) If, in the circumstances described in subsection (2)(a), the person paying the non-resident passive income has withheld the amount of tax for the payment, they must notify the agent or other person of the amount withheld. Notification must be made at the time the payment is made.

Defined in this Act: amount of tax, Commissioner, New Zealand, non-resident passive income, notify, pay

Origin: 2004 No 35 s NG 8

#### **NF 4 When amounts of tax already withheld**

A person is not required to withhold an amount of tax for a payment of non-resident passive income when some or all of the payment consists of resident passive income to the extent to which the amount of tax has already been collected.

Defined in this Act: amount of tax, non-resident passive income, pay, resident passive income

Origin: 2004 No 35 s NF 2(6)

## **NF 5 When amounts of tax not withheld or partly withheld**

### ***Person as filing taxpayer***

- (1) When a person is required under section NA 6(2) (Withholding and payment obligations for passive income) to withhold an amount of tax for non-resident passive income and does not withhold the full amount required under this Part, the person deriving the non-resident passive income is treated for this purpose as a filing taxpayer.

### ***Debt payable***

- (2) The amount of tax referred to in subsection (1) as not withheld is a debt payable by the person to the Commissioner, and is treated as having become due under section NA 10 (When obligations not met).

### ***Non-cash dividends***

- (3) Subsection (2) applies in relation to a non-cash dividend described in section NF 10 as if the amount equal to the amount of tax for the dividend were the amount payable.

### ***Commissioner's powers to recover***

- (4) In recovering the amount, the Commissioner may take the steps the Commissioner thinks fit in relation to the person in default or liable to pay, whether or not they are the same person.

Defined in this Act: amount of tax, Commissioner, filing taxpayer, non-cash dividend, non-resident passive income

Origin: 2004 No 35 s NG 13

## **NF 6 When non-resident passive income paid to agents**

### ***Who this section applies to***

- (1) This section applies when—
  - (a) an amount is paid to a person (**person A**) who is acting as agent for another person (**person B**) at the time; and
  - (b) some or all of the amount is non-resident passive income.

### ***Obligation to withhold***

- (2) At the time the payment is received and to the extent to which it has not already been withheld, person A must withhold the amount of tax for the payment and pay it to the Commissioner.

### ***When amount of tax withheld***

- (3) If the person paying the non-resident passive income withholds the amount of tax for the payment that is made to person A, they must notify person A of the amount withheld.

Defined in this Act: amount, amount of tax, Commissioner, non-resident passive income, notify

Origin: 2004 No 35 s NG 8(2), (3)

### *Calculating amounts of tax*

#### **NF 7 General rate for payments of non-resident passive income**

##### *When this section applies*

- (1) This section applies to a payment of non-resident passive income other than a payment to which sections NF 8 to NF 12 apply.

##### *Calculation of amount of tax*

- (2) The amount of tax for the payment is calculated using the formula—

$$\text{payment} \times 0.15.$$

Defined in this Act: amount of tax, non-resident passive income, pay

Origin: 2004 No 35 s NG 2(1)(c)

#### **NF 8 Certain dividends**

##### *When this section applies*

- (1) This section applies when a person makes a payment of non-resident passive income that consists of a dividend, except to the extent to which the payment is—
- (a) an investment society dividend; or
  - (b) a supplementary dividend under subpart LE (Non-resident investors); or
  - (c) a conduit tax relief additional dividend under subpart LG (Conduit tax relief credits); or
  - (d) a fully imputed dividend; or
  - (e) an amount of a dividend that is fully credited for FDP; or
  - (f) an amount of a dividend that is fully credited for conduit tax relief.

##### *Calculation of amount of tax*

- (2) The amount of tax for the payment is calculated using the formula—

$$\text{dividend payment} \times 0.3.$$

Defined in this Act: amount of tax, conduit tax relief, conduit tax relief additional dividend, dividend, FDP, investment society dividend, non-resident passive income, pay, supplementary dividend

Origin: 2004 No 35 s NG 2(1)(a)

## NF 9 When dividends fully imputed

### *When this section applies*

- (1) This section applies for the purposes of section NF 8(1)(d) to determine the extent to which a dividend is fully imputed.

### *Calculation of extent of imputation*

- (2) The extent of imputation is calculated using the formula—

$$(\text{imputation credit amount} + \text{supplementary dividend amount}) \times \frac{1 - \text{rate}}{\text{rate}}$$

### *Definition of items in formula*

- (3) In the formula,—
- (a) **imputation credit amount** is the amount of an imputation credit attached to the dividend:
  - (b) **supplementary dividend amount** is the amount of a supplementary dividend payable under subpart LE (Non-resident investors) for the dividend:
  - (c) **rate** is the percentage that is the basic rate of income tax for companies set out in schedule 1, part A, clause 5, (Basic rates of income tax and ESCT) applying for the tax year in which the dividend is paid.

Defined in this Act: amount, dividend, imputation credit, pay, supplementary dividend, tax year

Origin: 2004 No 35 s NG 2(3)

## NF 10 Non-cash dividends

### *When this section applies*

- (1) This section applies when a person makes a payment of non-resident passive income that consists of a non-cash dividend to the extent to which the amount is not fully imputed.

***When amount not taxable bonus issue***

- (2) The amount of tax for the payment when it is not a taxable bonus issue is calculated using the formula—

$$\frac{\text{rate A}}{1 - \text{rate A}} \times \text{dividend payment} + (\text{rate B} \times \text{amount paid}).$$

***Definition of items in formula***

- (3) In the formula in subsection (2),—

- (a) **rate A** is—
- (i) for a conduit tax relief additional dividend paid under subpart LG (Conduit tax relief credits) or a dividend to the extent to which the amount of the dividend is fully credited for conduit tax relief, the rate set out in section NF 7; and
  - (ii) the percentage that is the rate of tax set out in section NF 8:
- (b) **dividend payment** is the amount of the dividend paid to the extent to which the amount of the dividend is not fully imputed or fully credited for FDP (as described in sections NF 9 and NF 14), disregarding the amount of tax to be withheld:
- (c) **rate B** is the percentage that is the rate of tax set out in section NF 7:
- (d) **amount paid** is the amount of the dividend paid to the extent to which the amount of the dividend is fully credited for FDP (as described in section NF 14) disregarding the amount of tax to be withheld.

***When amount taxable bonus issue***

- (4) The amount of tax for the payment when it is a taxable bonus issue is calculated using the formula—

$$(\text{rate A} \times \text{dividend payment}) + (\text{rate B} \times (\text{amount paid} + \text{credit amount})).$$

***Definition of items in formula***

- (5) In the formula in subsection (4),—

- (a) **rate A** is the percentage that is the rate of tax set out in section NF 8:
- (b) **dividend payment** is the amount of the dividend paid calculated under section CD 6(2) or CD 7(3) (which relate to bonus issues)—
- (i) other than a dividend referred to in the item **bonus issue**:
  - (ii) to the extent to which the amount of the dividend is not fully imputed or fully credited for FDP (as described in sections NF 9 and NF 14), before the amount of tax is withheld:
- (c) **rate B** is the percentage that is the rate of tax set out in section NF 7:
- (d) **amount paid** is the amount of the dividend calculated under section CD 6(2) or CD 7(3) together with the amount of a credit of dividend withholding payment attached to the dividend to the extent to which the



amount of the dividend is fully credited for FDP (as described in section NF 14) before the amount of tax is withheld:

- (e) **credit amount** is the amount of the dividend to the extent to which it is fully credited for conduit tax relief together with a conduit tax relief additional dividend paid for the taxable bonus issue under subpart LG.

***Amount treated as amount withheld and paid under NRWT rules***

- (6) A person who is liable under this section for the amount of tax for non-resident passive income must pay the amount to the Commissioner. The amount is treated as if it were an amount withheld and paid under the NRWT rules for the purposes of this Act and the Tax Administration Act 1994.

Defined in this Act: amount, amount of tax, Commissioner, conduit tax relief, conduit tax relief additional dividend, dividend, FDP, non-cash dividend, non-resident passive income, NRWT rules, pay, taxable bonus issue, this Act

Origin: 2004 No 35 s NG 9

**NF 11 Dividends paid to companies under control of non-residents**

***When this section applies***

- (1) This section applies when—
  - (a) a non-resident formerly held a share in a company (**company A**) resident in New Zealand; and
  - (b) while the non-resident held the share, company A was under the control of the non-resident, or was treated for the purposes of this Act as under the control of persons who include the non-resident; and
  - (c) the non-resident has disposed of the share to another company (**company B**) that is resident in New Zealand and under the control of the non-resident, or is treated for the purposes of this Act as under the control of persons who include the non-resident; and
  - (d) some or all of the price for which company B acquired the share remains after the acquisition unpaid or owing in any way to the non-resident, whether or not the amount is secured.

***Dividend derived***

- (2) While an amount of the price remains unpaid or owing, a dividend paid to company B in relation to the share is treated as having been paid to the non-resident and as derived as a dividend by the non-resident at the time the dividend is paid.

Defined in this Act: amount, company, control, dividend, non-resident, pay, resident in New Zealand, share

Origin: 2004 No 35 s NG 14

## NF 12 Certain amounts of interest

### *When payment derived jointly with resident*

- (1) If a person makes a payment of non-resident passive income that consists of interest derived by 2 or more persons jointly and at least 1 person is a New Zealand resident, the amount of tax for the payment is calculated using the formula—

$$(\text{rate} \times (\text{interest paid} + \text{foreign withholding tax})) - \text{foreign withholding tax}.$$

### *Definition of items in formula*

- (2) In the formula,—
- (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 1 or 1C (Basic amounts of tax for resident passive income):
  - (b) **interest paid** is the amount of interest paid before the amount of tax is determined:
  - (c) **foreign withholding tax** is the amount of foreign withholding tax paid or payable on the amount of interest paid.

### *Exclusion: when payment by approved issuer*

- (3) The amount of tax for a payment of resident passive income is zero if it consists of interest that—
- (a) is paid by an approved issuer for a registered security; and
  - (b) is derived by a person not associated with the approved issuer; and
  - (c) is not a payment to which subsection (1) applies.

### *Exclusion: when payment by transitional resident*

- (4) The amount of tax for a payment of resident passive income is zero if it consists of interest that—
- (a) is paid by a transitional resident in relation to money borrowed by them while non-resident; and
  - (b) is not paid in relation to a business carried on through a fixed establishment in New Zealand; and
  - (c) is derived by a person not associated with the transitional resident; and
  - (d) is not a payment to which subsection (1) applies.

***Other payments of interest***

- (5) For a payment of non-resident passive income consisting of interest to which subsection (1), (3), or (4) applies, the amount of tax for the payment is calculated using the formula—

$$\text{interest payment} \times 0.15.$$

***Treatment as filing taxpayer***

- (6) For the purposes of this section, the person referred to in subsection (1) who is a New Zealand resident, is treated as a filing taxpayer.

Defined in this Act: amount of tax, approved issuer, associated person, business, filing taxpayer, fixed establishment, foreign withholding tax, interest, New Zealand resident, non-resident, non-resident passive income, pay, registered security, resident passive income, transitional resident

Origin: 2004 No 35 s NG 2(1)(ab), (b), (c)

***Paying amounts of tax***

**NF 13 Basis for payment of amounts of tax for non-resident passive income**

***When this section applies***

- (1) This section applies when a person estimates for a tax year that they will not be required by the NRWT rules to withhold a total amount of tax for non-resident passive income of \$500 or more.

***Two instalments***

- (2) The person may pay to the Commissioner the amount withheld for the tax year in 2 instalments.

***When threshold reached during tax year***

- (3) If the threshold amount of \$500 is reached at a time in a tax year, the person must pay to the Commissioner—
- (a) the amount of tax withheld from the start of the tax year to the end of the month in which the threshold is reached; and
  - (b) for the remainder of the tax year, the amount of tax on a monthly basis.

Defined in this Act: amount of tax, Commissioner, non-resident passive income, NRWT rules, tax year

Origin: 2004 No 35 s NG 11(1)-(3)

## NF 14 Treatment of FDP credits

### *Amount of tax treated as withheld and paid*

- (1) A person who is required under the NRWT rules to withhold the amount of tax for non-resident passive income consisting of a dividend is treated as having withheld the amount of tax to the extent of an amount of an FDP credit attached to the dividend.

### *Calculation of extent of imputation*

- (2) The extent to which a dividend is fully credited for FDP is calculated using the formula—

$$\frac{\text{FDP credit amount}}{\text{rate.}}$$

### *Definition of items in formula*

- (3) In the formula,—
- (a) **FDP credit amount** is the amount of FDP credit attached to the dividend:
- (b) **rate** is the percentage that is the rate of resident companies' tax set out in schedule 1, part A, clause 5 (Basic rates of income tax and ESCT), applying for the tax year in which the dividend is paid.

Defined in this Act: amount of tax, company, dividend, FDP, FDP credit, non-resident passive income, pay, tax year

Origin: 2004 No 35 s NG 2(2), (4)

## NF 15 Commissioner's power to vary amounts of tax

### *Special circumstances*

- (1) For the purposes of meeting the special circumstances of a case or class of cases, the Commissioner may—
- (a) relieve a person from an obligation to withhold an amount of tax for a payment of non-resident passive income under section NA 6(2) (Withholding and payment obligations for passive income), NF 6, or NF 10; or
- (b) vary the amount of tax that a person must withhold under section NA 6(2).

### *Exclusion for certain payments of interest*

- (2) This section does not apply to an amount of tax for a payment of interest derived jointly with a person resident in New Zealand as described in section NF 11(1).

***NRWT rules apply as if amended***

- (3) On the exercise of a power under subsection (1), the NRWT rules apply in the particular case as if they were amended in the way in which the power is exercised.

Defined in this Act: amount of tax, Commissioner, interest, non-resident passive income, NRWT rules, pay, resident in New Zealand

Origin: 2004 No 35 s NG 10

## **NG—Payments for foreign dividends**

### **Contents**

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#### *Obligation to make payments*

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- NG 5 Credit balance in branch equivalent tax account
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### *Introductory provisions*

#### **NG 1 FDP rules and their application**

##### *Meaning*

- (1) The **FDP rules** means—
- (a) section GC 25 (Avoidance of dividend withholding payments); and
  - (b) section GC 27 (Arrangement to defeat application of dividend withholding payment account provisions); and
  - (c) section LD 8 (Credit of tax for dividend withholding payment credit in hands of shareholder); and
  - (d) section LD 9 (Refund to non-resident or exempt shareholders); and
  - (e) subpart LF (Underlying foreign tax credits); and
  - (f) sections MG 1 to MG 12 (which relate to FDP accounts); and
  - (g) subpart MZ (Terminating provisions); and
  - (h) this subpart; and
  - (i) section OB 6(1)(d) and (e) (Meaning of income tax); and
  - (j) sections 30, 68, 71, 71B, 72, and 102 to 104, Part 7, and sections 139B, 140C, 140D(1) and (3), 181, and 185 of the Tax Administration Act 1994.

##### *Application*

- (2) The FDP rules apply to a company that receives a foreign dividend.

Defined in this Act: foreign dividend

Origin: 2004 No 35 s OB 1 “dividend withholding payment rules”

#### **NG 2 Foreign dividends**

##### *Dividends to which rules apply*

- (1) **Foreign dividend** means—
- (a) a dividend paid by a foreign company that—
    - (i) is derived by a company resident in New Zealand; and
    - (ii) is exempt income of the resident company under section CW 9 or CW 11 (which relate to income from equity); and
    - (iii) is not exempt income under any of sections CW 29 to CW 33 and CW 35 to CW 40 (which relate to income of particular entities or of a certain type):

- (b) a dividend paid by a company resident in New Zealand if, and to the extent to which,—
- (i) the company was not resident in New Zealand previously; and
  - (ii) the amount of the dividend is less than the amount available to the company for distribution as a dividend immediately before becoming resident in New Zealand; and
  - (iii) the dividend is exempt income under sections CW 9 to CW 11 when derived by a resident company.

***Calculating amount of dividend***

- (2) For the purposes of subsection (1)(b)(ii), the amount is calculated after subtracting from the available amount the amount of any earlier dividend to which subsection (1)(b) applies paid by the company.

Defined in this Act: amount, company, dividend, exempt income, foreign company, foreign dividend, resident in New Zealand

Origin: 2004 No 35 s NH 1(2)

***Obligation to make payments***

**NG 3 Obligation to make payments for foreign dividends**

A company resident in New Zealand that receives a foreign dividend in a quarter must pay to the Commissioner a payment for the foreign dividend by the date set out in section NA 15 (Payment dates for interim and other tax payments) after the end of the quarter.

Defined in this Act: Commissioner, company, foreign dividend, pay, resident in New Zealand

Origin: 2004 No 35 ss NH 1(1), NH 3(1)



### *Calculation of payments*

#### **NG 4 Calculating amount of payments for foreign dividends**

##### *Calculation of amount to pay*

- (1) The amount of a payment for a foreign dividend is calculated using the formula—  
 $((\text{dividend amount} + \text{foreign tax} + \text{underlying credit}) \times \text{rate}) - \text{foreign tax} - \text{underlying credit}$ .

##### *Definition of items in formula*

- (2) In the formula,—
- (a) **dividend amount** is the amount of the foreign dividend after subtracting any foreign withholding tax paid in relation to the dividend:
  - (b) **foreign tax** is the amount of any foreign withholding tax paid in relation to the dividend, excluding foreign withholding tax paid in a country listed in schedule 6 (Countries whose taxes receive limited recognition for New Zealand tax purposes):
  - (c) **underlying credit** is the amount of—
    - (i) an underlying foreign tax credit calculated in relation to the dividend under section LF 2 (Granting of underlying foreign tax credit) if it is a positive amount; or
    - (ii) an imputation credit attached to the dividend, if subparagraph (i) does not apply:
  - (d) **rate** is the percentage that is the basic rate of income tax for companies set out in—
    - (i) schedule 1, part A, clause 5 (Basic rates of income tax and ESCT), if the company is not a Maori authority; or
    - (ii) schedule 1, part A, clause 2, if the company is a Maori authority.

Defined in this Act: amount, company, foreign dividend, foreign withholding tax, imputation credit, Maori authority, pay

Origin: 2004 No 35 s NH 2(1)

### *Adjustments to payments*

#### **NG 5 Credit balance in branch equivalent tax account**

##### *When this section applies*

- (1) This section applies when a foreign dividend is paid to a company in relation to an income interest in a CFC, and at the time the dividend is paid, the company is—
  - (a) a BETA company; or
  - (b) part of a group of companies in which another company is a BETA company.

##### *Reducing payment*

- (2) Despite section NG 4, the payment for the foreign dividend may be reduced by the amount of a credit balance in the branch equivalent tax account at the time the dividend is paid. The company makes the election to use the credit balance under section MF 5(1) (Use of credit to reduced dividend withholding payment, or use of debit to satisfy income tax liability).

##### *When dividend paid in relation to income interest in CFC*

- (3) For the purposes of this section, a foreign dividend is paid in relation to an income interest in a CFC if the company holds the income interest in the CFC at any time during—
  - (a) the period that starts at the beginning of the income year of the company in which the dividend is paid and ends with the date the dividend is paid; or
  - (b) the income year of the company immediately before the income year in which the dividend is paid.

Defined in this Act: amount, BETA company, branch equivalent tax account, CFC, company, foreign dividend, group of companies, income interest, income year, pay

Origin: 2004 No 35 s NH 2(2), (3)

#### **NG 6 Using net losses**

##### *When this section applies*

- (1) This section applies when—
  - (a) a company is required to make a payment for a foreign dividend that is paid to it; and

- (b) the company, or another company in the same group of companies,—
  - (i) has a net loss that may be carried forward and used under sections IE 1, IF 1 and, as applicable, IG 2 (which relate to the treatment of net losses) to reduce the net income of the company for the income year in which the foreign dividend is paid to it; or
  - (ii) has a reasonable expectation that, for the income year in which the foreign dividend is paid, it will have a net loss that may be carried forward and used under sections IE 1, IF 1 and, as applicable, IG 2 to reduce the net income of the company for the next income year.

***Maximum reduction***

- (2) The company may choose to use the net loss, so far as it extends, to pay some or all of the payment for the foreign dividend. The maximum reduction is calculated using the formula—

$$\frac{\text{payment}}{\text{rate.}}$$

***Definition of items in formula***

- (3) In the formula,—
  - (a) **payment** is the amount determined under section NG 4:
  - (b) **rate** is the percentage that is the rate of income tax for companies set out in schedule 1, part A, clause 5 (Basic rates of income tax and ESCT), applying for the tax year in which the dividend is paid.

***Time for making election***

- (4) The company must make the election by the relevant due date after the end date set out in section NA 15(3)(c) (Payment dates for interim and other tax payments), or by a later date if the Commissioner allows.

***No actual net loss***

- (5) Subsections (6) and (7) apply if the company chooses under subsection (2) to use a net loss to satisfy a liability to pay some or all of a payment for a foreign dividend, and—
  - (a) the company does not have a net loss; or
  - (b) the company has an insufficient net loss for the reduction; or
  - (c) if 2 companies are part of the same group of companies for part of the relevant income year, the net loss could be used in relation to the net income of the company deriving the dividend only through the application of section IG 2(4) or (5) (Net loss offset between group companies).

*Commissioner's power to overrule*

- (6) The Commissioner may overrule the election under subsection (2) to the extent to which it is appropriate having regard to—
- (a) the amount of the actual net loss of the electing company; and
  - (b) the amount or proportion, or likely amount or proportion, of the net loss of the electing company that could be used under section IG 2(4) or (5).

*Company's liability*

- (7) The company that was initially required to make the payment for the foreign dividend is liable to pay an amount disallowed under subsection (6), and a penalty under section 150 of the Tax Administration Act 1994, as if the deficiency arose at the time of the initial liability.

Defined in this Act: amount, Commissioner, company, foreign dividend, group of companies, income year, net income, net loss, pay

Origin: 2004 No 35 s NH 3(2)-(4)

**NG 7 Reduction of payments for conduit tax relief**

*Reduction*

- (1) A company that is a conduit tax relief company at the time it is required to pay to the Commissioner a payment for a foreign dividend, may reduce the payment by an amount calculated using the formula—

percentage of non-resident shareholders x payment for foreign dividend.

*Definition of items in formula*

- (2) In the formula,—
- (a) **percentage of non-resident shareholders** is the percentage of the company's shareholders not resident in New Zealand as determined under subsections (3) to (9):
  - (b) **payment for foreign dividend** is the amount of the payment for the foreign dividend that would be paid to the Commissioner if this section did not exist, calculated after applying section NG 6.

*Determining percentage of non-resident shareholders*

- (3) The percentage of the company's non-resident shareholders referred to in subsection (2) is the lowest of the following percentages:
- (a) the percentage of direct voting interests that non-residents hold in the company on the date on which the company pays a dividend to all shareholders under subsection (4)(a)(ii):

- (b) if a direct market value circumstance exists, the percentage of direct market value interests that non-residents hold in the company on the date on which the company pays a dividend to all shareholders under subsection (4)(a)(ii):
- (c) if the shares in the company are not all shares of the same class, the percentage of total dividends payable by the company that non-residents would derive if the company were liquidated at the relevant time.

***Timing of determination of percentage of non-resident shareholders***

- (4) For the purposes of this section, the percentage of the company's non-resident shareholders is calculated at the latest of the following dates:
  - (a) the last date before the foreign dividend was received on which the company—
    - (i) paid a dividend to all its shareholders; or
    - (ii) paid a dividend to all holders of shares of 1 of the classes if the company has more than 1 class of shares; or
  - (b) the last day of the tax year that is just before the tax year in which the foreign dividend is received; or
  - (c) for a company that is incorporated after the tax year that is just before the tax year in which the foreign dividend is received by the company, the last day of the quarter in which the dividend is received.

***Conduit tax relief group members***

- (5) If a conduit tax relief group member exists for a company (**company A**), this section applies as if the company referred to in subsection (4) were the company—
  - (a) in which 1 or more non-residents have a direct voting interest; and
  - (b) that has a 100% voting interest in company A, calculated as if section OD 3(3)(d) (Voting interests) did not apply to treat the company's interests to be held by others.

***When subsection (5) does not apply***

- (6) Subsection (5) does not apply if the date for measuring the percentage of non-resident shareholders is before the date of incorporation of company A.

***Listed companies***

- (7) Despite subsection (4), a listed company may use—
  - (a) the date an entitlement to a dividend is determined instead of the date the dividend is paid:
  - (b) a date in the tax year on which it calculates the percentage of its non-resident shareholders.

***Companies with more than 1 class of shares***

- (8) A company with more than 1 class of shares is treated in relation to each class of shares as having the same shareholders on the relevant date that it had on the last date on which a dividend is paid to all shareholders of the class.

***Treasury stock and determination of residence***

- (9) For the purposes of this section,—
- (a) treasury stock is disregarded:
  - (b) the rules for determining residence in sections OE 7 and OE 8 (which relate to conduit tax relief companies) apply.

Defined in this Act: amount, Commissioner, company, conduit tax relief company, conduit tax relief group member, direct market value circumstance, direct market value interest, direct voting interest, dividend, foreign dividend, liquidation, listed company, non-resident, resident in New Zealand, share, shares of the same class, shareholder

Origin: 2004 No 35 s NH 7

## **Subpart NM—Refunds**

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### *Introductory provision*

#### **NM 1 What this subpart does**

This subpart establishes and measures a person's entitlement to a refund for an overpayment under this Part or another Part of this Act, how the amount of the refund may be used, and the limits placed on the amount and use of a refund for—

- (a) an ICA company:
- (b) a company receiving a foreign dividend:
- (c) a Maori authority:
- (d) a PCA person:
- (e) a qualifying company:
- (f) certain unit trusts and group investment funds.

Defined in this Act: amount, company, foreign dividend, group investment fund, ICA company, Maori authority, PCA person, qualifying company, unit trust

Origin: new

### *Refunds for overpaid amounts*

#### **NM 2 Refunds for overpaid tax**

##### *Amount more than required*

- (1) The Commissioner must refund an amount of tax that a person has paid if—
  - (a) the amount is more than the tax required to be paid by the person under this Part; and
  - (b) the 4-year period for amendment of an assessment under section 108 of the Tax Administration Act 1994 has not ended.

##### *Refunds arising from mistakes*

- (2) Section NM 6 overrides subsection (1).

Defined in this Act: amount of tax, assessment, Commissioner, pay

Origin: 2004 No 35 s MD 1(1)

### **NM 3 Refunds for overpaid payments for foreign dividends**

If a company pays to the Commissioner a payment for a foreign dividend paid to it, and the amount is more than the amount required to be paid under this Part, the Commissioner must refund the overpayment.

Defined in this Act: amount, Commissioner, company, foreign dividend, pay

Origin: 2004 No 35 s NH 4(1)

### **NM 4 Overpayment on amended assessment**

#### *Assessment increasing tax*

- (1) The Commissioner must refund an amount of tax that a person has paid if—
  - (a) the person paid the amount as a result of an amendment to an assessment increasing the amount of tax payable by the person; and
  - (b) the amount is more than the amount required to be paid by the person under this Part; and
  - (c) the 4-year period under section 108 of the Tax Administration Act 1994 beginning at the end of the income year in which the assessment was amended has not ended.

#### *Refunds arising from mistakes*

- (2) Section NM 6 overrides subsection (1).

Defined in this Act: amount of tax, assessment, Commissioner, income year, pay

Origin: 2004 No 35 s MD 1(2)

### **NM 5 Overpayment on income statements**

#### *When this section applies*

- (1) This section applies when an income statement has been provided to a person and the result is that an amount of tax must be refunded to the person. For the purposes of this section, the amount of tax must be more than \$50.

#### *Refund on confirmation of correctness*

- (2) The Commissioner may refund the amount of tax only after the person has confirmed that the income statement is correct.

***Threshold amount***

- (3) The Governor-General may make an Order in Council increasing the amount set out in subsection (1).

Defined in this Act: amount of tax, Commissioner, income statement

Origin: 2004 No 35 s MD 1(1A)

**NM 6 Refunds after 4-year period ends**

***When this section applies***

- (1) This section applies when a person has overpaid an amount of tax or payment for a foreign dividend, and the 4-year period referred to in sections NM 2(1)(b) and NM 4(1)(c) has ended.

***Refund***

- (2) The Commissioner may refund the amount or payment if the refund—
- (a) arises as described in subsection (3); and
  - (b) is made in the way described in subsection (4).

***Cause of refund***

- (3) The refund must arise from—
- (a) a clear mistake by or simple oversight of the person; or
  - (b) the person's entitlement to a credit of tax under subpart KD (Tax credits for family support and family plus).

***When refund made***

- (4) The refund must be made—
- (a) within a period of 4 years that starts at the end of the 4-year period referred to in sections NM 2(1)(b) and NM 4(1)(c); and
  - (b) on an application—
    - (i) made by the person or on their behalf; and
    - (ii) received by the Commissioner within the further period of 4 years described in paragraph (a).

Defined in this Act: amount of tax, Commissioner, credit of tax, pay

Origin: 2004 No 35 ss MD 1(2B), NH 3(7)

## **NM 7 Refunds to PAYE intermediaries**

### ***When this section applies***

- (1) This section applies when a PAYE intermediary pays to the Commissioner an amount of tax for a PAYE payment for an employer—
  - (a) relying on a payment made to the trust account of the intermediary—
    - (i) by the employer and later dishonoured; or
    - (ii) mistakenly by a person and later recovered from the intermediary:
  - (b) mistakenly from funds not provided by the employer for a purpose related to the PAYE payment.

### ***Refund to intermediary***

- (2) The Commissioner must refund the amount of tax to the intermediary.

Defined in this Act: amount of tax, Commissioner, employer, pay, PAYE intermediary, PAYE payment

Origin: 2004 No 35 s NBA 7

## **NM 8 Overpaid tax for resident passive income or non-resident passive income**

### ***When this section applies***

- (1) This section applies when a person is required to withhold and pay to the Commissioner an amount of tax for resident passive income or non-resident passive income, and the amount is more than the amount required to be paid under this Part.

### ***Refund to person deriving payment or person withholding amount***

- (2) The Commissioner must refund the amount of the overpayment to—
  - (a) the person who derives the payment from which the amount of tax was withheld; or
  - (b) the person who withheld the amount if they have paid the amount of the overpayment to the person deriving the payment and not subtracted the amount under section NA 12(5) and (6) (Adjustment to correct errors: certain excess amounts).

Defined in this Act: amount of tax, Commissioner, non-resident passive income, pay, resident passive income

Origin: 2004 No 35 ss NF 7(1), (2), (5), NG 16

## **NM 9 Calculations for attributed and non-attributed fringe benefits**

***When this section applies***

- (1) This section applies when an employer chooses to pay FBT under sections ND 48 to ND 54 (which relate to attributed fringe benefits and non-attributed fringe benefits).

***Result of calculations***

- (2) If the result of the calculations of FBT on attributed fringe benefits or non-attributed fringe benefits is negative, the Commissioner must refund to the employer an amount equal to the deficiency.

Defined in this Act: amount, Commissioner, employer, FBT

Origin: 2004 No 35 s ND 10(4)(a)

***Use of refunds***

**NM 10 Using refund to satisfy tax liability**

***When this section applies***

- (1) This section applies when a person is entitled to a refund of an amount of tax under sections NM 2 and NM 4 to NM 6.

***Request for particular application***

- (2) The person may ask under section 173T of the Tax Administration Act 1994 for the Commissioner to apply some or all of the amount on a particular date to satisfy a liability under the Inland Revenue Acts.

***Commissioner applying refund***

- (3) If no request is made under subsection (2), the Commissioner may apply the amount of the refund to satisfy a liability that the person has under the Inland Revenue Acts.

Defined in this Act: amount of tax, Commissioner, Inland Revenue Acts

Origin: 2004 No 35 s MD 1(3), (3A)

## **NM 11 Using GST refund to pay instalment of provisional tax**

### ***When this section applies***

- (1) This section applies when a person who is liable to pay provisional tax has a GST refund in a taxable period as a result of the application of section 20(5) of the Goods and Services Tax Act 1985.

### ***Using amount***

- (2) The person may choose to use the amount of the refund to pay some or all of an instalment of provisional tax that is payable on the same instalment date.

### ***Reduction in amount***

- (3) If the Commissioner amends the assessment reducing the amount of the refund, the person's payment of provisional tax arising from the GST refund is the reassessed amount.

Defined in this Act: amount, assessment, Commissioner, GST, instalment date, provisional tax, taxable period

Origin: 2004 No 35 s MB 11

## **NM 12 Reduction in provisional tax liability**

### ***When this section applies***

- (1) This section applies when the amount of provisional tax payable for a tax year is reduced by the person liable to pay the provisional tax, or by the Commissioner under section 119(2) of the Tax Administration Act 1994.

### ***Reduction in amount of provisional tax payable***

- (2) If the person applies in writing for a refund of the amount of provisional tax already paid that is as a result of the reduction more than the amount that would have been payable in relation to earlier instalment dates for the tax year, the Commissioner must—
  - (a) apply the overpayment as the person asks under section 173T of the Tax Administration Act 1994 or, if no request is made, in a way that the Commissioner determines in payment of tax or another amount that is payable by them; and
  - (b) refund any balance of the overpayment.

***Reduction in assessment***

- (3) If the person's residual income tax for the relevant tax year is not more than \$2,500, and they apply in writing for the refund of an amount of provisional tax that has been determined under section NC 9 (Provisional tax payable in instalments) and already paid, other than on a final instalment, the Commissioner must—
- (a) apply the amount as the person asks under section 173T of the Tax Administration Act 1994 or, if no request is made, in a way the Commissioner determines in payment of tax or another amount that is payable by them; and
  - (b) refund any balance of the amount.

***Treatment of amount refunded or credited***

- (4) When an overpayment or amount of provisional tax for a tax year has been applied or refunded under subsection (2) or (3)—
- (a) a later instalment payable under section NC 10 or NC 11 (which relate to the methods used to calculate the amount of an instalment), as applicable, is calculated as if the total instalments previously payable were reduced by the amount of the overpayment or amount; and
  - (b) the overpayment or amount applied or refunded is, from the date of action taken by the Commissioner, treated as not being provisional tax paid for the tax year.

Defined in this Act: amount, Commissioner, instalment date, pay, provisional tax, residual income tax, tax, tax year

Origin: 2004 No 35 s MB 36

***Limits on refunds and transfers***

***ICA companies***

**NM 13 Limits on refunds for ICA companies**

***When this section applies***

- (1) This section applies when an ICA company is entitled to—
- (a) a refund of income tax under sections NM 2 and NM 4 to NM 6; or
  - (b) transfer an amount under section NC 32 (Wholly-owned groups of companies).

***Amount of refund or transfer limited***

- (2) The amount of the refund or transfer must not be more than the credit balance of the ICA company in the imputation credit account at the latest of the following dates:
- (a) the last day of the tax year that has just ended;
  - (b) the last day of a period for which the company filed an imputation return under section 70(3) of the Tax Administration Act 1994;
  - (c) the last day of a period for which the company is required to file a return under section 70(1) of that Act.

***Time for filing returns***

- (3) Subsection (2) does not apply if the ICA company has an extension of time to file its imputation return for a tax year. The total amount refunded or transferred must not be more than the credit balance of the ICA company in its imputation credit account on the last day of the tax year to which the imputation return relates.

Defined in this Act: amount, ICA company, imputation credit account, imputation return, income tax, tax year

Origin: 2004 No 35 s MD 2(1), (1A)

**NM 14 Limits on refunds when company stops being ICA company**

***When this section applies***

- (1) This section applies when a company stops being an ICA company and is entitled to have a refund or to make a transfer under section NM 13(1) for a tax year in which it was an ICA company.

***Limit on amount of refund or transfer***

- (2) The total amount refunded or transferred must not be more than the final balance of the imputation credit account arising as a debit under section ME 5(1)(k) (Debits arising to imputation credit account) just before the company stopped being an ICA company.

Defined in this Act: amount, company, ICA company, imputation credit account, tax year

Origin: 2004 No 35 s MD 2(2)

**NM 15 Changes in credit balances**

***Credit balance reduced***

- (1) A credit balance is treated as reduced by the amount of a refund or transfer as described in sections NM 13 and NM 14 that is made earlier in the same tax year.



***Credit balance increased***

- (2) A credit balance is treated as increased by an amount equal to a debit to the company's imputation credit account under section ME 5(1)(i) (Debits arising to imputation credit account) arising after the date of payment of the date of instalment B set out in schedule 13, part A (Dates for payment of provisional tax and terminal tax), for the company's income year that corresponds to the tax year and before the date on which the credit balance is to be determined under sections NM 13 and NM 14.

Defined in this Act: amount, corresponding income year, imputation credit account, pay, tax year

Origin: 2004 No 35 s MD 2(3), (4)

**NM 16 Treatment of amounts not refunded**

***When this section applies***

- (1) This section applies when, through the application of sections NM 13 and NM 14, an overpayment of income tax by a company is not refunded to the company or transferred within a wholly-owned group of companies.

***Satisfying liabilities or retained***

- (2) The amount prevented from being a refund or transfer is—
- (a) applied to satisfy an income tax or provisional tax liability of the company for the tax year of the entitlement; and
  - (b) retained by the Commissioner to the extent to which paragraph (a) does not apply, whether because the company is liquidated or for another reason.

***Credit for provisional tax***

- (3) Despite subsection (2), the amount may be credited on a provisional tax instalment date if residual income tax is treated under section 120K of the Tax Administration Act 1994 as payable on the date set out in Part 7 of that Act.

Defined in this Act: amount, Commissioner, company, income tax, income tax liability, instalment date, liquidation, pay, provisional tax, wholly-owned group of companies

Origin: 2004 No 35 s MD 2(5), (5A)

**NM 17 Treatment of further income tax paid**

***When this section applies***

- (1) This section applies for the purposes of sections NM 2 and NM 4 to NM 6 when a company pays further income tax under section ME 9 (Further tax payable where

end of year debit balance, or when company ceases to be imputation credit account company).

***No refund***

- (2) The company is not entitled to a refund of the amount of further income tax paid which is treated as tax paid to satisfy an obligation yet to arise.

Defined in this Act: amount, company, further income tax, pay

Origin: 2004 No 35 s MD 2(6)

*Companies receiving foreign dividends*

**NM 18 Limits on refunds related to foreign dividends**

***Maximum refund***

- (1) Despite section NM 3, if the overpayment described in that section relates to an earlier tax year, the refund must not be more than the relevant credit balance as follows:
- (a) for a FDP company, the credit balance of the company's FDP account at the end of the tax year that is just before the tax year in which the entitlement to the refund arises:
  - (b) for an ICA company that is not an FDP company, the credit balance of the company's imputation credit account at the end of the tax year that is just before that in which the entitlement to the refund arises:
  - (c) for a company described in paragraph (a) or (b) that ends its residence in New Zealand, the credit balance, immediately before the company became no longer resident, of—
    - (i) the company's FDP account arising as a debit under section MG 5(1)(j) (Debits arising to dividend withholding payment account);  
or
    - (ii) the company's imputation credit account arising as a debit under section ME 5(1)(k) (Debits arising to imputation credit account).

***Treatment of amount not refunded***

- (2) If the amount of a company's overpayment is not refunded because it is more than the maximum allowed under subsection (1), the amount may still be used to reduce a payment for a foreign dividend paid to the company.

***Reductions in credit balances***

- (3) For the purposes of this section, a credit balance referred to in subsection (1) is treated as reduced by an earlier refund under this section paid to the company in

the tax year in which the entitlement to the refund arises. The refund of income tax under sections NM 13 to NM 17 in the same tax year must not be more than the relevant credit balance.

Defined in this Act: amount, company, FDP account, FDP company, foreign dividend, ICA company, imputation credit account, pay, tax year

Origin: 2004 No 35 s NH 4(2), (3)

## **NM 19 Treatment of financial arrangements**

### ***When this section applies***

- (1) This section applies when a company is entitled to a refund of a payment for a foreign dividend under section CD 39(10) to (13) (Outstanding balances of financial arrangements).

### ***Credit balance increased***

- (2) The amount of the company's credit balance under section NM 18(1) is treated as increased by the amount of a debit in the company's FDP account or imputation credit account arising under section ME 5(1)(i) or MG 5(1)(i) (which relate to certain debits), as applicable, after the date on which the payment was made and before the date on which the credit balance is determined under section NM 18(1).

Defined in this Act: amount, company, FDP account, foreign dividend, imputation credit account, pay

Origin: 2004 No 35 s NH 4(4)(a)

## **NM 20 Treatment of amounts not refunded**

### ***When this section applies***

- (1) This section applies when, through the application of section NM 18(1), an overpayment is not refunded.

### ***Satisfying liabilities or retained***

- (2) The amount prevented from being a refund is—
  - (a) applied to satisfy an income tax or provisional tax liability of the company for the tax year of an entitlement to a refund or a payment for a foreign dividend that is payable after the date on which the entitlement to the refund arises; and
  - (b) retained by the Commissioner to the extent to which paragraph (a) does not apply, whether because the company is liquidated or for another reason.

***Credit for provisional tax***

- (3) Despite subsection (2), the amount may be credited on a provisional tax instalment date if residual income tax is treated under section 120K of the Tax Administration Act 1994 as payable on the date set out in Part 7 of that Act.

Defined in this Act: amount, Commissioner, company, foreign dividend, income tax liability, instalment date, liquidation, pay, provisional tax, residual income tax, tax year

Origin: 2004 No 35 s NH 4(4)(b)

**NM 21 Refunds when net losses used to reduce net income**

***When subsection (3) applies***

- (1) Subsection (2) applies when a company that is liable to pay to the Commissioner a payment for a foreign dividend has a net loss that may be carried forward and used under sections IE 1 and IF 1 (which relate to the treatment of net losses) to reduce its net income for the income year in which the foreign dividend is paid.

***Refund***

- (2) The company is entitled to a refund of an amount equal to the least of the following, as applicable:
- (a) the amount of the payment for the foreign dividend that the company pays in the income year in which the foreign dividend is paid; or
  - (b) the amount of the net loss multiplied by the basic rate of income tax for companies set out in schedule 1, part A, clause 5 (Basic rates of income tax and ESCT) for the income year in which the foreign dividend is paid; or
  - (c) the credit balance of the company's FDP account at the end of the tax year that has just ended.

***Group company's net loss***

- (3) This section also applies, treating the group of companies as the company, when—
- (a) a company (**group company A**) pays to the Commissioner a payment for a foreign dividend; and
  - (b) another company (**group company B**) that is part of the same group of companies as group company A, has a net loss for the income year in which the foreign dividend is paid or an earlier income year that may be used under sections IE 1, IF 1, and IG 2 to reduce the net income of group company A; and
  - (c) group company B makes the net loss available so that group company A is able to get a refund of some or all of the payment.

***Application and return requirements***

- (4) For this section to apply,—
- (a) the company must apply to the Commissioner in writing; and
  - (b) the company must meet the return requirements set out in section 71B of the Tax Administration Act 1994 for the income year in which the dividend is paid; and
  - (c) if group company B's net loss is used, group company B must make an election to use the net loss in writing.

***Reduction in net loss***

- (5) When a refund is paid under this section, the amount of net loss is reduced by an amount calculated using the formula—

$$\frac{\text{refund}}{\text{rate.}}$$

***Definition of items in formula***

- (6) In the formula,—
- (a) **refund** is the amount of the refund paid to company A or group company A, as applicable, under this section:
  - (b) **rate** is the decimal fraction that is the rate of income tax for companies set out in schedule 1, part A, clause 5, applying for the income year that corresponds to the tax year referred to in subsection (3)(c).

***Late payment penalties***

- (7) Company A or group company A, as applicable, is entitled to a refund of a late payment penalty imposed under section 139B of the Tax Administration Act 1994 in relation to the failure to pay the amount that is refunded.

Defined in this Act: amount, Commissioner, company, corresponding income year, foreign dividend, group of companies, income tax, income year, net income, net loss, pay, tax year

Origin: 2004 No 35 s NH 4(5), (6)

*Maori authorities*

**NM 22 Limits on refunds for Maori authorities**

***When this section applies***

- (1) This section applies when a Maori authority is entitled to a refund of income tax under sections NM 2 and NM 4 to NM 6.

***Amount of refund limited***

- (2) The amount of the refund must not be more than the credit balance of the Maori authority in the Maori authority credit account at the latest of the following dates:
- (a) the last day of the tax year that has just ended:
  - (b) the last day of a period for which the Maori authority files a Maori authority credit account return under section 70B(3) of the Tax Administration Act 1994:
  - (c) the last day of a period for which the Maori authority is required to file a return under section 70B(1) of that Act.

***Time for filing returns***

- (3) Subsection (2) does not apply if the Maori authority has an extension of time to file its Maori authority credit account return for a tax year. The total amount refunded must not be more than the credit balance of the Maori authority in its Maori authority credit account on the last day of the tax year to which the return relates.

Defined in this Act: amount, income tax, Maori authority, Maori authority credit account, Maori authority credit account return, tax year

Origin: 2004 No 35 s MD 2B(1), (1B)

**NM 23 Limits on refunds when Maori authority no longer exists**

***When this section applies***

- (1) This section applies when a Maori authority ends its existence and is entitled to a refund under sections NM 2 or NM 4 to NM 6 for a tax year in which it maintained a Maori authority credit account.

***Limit on amount of refund***

- (2) The amount refunded must not be more than the final balance of the Maori authority credit account arising as a debit under section MK 5(1)(i) (Debits arising to Maori authority credit account) just before the Maori authority ended its existence.

Defined in this Act: amount, Maori authority, Maori authority credit account, tax year

Origin: 2004 No 35 s MD 2B(2)

## **NM 24 Increase in credit balances**

A credit balance is treated as increased by an amount equal to a debit to the Maori authority credit account under section MK 5(1)(f) (Debits arising to Maori authority credit account) arising after the date of payment of the date of instalment B set out in schedule 13, part A (Dates for payment of provisional tax and terminal tax), for the authority's income year that corresponds to the tax year and before the date on which the credit balance is to be determined under sections NM 22 and NM 23.

Defined in this Act: amount, corresponding income year, Maori authority credit account, pay, tax year

Origin: 2004 No 35 s MD 2B(3)

## **NM 25 Treatment of amounts not refunded**

### *When this section applies*

- (1) This section applies when, through the application of sections NM 22 and NM 23, an overpayment of income tax by a Maori authority is not refunded to the authority.

### *Satisfying liabilities or retained*

- (2) The amount prevented from being a refund is—
  - (a) applied to satisfy an income tax or provisional tax liability of the Maori authority for the tax year of the entitlement; and
  - (b) retained by the Commissioner to the extent to which paragraph (a) does not apply.

### *Credit for provisional tax*

- (3) Despite subsection (2), the amount may be credited on a provisional tax instalment date if residual income tax is treated under section 120K of the Tax Administration Act 1994 as payable on the date set out in Part 7 of that Act.

Defined in this Act: amount, income tax, income tax liability, instalment date, Maori authority, pay, provisional tax, residual income tax

Origin: 2004 No 35 s MD 2B(4), (4B)

## **NM 26 Treatment of further income tax paid**

### *When this section applies*

- (1) This section applies for the purposes of sections NM 2 and NM 4 to NM 6 when a Maori authority pays further income tax under section MK 8 (Further tax payable for end of year debit balance or when Maori Authority ceases to exist).

### *No refund*

- (2) The authority is not entitled to a refund of the amount of further income tax paid which is treated as tax paid to satisfy an obligation yet to arise.

Defined in this Act: amount, further income tax, Maori authority, pay

Origin: 2004 No 35 s MD 2B(5)

## **NM 27 Application when no credits arise**

Sections NM 22 to NM 26 do not apply in relation to an amount of tax paid for which no credit arises under section MK 4(1)(a) (Credits arising to Maori authority credit account).

Defined in this Act: amount, pay

Origin: 2004 No 35 s MD 2B(6)

### *Persons with policyholder credit accounts*

## **NM 28 Limits on refunds for PCA persons**

### *When this section applies*

- (1) This section applies when a PCA person is entitled to a refund of income tax under sections NM 2 and NM 4 to NM 6.

### *Amount of refund limited*

- (2) The amount of the refund must not be more than the credit balance of the PCA person in the policyholder credit account at the latest of the following dates:
  - (a) the last day of the tax year that has just ended;
  - (b) the last day of a period for which the person files a policyholder credit account return under section 66(5) of the Tax Administration Act 1994;
  - (c) the last day of a period for which the person is required to file a return under section 66(4) of that Act.



Defined in this Act: amount, income tax, PCA person, policyholder credit account, policyholder credit account return, tax year

Origin: 2004 No 35 s MD 3(1)

## **NM 29 Limits on refunds when person no longer PCA person**

### ***When this section applies***

- (1) This section applies when a person stops being a PCA person and is entitled to a refund as described in section NM 28(1) for a tax year in which they were a PCA person.

### ***Limit on amount of refund***

- (2) The amount refunded must not be more than the final balance of the policyholder credit account just before the person stopped being a PCA person.

Defined in this Act: amount, PCA person, policyholder credit account, tax year

Origin: 2004 No 35 s MD 3(2)

## **NM 30 Changes in credit balances**

A credit balance is treated as reduced by the amount of an earlier refund paid to the person during the same tax year within the limits imposed by sections NM 28 and NM 29.

Defined in this Act: amount, tax year

Origin: 2004 No 35 s MD 3(3)

## **NM 31 Treatment of amounts not refunded**

### ***When this section applies***

- (1) This section applies when, through the application of sections NM 28 and NM 29, an overpayment of income tax by a PCA person is not refunded to the person.

### ***Satisfying liabilities or retained***

- (2) The amount prevented from being a refund is—
  - (a) applied to satisfy an income tax or provisional tax liability of the person for the tax year of the entitlement; and

- (b) retained by the Commissioner to the extent to which paragraph (a) does not apply.

***Credit for provisional tax***

- (3) Despite subsection (2), the amount may be credited on a provisional tax instalment date if residual income tax is treated under section 120K of the Tax Administration Act 1994 as payable on the date set out in Part 7 of that Act.

Defined in this Act: amount, Commissioner, income tax, instalment date, pay, PCA person, provisional tax, residual income tax

Origin: 2004 No 35 s MD 3(4)

*Qualifying companies*

**NM 32 Application of sections NM 13 to NM 17 to qualifying companies**

Sections NM 13 to NM 17 do not apply to an overpayment of tax by a qualifying company that may be refunded to or allocated by the company unless—

- (a) the overpayment was made as part of or under an arrangement—
  - (i) to obtain a tax advantage of a kind referred to in section GC 22(1) (Imputation: arrangement to obtain tax advantage); or
  - (ii) to avoid a tax liability of a shareholder under this Act; and
- (b) the arrangement, or a part of it, was based on the company's ability to obtain a refund of tax that the company would have under those sections if this section did not exist.

Defined in this Act: arrangement, qualifying company, shareholder, tax advantage

Origin: 2004 No 35 s MD 2(7)

*Certain unit trusts and group investment funds*

**NM 33 Limits on refunds for certain unit trusts and group investment funds**

***When this section applies***

- (1) This section applies when a qualifying unit trust or group investment fund—
  - (a) is entitled to a refund under sections NM 2 or NM 4 to NM 6; and
  - (b) has,—

- (i) a credit balance in its supplementary ASC account on liquidation;  
and
- (ii) a zero balance in its imputation credit account.

***Calculating amount of refund***

- (2) The refund must not be more than an amount calculated using the formula—
- $$\text{ASC credit balance} \times \text{maximum imputation ratio.}$$

***Definition of items in formula***

- (3) In the formula,—
- (a) **ASC credit balance** is the credit balance in the ASC account of the qualifying unit trust or group investment fund, as applicable:
  - (b) **maximum imputation ratio** is the result of the formula set out in section ME 8(1) (Allocation rules for imputation credits), read as if the words “in which the dividend is paid” in item “a” were “in which the liquidation occurs”.

Defined in this Act: amount, group investment fund, imputation credit account, liquidation, qualifying unit trust, supplementary ASC account

Origin: 2004 No 35 s MD 2A

## Subpart NP—Intermediaries

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### *Introductory provision*

#### **NP 1 What this subpart does**

This subpart establishes the obligations of PAYE intermediaries and tax pooling intermediaries in relation to the collection and payment of tax and the provision of information, and sets out the requirements for the operation of their respective accounts.

Defined in this Act: PAYE intermediary

Origin: new

### *PAYE intermediaries*

#### *Obligations and treatment of PAYE intermediaries*

#### **NP 2 PAYE intermediaries**

##### *Transferring obligations*

- (1) An employer may arrange to transfer their PAYE and ESCT obligations to a person approved under section 15D or 15G of the Tax Administration Act 1994 as a PAYE intermediary or a listed PAYE intermediary.

##### *Paying amounts of tax and filing returns*

- (2) A PAYE intermediary or listed PAYE intermediary must, on behalf of an employer who has transferred an obligation to them under subsection (1),—
  - (a) withhold and pay to the Commissioner the amount of tax for a payment under the PAYE rules and the ESCT rules; and
  - (b) file a return of income relating to the payment and the amount of tax for the payment.

##### *When person no longer intermediary*

- (3) A person who stops being a PAYE intermediary or a listed PAYE intermediary for an employer has the rights and obligations under the PAYE rules and ESCT

rules of a PAYE intermediary or listed PAYE intermediary, as applicable, in relation to funds that—

- (a) the employer pays to the person as intermediary; and
- (b) the person holds at the time they stop being an intermediary.

Defined in this Act: amount of tax, employer, ESCT, ESCT rules, listed PAYE intermediary, pay, PAYE, PAYE intermediary, PAYE rules, return of income

Origin: 2004 No 35 ss NBA 1, NBA 8, NBB 7(3)

### **NP 3 Requirements for listed PAYE intermediaries**

For a period in which a person remains a listed PAYE intermediary, they must—

- (a) continue to qualify under section 15D of the Tax Administration Act 1994 as a PAYE intermediary; and
- (b) meet all the obligations of a PAYE intermediary; and
- (c) continue to meet the requirements set out in section 15F of that Act; and
- (d) operate technology systems to enable them to return by electronic means a subsidy claim form that contains a correct calculation of the amount of a subsidy under section NP 5 and section 15M of the Tax Administration Act 1994.

Defined in this Act: amount, listed PAYE intermediary, PAYE intermediary, subsidy claim form

Origin: 2004 No 35 s NBB 3

### **NP 4 Payment of subsidies to certain PAYE intermediaries**

#### ***Requirements for payment of subsidy***

- (1) The Commissioner may pay a subsidy to a listed PAYE intermediary for a payroll service that they provide to an employer to whom section ND 23(3) or (4) (PAYE payment forms for amounts of tax paid to Commissioner) applies if the listed PAYE intermediary—
  - (a) has a contract with the employer to provide the services; and
  - (b) has met their obligations under sections NP 13 to NP 16; and
  - (c) files a correct subsidy claim form under section 15M of the Tax Administration Act 1994.

***Notification requirements***

- (2) If a subsidy under subsection (1) is paid to a listed PAYE intermediary, the Commissioner must notify the intermediary within 14 days of the date of the payment of—
- (a) the amount of the subsidy paid in relation to each employer; and
  - (b) the period to which the subsidy relates; and
  - (c) other information that may be relevant to the payroll services provided as the Commissioner considers appropriate.

***Calculating amount of subsidy***

- (3) The listed PAYE intermediary must calculate the amount of the subsidy in the manner provided by regulations made under this section.

***Paying amount of subsidy***

- (4) The Commissioner must pay the amount of the subsidy within 30 days of receiving the last of—
- (a) the employer's monthly schedule to which the subsidy claim form relates;
  - (b) the payment of the amounts of tax for a PAYE payment to which the subsidy claim form relates;
  - (c) the subsidy claim form.

***Bank accounts***

- (5) The Commissioner must pay the subsidy to a bank account nominated by the listed PAYE intermediary for the purpose or, if an overpayment has been made to the listed PAYE intermediary, to the listed PAYE intermediary's bank account.

***Prescribing amount of subsidy***

- (6) The Governor-General may from time to time by Order in Council prescribe the amount of the subsidy to be paid for an employee of an employer who contracts the services of a listed PAYE intermediary under section 15J of the Tax Administration Act 1994.

Defined in this Act: amount, amount of tax, Commissioner, employee, employer, employer's monthly schedule, listed PAYE intermediary, pay, subsidy claim form

Origin: 2004 No 35 s NBB 6

**NP 5 Subsidy claims**

***When this section applies***

- (1) This section applies when a listed PAYE intermediary files a subsidy claim form under section 15M of the Tax Administration Act 1994 and the Commissioner amends the details to correct an error.



***Overpaid or underpaid amounts***

- (2) If an overpayment or underpayment results from the amendment, the intermediary or Commissioner, as applicable, must pay the amount overpaid or underpaid within 30 days of the date of notice under section 15M(3).

***Using overpayment to pay subsidy***

- (3) Despite subsection (2), the Commissioner may choose to use the amount of an overpayment resulting from an amendment to pay a subsidy claim made after the end of the 14-day period referred to in section 15M(3).

Defined in this Act: Commissioner, listed PAYE intermediary, subsidy claim form

Origin: 2004 No 35 s NBB 5

**NP 6 Operation of PAYE intermediaries' trust accounts**

***Nature of account***

- (1) A PAYE intermediary's trust account must be named as a trust account and established at a registered bank within the meaning of the Reserve Bank of New Zealand Act 1989.

***Deposits***

- (2) The deposits to the account consist of—
- (a) a payment of gross salary or wages paid by an employer:
  - (b) an amount of employer's superannuation contribution paid by an employer:
  - (c) an amount of tax for a payment of salary or wages required under the PAYE rules and ESCT rules, or made under section NP 12:
  - (d) an amount of a refund made by the Commissioner under section NM 7 (Refunds to PAYE intermediaries):
  - (e) interest on the amount of the funds in the trust account.

***Withdrawals***

- (3) The withdrawals from the account consist of—
- (a) a payment of net salary or wages to an employee:
  - (b) an amount of employer's superannuation contribution paid by an employer:
  - (c) an amount of tax for a payment of salary or wages withheld under section NP 12:
  - (d) a payment that an employer would be required to make but for the arrangement with the PAYE intermediary, in relation to an amount of tax for a payment of salary or wages to an employee or an employer's superannuation contribution made on behalf of an employee:

- (e) interest on the amount of the funds in the trust account.

***Payments held on trust***

- (4) A payment relating to an employee that is credited to the trust account of a PAYE intermediary is held by the PAYE intermediary on trust for the benefit of the employee and the Commissioner according to their respective rights and obligations.

***Interest***

- (5) Interest earned in the trust account of a PAYE intermediary by a payment that relates to an employee is held beneficially by the PAYE intermediary.

Defined in this Act: amount, amount of tax, Commissioner, employee, employer, employer's superannuation contribution, ESCT rules, interest, pay, PAYE intermediary, PAYE rules, salary or wages

Origin: 2004 No 35 s NBA 6

*Employers' responsibilities*

**NP 7 General responsibilities of employers**

***When this section applies***

- (1) This section applies when an employer who meets the requirements of sections NP 8 to NP 11 arranges to transfer their PAYE obligations in relation to an employee and a pay period to a PAYE intermediary.

***PAYE liabilities***

- (2) The employer is not liable under the PAYE rules in relation to the employee and the pay period. However, the employer remains liable for the payment to the employee of the salary or wages for the pay period.

***ESCT liabilities***

- (3) If the PAYE intermediary assumes the employer's obligations under the ESCT rules, the employer is not liable under the ESCT rules in relation to the employee and the pay period. However, the employer remains liable for the payment to the employee of the employer's superannuation contribution on the employee's behalf.

Defined in this Act: employee, employer, employer's superannuation contribution, ESCT rules, pay period, PAYE, PAYE intermediary, salary or wages

Origin: 2004 No 35 s NBA 4(2), (3)

## **NP 8 Information required from employers**

An employer must—

- (a) keep a record of—
  - (i) the gross salary or wages of an employee for a pay period; and
  - (ii) the amounts of tax withheld by the employer for the pay period; and
- (b) provide the information the PAYE intermediary seeks in the time agreed by the employer and PAYE intermediary.

Defined in this Act: amount of tax, employee, employer, pay period, PAYE intermediary, salary or wages

Origin: 2004 No 35 s NBA 4(1B)

## **NP 9 Authorised transfers from accounts**

### *When this section applies*

- (1) This section applies when an employer has authorised the PAYE intermediary to direct the transfer of an amount from the employer's bank account to meet an obligation that the PAYE intermediary has on the employer's behalf in relation to an employee and a pay period.

### *Sufficient funds*

- (2) The employer must ensure, at a time fixed by the PAYE intermediary, that the bank account has sufficient funds available for the transfer.

Defined in this Act: amount, employee, employer, pay period, PAYE intermediary

Origin: 2004 No 35 s NBA 4(1)(a)

## **NP 10 When transfers from accounts not authorised**

### *Employer to pay amount of tax to trust account*

- (1) If an employer has not authorised a PAYE intermediary to direct the transfer of funds as described in section NP 9, and the employer pays salary or wages directly to an employee for a pay period under section NP 12, the employer must pay the amount of tax for the payment required under the PAYE rules and ESCT rules into the PAYE intermediary's trust account.

### *Employer to pay salary or wages to trust account*

- (2) If the employer has not authorised the PAYE intermediary to direct the transfer of funds as described in section NP 9, and subsection (1) does not apply, the

employer must pay the amount of the employee's gross salary or wages for the pay period into the PAYE intermediary's trust account. However, the employer may retain an amount lawfully owed to them by the employee before making the payment.

Defined in this Act: amount of tax, employee, employer, ESCT rules, pay, pay period, PAYE intermediary, PAYE rules, salary or wages

Origin: 2004 No 35 s NBA 4(1)(b)(i), (ii)

### **NP 11 Employer's superannuation contributions**

If a PAYE intermediary has assumed the obligations of an employer under the ESCT rules in relation to an employee and a pay period, the employer must pay the amount of the employer's superannuation contribution made in the pay period on behalf of the employee into the PAYE intermediary's trust account.

Defined in this Act: amount, employee, employer, employer's superannuation contribution, ESCT rules, pay period, PAYE intermediary

Origin: 2004 No 35 s NBA 4(1)(b)(iii)

### **NP 12 When payments made directly to employees**

Despite sections NP 9 and NP 10, an employer may pay an employee's salary or wages directly to the employee in the following circumstances:

- (a) the payment is made on a day in a pay period that is not the usual day for a payment of salary or wages for the pay period; and
- (b) the payment is—
  - (i) an advance of the employee's salary or wages;
  - (ii) salary or wages owed to the employee for an earlier pay period;
  - (iii) a payment on the termination of the employee's employment; and
- (c) the employer withholds for the salary or wages of the employee the amount of tax that would be required under the PAYE rules and the ESCT rules if the employer did not have an arrangement with a PAYE intermediary; and
- (d) the employer pays the amount in the way described in sections NP 9 to NP 11.

Defined in this Act: amount of tax, arrangement, employee, employer, employment, ESCT rules, pay, pay period, PAYE rules, salary or wages

Origin: 2004 No 35 s NBA 4(4)

*PAYE intermediaries' responsibilities*

**NP 13 General responsibilities of PAYE intermediaries**

***When this section applies***

- (1) This section applies when a PAYE intermediary assumes the PAYE and ESCT obligations in relation to an employee and a pay period that an employer would have under those rules if section NP 2(1) did not exist.

***No liability as employer***

- (2) The PAYE intermediary does not become liable as an employer for the payment to the employee of the salary or wages for the pay period, or for the payment of an employer's superannuation contribution made on behalf of the employee.

Defined in this Act: employee, employer, employer's superannuation contribution, ESCT, pay period, PAYE, PAYE intermediary, salary or wages

Origin: 2004 No 35 s NBA 5(1), (2)

**NP 14 Collection, payment, and information requirements**

A PAYE intermediary must—

- (a) calculate and withhold the amount of tax for a payment of salary or wages, and pay the amount to the Commissioner by electronic means and in the format required:
- (b) provide an employer's monthly schedule to the Commissioner by electronic means and in the format required:
- (c) provide a PAYE payment form to the Commissioner if required:
- (d) keep the records referred to in section 24 of the Tax Administration Act 1994.

Defined in this Act: amount of tax, Commissioner, employer's monthly schedule, pay, PAYE intermediary, PAYE payment form, salary or wages

Origin: 2004 No 35 s NBA 5(1)

### **NP 15 When employers have authorised transfers from accounts**

If a PAYE intermediary has been given an authorisation by an employer under section NP 2(1), the intermediary must direct that, at or before the time of the transfer of the payment of salary or wages, an amount equal to the amount of tax for the payment required under the PAYE rules and ESCT rules is transferred to—

- (a) the Commissioner; or
- (b) the trust account established by the PAYE intermediary and identified in the employer's notice under section 15J of the Tax Administration Act 1994.

Defined in this Act: amount, amount of tax, Commissioner, employer, ESCT rules, pay, PAYE intermediary, PAYE rules, salary or wages

Origin: 2004 No 35 s NBA 5(1B)

### **NP 16 Obligations for employer's superannuation contributions**

When section NP 11 applies, the PAYE intermediary assumes the obligations under the ESCT rules in relation to the employee and the pay period that the employer would have had if section NP 2(1) did not exist.

Defined in this Act: employee, employer, ESCT rules, pay period, PAYE intermediary

Origin: 2004 No 35 s NBA 5

## ***Tax pooling intermediaries***

### **NP 17 Tax pooling intermediaries**

A person (**person A**) may ask a person who maintains a tax pooling account to act as a tax pooling intermediary between person A and the Commissioner in using funds in the tax pooling account to meet an obligation of person A to pay provisional tax.

Defined in this Act: Commissioner, provisional tax, tax pooling account

Origin: 2004 No 35 s MBA 2

## **NP 18 Deposits in tax pooling accounts**

### ***When this section applies***

- (1) This section applies when a tax pooling intermediary makes a deposit in a tax pooling account on behalf of a person.

### ***Deposit held in trust***

- (2) The intermediary holds the principal amount of the person's deposit in trust for the person until the amount is—
  - (a) credited to the person's tax account with the Commissioner;
  - (b) credited to another person's tax account with the Commissioner;
  - (c) refunded to the person.

### ***Notification required***

- (3) The intermediary must—
  - (a) notify the person, at or before the time the person pays an amount to the intermediary, that the payment does not satisfy an obligation of the person to make a payment to the Commissioner; and
  - (b) notify the Commissioner by electronic means, providing for each person who has contributed an amount as a deposit,—
    - (i) the person's name and tax file number; and
    - (ii) the amount of the person's contribution.

### ***Commissioner's notification***

- (4) On receiving the deposit and details described in subsection (3), the Commissioner must notify the intermediary of—
  - (a) the account in which the deposit is paid; and
  - (b) the names of all persons who are connected with the deposit; and
  - (c) the amount of each person's deposit.

### ***Refunding deposit***

- (5) If the details described in subsection (3) are not provided within 5 working days after a deposit is made, the Commissioner must refund the deposit.

Defined in this Act: amount, Commissioner, notify, tax file number, tax pooling account, working day

Origin: 2004 No 35 s MBA 5

## **NP 19 Transfers from tax pooling accounts**

### ***Transferring amounts***

- (1) A tax pooling intermediary may ask the Commissioner to transfer an amount in their tax pooling account to the tax account of a person who is their client. The amount transferred and credited to the person's account is treated as income tax paid to meet a provisional tax obligation under the provisional tax rules.

### ***Credited on date of deposit or later***

- (2) The intermediary may ask the Commissioner that the amount of a transfer under subsection (1) is credited in the person's tax account on the date on which the amount was deposited in the tax pooling account or on some later date.

### ***Credit date***

- (3) The credit date for an amount transferred to a person's tax account is—
- (a) the date sought under subsection (2), unless—
    - (i) that date falls in a tax year for which the person's terminal tax date is more than 60 days before the date on which the Commissioner receives the request; and
    - (ii) when the Commissioner receives the request, the person is liable for a penalty relating to their provisional tax obligations for the tax year; or
  - (b) the date on which the Commissioner receives the request for the transfer.

### ***Details***

- (4) For the purposes of this section, the intermediary must provide the following details to the Commissioner by electronic means:
- (a) the date of the transfer and the credit date, if it is different; and
  - (b) the amount of the transfer; and
  - (c) the tax file number of the person for whom the amount is transferred.

### ***Statement***

- (5) When an amount is transferred, the Commissioner must provide a statement showing the effect of the transfer to both the intermediary and the person for whom the transfer is made.

Defined in this Act: amount, Commissioner, income tax, pay, provisional tax, provisional tax rules, tax file number, tax pooling account, tax year, terminal tax

Origin: 2004 No 35 s MBA 6

## **NP 20 Refusals to transfer amounts**



***When this section applies***

- (1) This section applies when a tax pooling intermediary asks to transfer an amount under section NP 19.

***Tax avoidance***

- (2) The Commissioner may refuse to accept the request, or may reverse the transfer, if it the request is made for the purpose or effect of tax avoidance.

***Failure to provide details***

- (3) The Commissioner must refuse the transfer if—
- (a) it relates to a deposit for which the details have not been provided under section NP 18(3) and the period of 5-working days has not expired:
  - (b) the details required under section NP 19(4) have not been provided.

Defined in this Act: amount, Commissioner, tax avoidance, working day

Origin: 2004 No 35 s MBA 6(4)-(9)

**NP 21 Refunds from tax pooling accounts**

A tax pooling intermediary may ask the Commissioner to refund some or all of the balance in their tax pooling account.

Defined in this Act: Commissioner, tax pooling account

Origin: 2004 No 35 s MBA 7

### Section OB 1 for Part N

accident compensation earnings-related payment	new	
agent		
agricultural, horticultural, or viticultural company	moved from withholding payment regulations	
amalgamated company		
amalgamating company		
amalgamation		
amount	update section references	
amount of tax	new, replaces tax deduction	
annual gross income		
approved issuer		
arrangement		
assessment		
associated person		
attributed repatriation		
Australian imputation credit account company		
balance date	new	
base amount	new, NC 8	
basic rates		
basic tax deduction	omit	
beneficiary income		
BETA company	replacement for branch equivalent tax account company	
body	omit, NE 30	
bonus issue in lieu		
branch equivalent tax account		
building society		
business		
casual agricultural employee		
certificate of exemption	update section references	
CFC		
charitable organisation	update section references	
chief executive of the department currently responsible for administering the Social Security Act 1964		
close company		
close of trading spot exchange rate		
combined tax and earner-related payment	amalgamate existing definitions	
Commissioner		
company		
conduit tax relief additional dividend		
conduit tax relief company		

consolidated group		
consolidation rules	update section references	
contract activity or service	moved from withholding payment regulations	
contract payment	moved from withholding payment regulations	
control		
convertible credit	update references	
corresponding income year		
cost	move from ND to OB 1	
credit transfer notice		
derived from New Zealand		
direct market value circumstance		
direct market value interest		
direct voting interest		
distribution		
dividend	update section references etc	
dividend withholding payment	omit	
dividend withholding payment account	omit	
dividend withholding payment account company	omit	
dividend withholding payment account return	omit	
dividend withholding payment credit	omit	
dividend withholding payment deduction	omit, becomes payment for a foreign dividend	
dividend withholding payment penalty tax	omit, becomes FDP penalty tax	
dividend withholding payment ratio	omit, becomes FDP ratio	
dividend withholding payment rules	omit, becomes FDP rules	
double tax agreement		
early balance date		
election day worker		
emigrating company		
employee	update	
employer	update	
employer's monthly schedule	replaces employer monthly schedule	
employer's superannuation contribution	ND 66	
employment	update	
employment-related loan		
ESCT	new	
ESCT rules	replaces SSCWT rules, ND 65	
exempt income		
exempt interest		
expenditure on account of an employee		
extra pay		
FBT	replaces fringe benefit tax	
FBT rules	replaces fringe benefit tax rules	
FDP	new	
FDP account	replaces dividend withholding payment account	
FDP company	replaces dividend withholding payment company	
FDP credit	replaces dividend withholding payment credit	
FDP rules	NG 1, replaces dividend withholding payment rules	

fee	update section reference, ND 41	
filing taxpayer		
final instalment		
financial arrangement		
financial arrangements rules		
first business day		
first payment period	replaces first PAYE period	
fixed establishment		
foreign company		
foreign dividend	replaces foreign withholding payment dividend, NG 2	
foreign dividend payment account return	replaces dividend withholding payment account return	
foreign dividend payment penalty tax		
foreign withholding payment dividend	omit	
foreign withholding tax	update references	
friendly society		
fringe benefit	update section references	
fringe benefit tax	becomes FBT, ND 25	
fully conduit tax relief credited	omit, move definition to Act	
further dividend withholding payment	omit, becomes further payment for a foreign dividend	
further income tax		
generally accepted accounting practice		
goods		
gross	omit	
gross tax deductions	omit	
group investment fund		
group of companies		
GST		
GST ratio		
ICA company	replaces imputation credit account company	
identical goods	move from ND to OB 1	
imputation credit		
imputation credit account		
imputation credit account company	replaced by ICA company	
imputation return		
income		
income interest		
income statement		
income tax		
income tax liability		
income year		
income-tested benefit		
initial provisional tax liability	replaces new provisional taxpayer	
Inland Revenue Acts		
input tax		
instalment date		
interest		
interest instalment date		
investment society dividend		

life insurance		
life insurance rules		
life insurer		
liquidation		
listed company	update section references	
listed PAYE intermediary	update section references	
living alone payment		
local authority		
major shareholder		
Maori authority		
Maori authority credit		
Maori authority credit account		
Maori authority credit account return		
market interest	ND 35	
market value	update section references, ND 27, ND 40	
member	update section references, NE 30	
money		
money lent		
monthly remittance certificate	omit, replaced by PAYE payment form	
motor vehicle		
net income		
net loss		
new provisional taxpayer	omit, replaced by initial provisional tax liability	
New Zealand		
New Zealand resident		
New Zealand superannuation		
nominated company		
nominee		
non-cash dividend		
non-concessionary rate of interest		
non-filing taxpayer	update section reference	
non-resident		
non-resident contractor	new	
non-resident entertainer	amalgamate existing and new definitions	
non-resident passive income	NF 2, replaces non-resident withholding income	
notice		
notify		
NRWT	new	
NRWT rules	NF 1	
partner	NE 30	
partnership	NE 30	
pay	add to para (a) "treated as paid", update section references, include ND 51	
pay period		
PAYE	new	
PAYE intermediary	update section references	
PAYE payment	replaces source deduction payment, s ND 3	
PAYE payment form	replaces remittance certificate, monthly remittance certificate	

PAYE rules	ND 1	
PCA person	replaces policyholder credit account person	
policyholder base		
policyholder credit account		
policyholder credit account person	omit, replaced by PCA person	
policyholder credit account return	new, compare other return types	
preceding year	omit	
prescribed interest	update section references	
prescribed rate of interest	update section references	
price	move from ND to OB 1	
primary employment earnings	move definition to TAA	
private domestic worker		
private use		
provisional tax		
provisional tax rules	NC 1	
provisional taxpayer	omit	
public authority		
qualifying amalgamation		
qualifying company		
qualifying event		
qualifying unit trust		
quarter		
ratio instalment date		
redemption payment		
reduced deduction	omit	
registered person		
registered security		
related employer	ND 51	
remittance certificate	omit, replaced by PAYE payment form	
remuneration	omit	
replacement payment		
resident in New Zealand		
resident passive income	NE 2, replaces resident withholding income	
resident withholding tax	omit, replaced by RWT	
residual income tax		
return of income		
revenue account property		
royalty		
RWT	new	
RWT proxy	update section reference	
RWT rules	NE 1	
salary or wages	ND 5	
schedular payment subject to final withholding	omit	
schedular income	add para	
schedular payment	replaces withholding payment	
schedular tax code	replaces withholding declaration, new definition for TAA	
second payment period	replaces second PAYE period	

self-assessed adverse event		
services		
share		
share-lending arrangement		
share supplier		
share user		
shareholder		
shareholder dividend statement		
shareholder-employee		
shares of the same class		
shearer		
shearing shed hand		
short-term charge facility		
sickness, accident, or death benefit fund		
source deduction payment	omit, replaced by PAYE payment	
specified dividend	omit, replaced by new definition: dividend having the nature of interest	
specified insurance premium	rewrite in CX 15 and omit definition	
specified superannuation contribution	omit, replaced by ESCT	
withholding tax		
SSCWT rules	omit, replaced by ESCT rules, ND 64	
subsidised transport	update section reference	
subsidy claim form	replaces listed PAYE intermediary claim form	
superannuation fund		
superannuation scheme		
supplementary available subscribed capital account	replacement supplementary ASC account	
supplementary dividend		
tax advantage		
tax agent		
tax avoidance		
tax code	update section reference	
tax code certificate	shift definition to TAA	
tax code declaration	omit	
tax deduction	omit	
tax file number	update section reference	
tax pooling account		
tax year		
taxable activity		
taxable bonus issue		
taxable income		
taxable Maori authority distribution		
taxable period	extend by reference to GST Act	
taxable supply		
terminal tax		
this Act		
total taxable supplies	NC 8	
transitional resident		
transitional year	amend to refer to return filed under section 33 for	

	period to which section 39 applies	
trustee		
unclassified benefit		
unit trust		
veteran's pension		
voting interest		
wholly-owned group of companies		
withdrawable share		
withdrawal		
withholding payment	omit, replaced by schedular payment	
working day		
work-related vehicle		
year		

*Particular definitions*

**accident compensation earnings-related payment** means a payment included in salary or wages of the following kinds and under the following Acts:

- (a) under the Accident Compensation Act 1982, a payment of earnings related compensation, as defined in section 2, and of compensation under section 80(4), that are not payments of account made under section 88 in circumstances in which, at the time the payments are made, the nature of the compensation has not been determined:
- (b) under the Accident Rehabilitation and Compensation Insurance Act 1992,—
  - (i) a vocational rehabilitation allowance payable under section 25; and
  - (ii) a payment of compensation for loss of earnings payable under any of sections 38, 39, and 43; and
  - (iii) a payment of compensation for loss of potential earning capacity payable under section 45 or 46; and
  - (iv) a payment of weekly compensation payable under any of sections 58, 59, and 60; and
  - (v) a payment of continued compensation payable under section 138:
- (c) under the Accident Insurance Act 1998,—
  - (i) a payment or weekly compensation made by an insurer, as defined in that Act:
  - (ii) a payment of compensation for loss of earnings, or loss of potential earning capacity in relation to a work-related personal injury, as defined in that Act, made by an insurer under a policy of personal accident or sickness insurance to which section 188(1)(a)



(as it read immediately before its repeal by section 7 of the Accident Insurance Amendment Act 2000) applies:

- (d) under the Injury Prevention, Rehabilitation, and Compensation Act 2001, a payment of weekly compensation made by the Corporation, as defined in that Act

**agricultural, horticultural, or viticultural company** means a company that carries on a business that comprises or includes performing any work or rendering a service set out in schedule 1B, part A, clause 4A (Basic amounts of tax for schedular payments)

**amount of tax**, for a payment, means an amount of tax that must be withheld and paid, or paid to the Commissioner under the PAYE rules, ESCT rules, RWT rules, or NRWT rules

**balance date**, for the purposes of section NA 15 and subparts NC and ND (which relate to payments of income tax) means the date of the annual balance of a person's accounts for their income year

**contract activity or service**, for a non-resident contractor, means—

- (a) performing any work in New Zealand:
- (b) rendering a service of any kind in New Zealand:
- (c) providing the use of, or right to use, in New Zealand, any personal property or services of a person other than the non-resident contractor

**contract payment**, for a non-resident contractor, means any payment other than—

- (a) a royalty; or
- (b) a payment made to the non-resident contractor by or on behalf of a person who is not associated with the contractor to reimburse costs incurred by the contractor; or
- (c) a payment referred to in schedule 1B, part A, clause 8 or 9 (Basic amounts of tax for schedular payments)

**cost**, in sections ND 43 and ND 44 (which relate to goods provided with staff discount), for a registered person who may claim input tax for the cost of the goods, means the GST-inclusive cost of the goods to the person

**ESCT** means an amount payable as income tax under the ESCT rules

**FDP** means an amount payable for a foreign dividend under the FDP rules

**identical goods**, for the purposes of the FBT rules, for any goods, means other goods that are the same in terms of physical characteristics, quality, and reputation, except for minor differences in appearance that do not affect the value of the goods

**initial provisional tax liability**, means—

- (a) for a person who is not a natural person, or a person who is a natural person and a trustee of a trust, a provisional tax liability for a tax year in which the person starts to derive income from a taxable activity, when they did not derive income from a taxable activity in any of the 4 previous tax years; and
- (b) for a person who is a natural person and not a trustee of a trust, a provisional tax liability for a tax year when—
  - (i) they did not have residual income tax of more than \$2,500 in any of the 4 previous tax years; and
  - (ii) they have residual income tax of \$35,000 or more in the tax year; and
  - (iii) in the tax year, they stopped deriving income from employment and then started to derive income from a taxable activity

**non-resident contractor**, in the PAYE rules, means a person who—

- (a) is not resident in New Zealand under subpart OE (Source of income and residence); and
- (b) undertakes under a contract, agreement, or arrangement (other than a contract of service or apprenticeship)—
  - (i) to perform services of any kind in New Zealand;
  - (ii) to supply the use, or right to use, in New Zealand any personal property or services of another person

**non-resident entertainer**, in the PAYE rules, means a person who—

- (a) is not resident in New Zealand under subpart OE (Source of income); and
- (b) during a visit to New Zealand, undertakes an activity or performance connected with—
  - (i) a sporting event or competition; or
  - (ii) making speeches or giving lectures or talks for any purpose; or

- (iii) acting, singing, playing music, dancing, or entertaining generally, for any purpose and whether alone or not:
- (c) is not fully or partly sponsored under a cultural programme of an overseas government or the Government of New Zealand:
- (d) is not an official representative of a body that administers a game or sport in an overseas country:
- (e) is not undertaking an activity or performance under a programme of a foundation, trust, or organisation outside New Zealand which exists for the promotion of a cultural activity and is not carried on for individual profit of a member or shareholder:
- (f) if they are an employee, officer, or principal of a company, firm, or other person, includes the company, firm or other person

**NRWT means** an amount payable as income tax under the NRWT rules

**PAYE means** an amount payable as income tax under the PAYE rules

**price**, in sections ND 43 and ND 44 (which relate to goods provided with staff discount), for a registered person who may claim input tax for goods provided to an employee, means the GST-inclusive price

**RWT means** an amount payable as income tax under the RWT rules

**schedular income** means income of the following types:

...

- (h) non-resident passive income of the kind referred to section NF 2(3) (Non-resident passive income):

**tax pooling account** means a trust account into which a tax pooling intermediary pays an amount that they receive in their role as intermediary from a person liable to pay provisional tax

## To Part O

### OB 7 Foreign currencies

#### *When this section applies*

- (1) This section applies if a person (**payer**) is required under the RWT rules to determine the amount of tax for a payment of resident passive income and pay it to the Commissioner when the resident passive income is in a currency other than New Zealand currency.

#### *Determination in foreign currency*

- (2) The payer may determine the amount of tax in the foreign currency.

#### *Conversion for purposes of income tax liability*

- (3) For the purposes of calculating the income tax liability of the person (**payee**) deriving the resident passive income, the amount of tax must be converted into New Zealand currency either at the close of trading spot exchange rate on the day the amount of tax is withheld, or under another exchange rate determined by the Commissioner for the month in which the amount of tax is withheld.

#### *Conversion for purposes of payment*

- (4) For the purposes of calculating the amount of tax that the payer must pay to the Commissioner, the amount must be converted into New Zealand currency at the close of trading spot exchange rate on the first working day of the month after that in which the amount of tax is withheld.

#### *Australian imputation credit account companies*

- (5) Despite subsection (4), if the payer is an Australian imputation credit account company and the resident passive income is a dividend, the payer may choose to use the conversion rate applying under section ME 1B (Amount of dividend for imputation rules if paid in Australian currency).

Defined in this Act: amount of tax, Australian imputation credit account company, close of trading spot exchange rate, Commissioner, dividend, income tax liability, pay, resident passive income, RWT rules, working day

Origin: 2004 No 35 ss NF 2(3), NH 2(5)

## To Part F

### FD 12 General treatment of foreign dividends

#### *When this section applies*

- (1) This section applies when a company is part of a consolidated group at a time when it receives a foreign dividend for which it is required to make a payment to the Commissioner under section NG 3 (Obligation to make payments for foreign dividends).

#### *Joint and several liability*

- (2) All companies in the group at the time of the payment of the foreign dividend are jointly and severally liable for the payment, and the Commissioner must make an assessment under section 102 of the Tax Administration Act 1994 to reflect the joint and several liability.

#### *Tax credits*

- (3) For the purposes of sections FD 13 to FD 18, section LD 8(4) (Credit of tax for dividend withholding payment credit in hands of shareholder) applies to a company that is part of a consolidated group.

Defined in this Act: assessment, Commissioner, company, consolidated group, foreign dividend, pay

Origin: 2004 No 35 s NH 5(3), (9)

### FD 13 Reduction in payments for foreign dividends

#### *When this section applies*

- (1) This section applies at a time when a company that is part of a consolidated group that maintains a branch equivalent tax account under section MF 7 (Branch equivalent tax accounts and consolidated groups) receives a foreign dividend under section NG 5(3) (Credit balance in branch equivalent tax account) in relation to an income interest in a CFC for which it is liable to make a payment to the Commissioner.

#### *Reduction in payment*

- (2) If the nominated company of the group chooses under section MG 10(1) (Use of consolidated group credit to reduce dividend withholding payment, or use of group of individual debit to satisfy income tax liability), the payment is reduced by a credit balance in the group's branch equivalent tax account at the time the dividend is paid.

***Whether sufficient interest***

- (3) In determining whether a person has a sufficient interest in a company at the time, a consolidated group is treated as if it were a single company.

***Relationship with subpart NG***

- (4) This section overrides section NG 5(2).

Defined in this Act: branch equivalent tax account, CFC, Commissioner, company, consolidated group, foreign dividend, income interest, nominated company, pay

Origin: 2004 No 35 s NH 5(1), (2)

**FD 14 Using net losses to make payments**

***When this section applies***

- (1) This section applies when—
- (a) a company is liable to make a payment to the Commissioner for a foreign dividend paid to it; and
  - (b) the company is part of a consolidated group at the time of the payment; and
  - (c) either—
    - (i) the group has a net loss that may be carried forward and used under sections IE 1, IF 1, and IG 6 (which relate to the treatment of net losses) to reduce the net income of the group for the income year in which the foreign dividend is paid to the company; or
    - (ii) the group's nominated company has a reasonable expectation that, for the income year in which the foreign dividend is paid to the company, the group will have a net loss that may be carried forward and used under sections IE 1, IF 1, and IG 6 to reduce the net income of the company for the next income year.

***Maximum reduction***

- (2) The nominated company may notify the Commissioner within the time for payment to the Commissioner set out in section NA 15(3)(c) (Payment dates for interim and other tax payments) that it chooses to use the net loss, so far as it extends, to pay some or all of the payment. The maximum reduction is calculated using the formula—

$$\frac{\text{payment}}{\text{rate}}$$

*Definition of items in formula*

- (3) In the formula,—
- (a) **payment** is the amount determined under section NG 4 (Calculating amount of payments for foreign dividends):
  - (b) **rate** is the percentage that is the rate of income tax for companies set out in schedule 1, part A, clause 5 (Basic rates of income tax and ESCT), applying for the tax year in which the dividend is paid.

*Relationship with subpart NG*

- (4) For the purposes of this section, section NG 6(6) (Using net losses) applies modified as necessary.

Defined in this Act: amount, Commissioner, company, consolidated group, foreign dividend, income year, net income, net loss, nominated company, pay

Origin: 2004 No 35 s NH 5(4)

**FD 15 Refunds of payments for foreign dividends**

*When this section applies*

- (1) This section applies when a company becomes entitled in a tax year to a refund of a payment paid by it to the Commissioner in an earlier tax year in relation to a foreign dividend received when the company was part of a consolidated group.

*Maximum amount of refund*

- (2) The refund must not be more than the amount set out in the following paragraphs, as applicable:
- (a) if the group has an FDP account at the time the entitlement arises, a credit balance in the group's FDP account at the end of the tax year that is just before the tax year in which the entitlement arises; or
  - (b) if the group does not have an FDP account at the time the entitlement arises, a credit balance in the group's imputation credit account at the end of the tax year that is just before the tax year in which the entitlement arises.

*Treatment of excess*

- (3) If subsection (2) does not apply to some or all of the payment because it is more than the applicable credit balance, the amount in excess is credited to a payment for a foreign dividend that is payable by the company for a tax year in which it is part of the group.

*Earlier refunds of payments*

- (4) The credit balance referred to in subsection (3) is treated as reduced by an earlier refund of a payment for a foreign dividend that is made in the tax year to the

company, or to another company that is part of the same group at the time the dividend is paid or for the income year in which the refund is made.

***Refunds of income tax***

- (5) Subsection (4) also applies in relation to a refund of income tax that is, under section MD 2 (Limit on refunds and allocations of tax) not more than the credit balance described in subsection (2).

***Relationship with subpart NM***

- (6) This section overrides section NM 18 (Limits on refunds related to foreign dividends). However, section NM 18 does not limit a refund of a payment for a foreign dividend to a company that is part of a consolidated group at the time the dividend is paid to the extent to which this section would not have limited the refund.

Defined in this Act: amount, Commissioner, company, consolidated group, FDP account, foreign dividend, imputation credit account, income year, pay, tax year

Origin: 2004 No 35 s NH 5(5), (6), (8)

**FD 16 Refund when consolidated group has net loss**

***When this section applies***

- (1) This section applies when—
- (a) a company has paid to the Commissioner in an income year a payment for a foreign dividend and, at the time the dividend was paid, the company was part of a consolidated group; and
  - (b) the group has a net loss for the income year that may be carried forward under sections IE 1, IF 1, and IG 6 (which relate to the treatment of net losses) and used to reduce the net income of the group for a later income year; and
  - (c) the group has filed a single return of income under section HB 1 (Returns, assessment, and liability of consolidated group).

***Applying for refund***

- (2) The company may apply to the Commissioner for a refund of the payment. The maximum refund is the smallest of the following amounts:
- (a) the amount of the payment paid in the income year;
  - (b) the amount of the net loss referred to in subsection (1)(b) multiplied by the rate set out in subsection (4)(b);
  - (c) the credit balance of the group's FDP account at the end of the tax year just ended.



***Net loss reduced***

- (3) The amount of the net loss is reduced by an amount calculated using the formula—

$$\frac{\text{amount of refund}}{\text{rate.}}$$

***Definition of items in formula***

- (4) In the formula,—
- (a) **amount of refund** is the amount of the refund paid to the company;
- (b) **rate** is the percentage that is the basic rate of income tax for companies set out in schedule 1, part A, clause 5 (Basic rates of income tax and ESCT) applying for the income year corresponding to the tax year.

***Relationship with subpart NM***

- (6) This section overrides section NM 21 (Refunds when net losses used to reduce net income).

Defined in this Act: amount, Commissioner, company, consolidated group, foreign dividend, income tax liability, income year, net loss, pay, return of income

Origin: 2004 No 35 s NH 5(7)

**FD 17 Treatment of credit balance in consolidated group's FDP account**

***When this section applies***

- (1) This section applies when a consolidated group has a credit balance in its FDP account at the end of a tax year.

***Credit and debit***

- (2) The nominated company of the group may choose that some or all of the credit balance becomes—
- (a) a credit in the imputation credit account of the group, or of the imputation group to which the group companies belong; and
- (b) a debit in the FDP account of the group.

***How election made***

- (3) The company makes the election by recording the debit in the group's FDP account.

Defined in this Act: consolidated group, FDP account, imputation credit account, nominated company, tax year

Origin: 2004 No 35 s NH 6(6)

**FD 18 Application of certain provisions to consolidated groups**

***Section MG 6: FDP credits***

- (1) Section MG 6 (Company may attach dividend withholding payment credit to dividend) applies in relation to a consolidated group as if the reference to an FDP account company includes a reference to a company if, at the time a foreign dividend is paid to it, the company is part of a consolidated group and the group maintains an FDP account.

***When subsections (3) and (4) apply***

- (2) Subsections (3) and (4) apply when a consolidated group has a policyholder credit account and an FDP account.

***Credit and debit balances***

- (3) The nominated company for the group may choose to have some or all of a credit balance in the FDP account credited to its policyholder credit account by recording the credit and corresponding debit in its accounts.

***Section MG 7: life insurance credit balance***

- (4) Section MG 7(3) and (4) (Transfer by life insurance company of credit balance to policyholder credit account) applies in relation to a consolidated group, modified as necessary, as if—
- (a) a reference to a company were a reference to the group:
  - (b) a reference to a provision of this Act applying to a company were a reference to the equivalent of sections FD 12 to FD 17, and MG 13 to MG 16 applying to a consolidated group.

***Sections MG 9, MG 12, and others: liability for payments and penalties***

- (5) Sections MG 9 (Further dividend withholding payment payable by company) and MG 12 (Determinations by Commissioner as to credits and debits arising to dividend withholding payment credit account), and sections 103, 104, 139B, 140C, 140D, and 181 of the Tax Administration Act 1994 apply, modified as necessary in relation to a consolidated group and its FDP account as if—
- (a) the group were a single company:
  - (b) a reference to a provision of this Act were a reference to the equivalent provision applying to a consolidated group:
  - (c) a reference to a liability of a company for a further payment for a foreign dividend, a foreign dividend penalty tax, and a late payment penalty were a reference to the joint and several liability for the payment, tax, or penalty of each company that is part of the group at the time the payment, tax or penalty becomes payable.

***Section NA 19: amalgamations***

- (6) Section NA 19 (Refunds of excess amounts or when amounts mistakenly paid) applies, modified as necessary, from the time of amalgamation when a

consolidated group ends its existence on a qualifying amalgamation that involves all members of the consolidated group, whether or not with a company outside the group, in relation to tax paid by the consolidated group as if it and the amalgamated company were a single company.

***Sections 30 and 68 of Tax Administration Act 1994: FDP accounts***

- (7) Sections 30 and 68 of the Tax Administration Act 1994 apply, modified as necessary, in relation to a consolidated group as if a reference to an FDP account company were a reference to a company that is part of a consolidated group that maintains an FDP account.

Defined in this Act: amalgamation, company, consolidated group, FDP account, foreign dividend, foreign dividend penalty tax, pay, policyholder credit account, qualifying amalgamation

Origin: 2004 No 35 s NH 6(1), (2), (5), (7)

**Schedule 1B**  
**Basic amounts of tax for schedular payments**

(Reproduce Part A, Part B, Part D, and Part E of the schedule to the  
Income Tax (Withholding Payments) Regulations 1979)

Rename schedules

- 1 Basic rates of income tax and ESCT
- 1B Basic amounts of tax for schedular payments
- 14 Basic amounts of tax for resident passive income
- 19 Basic amounts of tax for PAYE payments

## **Tax Administration Act 1994**

### **Part IIB—Intermediaries for PAYE, provisional tax, and resident passive income**

#### *PAYE intermediaries*

#### **15C PAYE intermediaries and listed PAYE intermediaries**

- (1) A person who meets the requirements of section 15F may apply under section 15D to the Commissioner for approval to become a PAYE intermediary.
- (2) A PAYE intermediary may apply under section 15G to the Commissioner to become a listed PAYE intermediary. To make an application, the PAYE intermediary must meet, on a continuing basis, the requirements for a PAYE intermediary.

Origin: 2004 No 35 ss NBA 1, NBB 3

#### **15D Application for approval as PAYE intermediary**

- (1) In order to become a PAYE intermediary, a person must—
  - (a) meet the requirements of section 15F; and
  - (b) have established a trust account that meets the requirements of section NP 6 of the Income Tax Act 2004; and
  - (c) operate systems to protect the personal information and payment details that are obtained in the course of running the account.
- (2) The Commissioner may approve an application if the Commissioner is satisfied that the applicant—
  - (a) will comply with the PAYE rules, and the ESCT rules if they assume an employer's obligations under those rules; and
  - (b) has systems to allow them to make payments and provide information in the format required by the Commissioner.
- (3) The Commissioner may approve a person as a PAYE intermediary for a set period.

Origin: 2004 No 35 s NBA 2(1)(a)-(c), (2), (3)

### **15E Revocation of approval**

- (1) The Commissioner may revoke an approval given under section 15D if the person—
  - (a) does not comply with the PAYE rules:
  - (b) does not comply with the ESCT rules when they have assumed an employer's obligations under those rules:
  - (c) is no longer fit to be a PAYE intermediary because they do not meet the requirements of section 15F:
  - (d) when they are not a natural person, has been put into liquidation or receivership:
  - (e) when they are a company, is no longer registered in New Zealand.
- (2) If the Commissioner revokes an approval under subsection (1)(b), the Commissioner must notify the person, and any employer for whom the person is a PAYE intermediary, of the revocation and its effective date, which must not be less than 14 days from the date of notification.
- (3) A decision by the Commissioner under this section is not open to challenge.

Origin: 2004 No 35 s NBA 2(1)(a)-(c), (2)

### **15F Fitness of applicants**

- (1) This section applies for the purposes of section 15D to the following:
  - (a) an applicant who is a natural person or a corporation sole:
  - (b) each member of an applicant that is an unincorporated body:
  - (c) an officer of an applicant that is a body corporate:
  - (d) a principal of an applicant.
- (2) The applicant, member, officer, or principal, as applicable,—
  - (a) must not be a discharged or undischarged bankrupt; or
  - (b) must not have been convicted of an offence involving fraud; or
  - (c) must be eligible to be a company director.

Origin: 2004 No 35 s NBA 2(1)(c)

### **15G Application for approval as listed PAYE intermediary**

- (1) In order to become a listed PAYE intermediary, a PAYE intermediary must—
  - (a) meet the requirements of section 15D; and

- (b) have completed and filed the returns of income required from them; and
  - (c) paid the required amounts of tax due from them.
- (2) A PAYE intermediary is a listed PAYE intermediary only for a period that is no more than the period for which they have been approved as a PAYE intermediary.
- (3) On approval of an application under this section and before acting as a listed PAYE intermediary for an employer, the listed PAYE intermediary must inform an employer who contracts their services as a listed PAYE intermediary that the Commissioner does not guarantee payment by the intermediary to an employee of the employer, or the performance of a service provided by them.
- (4) The Commissioner may approve a PAYE intermediary as a listed PAYE intermediary for a set period.

Origin: 2004 No 35 s NBB 2

### **15H Grounds for revocation of listing**

The Commissioner may revoke the listing of a listed PAYE intermediary if—

- (a) an approval of the person as PAYE intermediary is revoked;
- (b) the person no longer meets the requirements of section 15F;
- (c) the person does not provide a subsidy claim form by the date and in the format required by the Commissioner;
- (d) the person does not comply with an obligation of a listed PAYE intermediary;
- (e) the Commissioner considers revocation is necessary in order to protect the integrity of the tax system.

Origin: 2004 No 35 s NBB 4(1)

### **15I Procedure for revocation of listing**

- (1) The Commissioner must notify a listed PAYE intermediary of an intended revocation under subsection (1), and must provide reasons for the intended revocation. The notice period is 30 days.
- (2) If the listed PAYE intermediary who is notified by the Commissioner under subsection (2) does not resolve the matters set out in the notice to the satisfaction of the Commissioner, the Commissioner may give 14 days notice of revocation.
- (3) At the end of the notice period under subsection (2), the listing of the listed PAYE intermediary is revoked.
- (4) A decision by the Commissioner under this section is not open to challenge under Part 8A.

Origin: 2004 No 35 s NBB 4(2)-(5)

### **15J Employers' arrangements with PAYE intermediaries**

- (1) An employer who wishes to enter an arrangement with a PAYE intermediary must notify the Commissioner of the proposed arrangement, providing—
  - (a) the name of the PAYE intermediary:
  - (b) the period for which the PAYE intermediary is to act for the employer:
  - (c) the bank account number of the PAYE intermediary into which the employer will deposit amounts:
  - (d) whether the proposed arrangement requires the PAYE intermediary to collect amounts under the ESCT rules.
- (2) On approval of the arrangement, the Commissioner must notify the employer, and the approval applies to pay periods that begin on or after 14 days after the date on which the notice is given.
- (3) An employer or a PAYE intermediary may end the arrangement by notifying the other party and the Commissioner. The notice must state the date that is after the notification for the end of the arrangement.
- (4) An employer or a listed PAYE intermediary may end an arrangement by notifying the other party and the Commissioner. The notice must state the date on which the arrangement is to end that must begin on or after 14 days after the date on which the notice is given.

Origin: 2004 No 35 ss NBA 3, NBA 8, NBB 7

### **15K Privacy requirements**

The PAYE intermediary must operate and maintain systems to protect the personal information and payment details that they acquire in running the systems.

Origin: 2004 No 35 s NBA 5(3)

### **15L Amended monthly schedules**

The PAYE intermediary may make an amended monthly schedule relating to the employee and a pay period, and is then responsible for the accuracy of the amendments.

Origin: 2004 No 35 s NBA 5(4)



### **15M Subsidy claim forms**

- (1) A listed PAYE intermediary must file a subsidy claim form within 1 month of the date of filing an employer's monthly schedule to which the form relates.
- (2) The Commissioner may amend the details in a subsidy claim form to correct an error. The amendment must be made within 2 years of receiving the form.
- (3) For the purposes of subsection (2), the Commissioner must give the listed PAYE intermediary 14 days notice of a proposed amendment.
- (4) For the purposes of section 22, a listed PAYE intermediary must keep the necessary records to verify the information in a subsidy claim form.

Origin: 2004 No 35 ss NBA 3, NBA 8, NBB 7

### *Tax pooling intermediaries*

### **15N Establishing tax pooling accounts**

A person who meets the requirements of section 15Q may apply under section 15P to the Commissioner to establish a tax pooling account.

Origin: 2004 No 35 s MBA 2

### **15O Role of Commissioner**

- (1) The Commissioner is not required to oversee or audit the operation of a tax pooling account.
- (2) The Commissioner is not liable for any loss related to the operation of a tax pooling account through—
  - (a) the failure of a tax pooling intermediary to deposit in a tax pooling account an amount paid to them by a taxpayer:
  - (b) the unauthorised withdrawal by a tax pooling intermediary from a tax pooling account:
  - (c) the failure of a tax pooling intermediary to ask for a transfer of funds from a tax pooling account to a taxpayer's tax account with the Commissioner.

Origin: 2004 No 35 s MBA 4(5), (6)

**15P Applications to establish tax pooling accounts**

- (1) In order to establish and maintain a tax pooling account, an intermediary must—
  - (a) hold the account in their name; and
  - (b) operate systems to protect the personal information and payment details that are obtained in the course of running the tax pooling account; and
  - (c) record the balance in the tax pooling account contributed by each taxpayer.
- (2) A tax pooling account continues until it is wound up under section 15S.

Origin: 2004 No 35 s MBA 4

**15Q Fitness of applicants**

- (1) This section applies for the purposes of section 15P to—
  - (a) an applicant who is a natural person; and
  - (b) an officer of an applicant who is not a natural person; and
  - (c) a principal of an applicant.
- (2) The applicant—
  - (a) must not be a discharged or undischarged bankrupt; or
  - (b) must not have been convicted of an offence involving dishonesty; or
  - (c) must be eligible to be a company director.

Origin: 2004 No 35 ss MBA 4, NBA 2(1)(c)

**15R Requirements for applications to establish tax pooling accounts**

- (1) An application to establish a tax pooling account must contain—
  - (a) the applicant's full name, address, and tax file number; and
  - (b) a statement that the applicant—
    - (i) will operate systems that allow them to meet the requirements set out in section 15P(1); and
    - (ii) will maintain and operate the systems to meet those requirements; and
  - (c) confirmation that the applicant has established a trust account into which they can pay an amount received in their role as intermediary; and
  - (d) an undertaking that, before acting as intermediary for a taxpayer, the applicant will inform the taxpayer of the following matters:
    - (i) the operation of the tax pooling account is not subject to the Commissioner's oversight or audit:

- (ii) the Commissioner has no liability for any loss related to the tax pooling account:
  - (iii) the applicant is fit to operate the tax pooling account as required by section 15Q:
  - (iv) the applicant has met the requirements set out in paragraphs (a) to (c).
- (2) The Commissioner may approve an application to establish a tax pooling account if the Commissioner is satisfied that the applicant—
  - (a) is able to operate the account correctly; and
  - (b) has systems to allow them to make payments and provide information in the format required by the Commissioner.

Origin: 2004 No 35 s MBA 3

### **15S Winding up tax pooling accounts**

- (1) An intermediary may wind up their tax pooling account at any time.
- (2) The Commissioner may require an intermediary to wind up their tax pooling account if—
  - (a) the intermediary's actions are preventing a taxpayer from effectively managing their liability to pay provisional tax and use of money interest; or
  - (b) the intermediary is or has breached their obligations under this subpart; or
  - (c) the tax pooling account is in deficit; or
  - (d) fewer than 100 taxpayers are, or are likely to be, making deposits in the tax pooling account; or
  - (e) the intermediary does not meet the requirements of section 15P; or
  - (f) when they are not a natural person, the intermediary has been put into liquidation or receivership.
- (3) For the purposes of subsection (2),—
  - (a) the Commissioner may require the winding up immediately or may set another date for the winding up:
  - (b) the Commissioner must give 30 days' notice to the intermediary of any intended action under paragraph (d).
- (4) On the winding up of a tax pooling account, the Commissioner may refund the balance of the account to the former holder of the account, or may apply to a court for directions for the disposal of the balance of the account.

Origin: 2004 No 35 s MBA 8

*RWT proxies*

**15T RWT proxies**

*Choosing to become RWT proxy*

- (1) If the requirements in subsection (2) are met, a person may choose to become an RWT proxy for a person who pays resident passive income that consists of a dividend by notifying the Commissioner.

*Requirements*

- (2) The requirements are that—
- (a) the person paying the resident passive income is a non-resident unit trust; and
  - (b) the person receiving the resident passive income is a natural person or a trustee of a qualifying trust who has asked the person referred to in subsection (1) to act as an RWT proxy in relation to the payment; and
  - (c) the person has agreed to act as the RWT proxy; and
  - (d) the payment of resident passive income is made while the notice is effective.

*Notification*

- (3) For the purposes of subsection (1), the notification to the Commissioner must contain the person's election, their name and postal address, and the date from which the election applies.

*Cancelling election*

- (4) The RWT proxy may cancel their election by notifying the Commissioner. The election stops applying from the later of—
- (a) the date set out in the notice of cancellation;
  - (b) the date on which the Commissioner receives a notice of cancellation.

*PAYE tax codes*

**24B PAYE tax codes**

- (1) This section applies for the purposes of the PAYE rules to provide an employee with a tax code for a PAYE payment. Subsection (2) overrides this subsection.
- (2) Subsection (1) does not apply to the following amounts:
  - (a) an extra pay:
  - (b) a schedular payment:
  - (c) a payment of an income-tested benefit.
- (3) An employee must notify their employer that their tax code is 1 of the following:
  - (a) “M” for primary employment earnings when the employee is not entitled to a rebate of income tax under section KC 3 of the Income Tax Act 2004:
  - (b) “ML” for primary employment earnings when the employee is entitled to a rebate of income tax under section KC 3 of the Income Tax Act 2004:
  - (c) “S” for secondary employment earnings for an employee whose annual income is not more than \$38,000:
  - (d) “SH” for secondary employment earnings for an employee whose annual income is more than \$38,000 but is not more than \$60,000:
  - (e) “ST” for secondary employment earnings for an employee whose annual income is more than \$60,000:
  - (f) “CAE” for salary or wages for employment as a casual agricultural employee:
  - (g) “EDW” for salary or wages for employment as an election day worker:
  - (h) “no notification” when the employee has not provided their employer with a tax code notification or a tax code certificate.
- (4) If another Act requires an employer to withhold the amount of tax for a PAYE payment to an employee and pay the amount to the Commissioner, the tax code may be combined with another code applying under that Act.

Origin: 2004 No 35 s NC 8(1), (1AA)

**24C Tax code for payment that includes income-tested benefit**

If an employee receives a PAYE payment of an income-tested benefit and a PAYE payment that does not consist of an income-tested benefit, the tax code “S” applies to the payment that does not consist of an income-tested benefit.

Origin: 2004 No 35 s NC 8(1) proviso

#### **24D Tax code for parental leave payment**

The tax code applying to an employee's parental leave payment under Part 7A of the Parental Leave and Employment Protection Act 1987 is their tax code before the parental leave from their employment started unless the employee provides a further tax code notification.

Origin: 2004 No 35 s NC 8(9A)

#### **24E Tax code for employment as private domestic worker**

An employee who wishes to have a tax code for their employment as a private domestic worker may provide their tax code notification to the Commissioner.

Origin: 2004 No 35 s NC 8(12)

#### **24F Special tax code certificates**

- (1) The Commissioner may provide an employee with a special tax code certificate, whether because the employee has 2 or more employments, or is entitled to have a net loss carried forward, or wishes to have a reduction applying to the amount of tax withheld under section 24H(1), or for another reason.
- (2) The special tax code may—
  - (a) set out a tax code to apply to a payment of salary or wages to an employee by 1 or more of their employers for a period referred to in the certificate:
  - (b) require that no amount of tax is withheld from, or a particular rate of tax applies to, a proportion of a PAYE payment of the employee, as if it were the whole payment.
- (3) The Commissioner must calculate, for the PAYE payments and period referred to in the certificate, and set out in the certificate, the amount of tax for the payments or the rate of tax applying to them, having regard to the amount of tax for the payments that would be required under sections ND 10 to ND 12 of the Income Tax Act 2004.
- (4) When an employee provides a special tax code certificate to their employer, the provisions of the certificate override anything in the Income Tax Act 2004 and this Act other than the employee's duties under section ND 4(2) of the Income Tax Act 2004.
- (5) An employee's entitlement under subpart KD of the Income Tax Act 2004 is not taken into account in setting a tax code for a special tax code certificate.

- (6) The Commissioner may cancel a special tax code certificate at any time, and on notification of the cancellation, the employee must return the certificate to the Commissioner within a period of 7 days.

Origin: 2004 No 35 s NC 14

#### **24G Use of incorrect tax codes**

- (1) This section applies when the Commissioner considers that an employer or PAYE intermediary has used an incorrect tax code in relation to a PAYE payment to an employee.
- (2) The Commissioner may notify the employer or PAYE intermediary of the incorrect code and provide the tax code that should apply to the PAYE payment.
- (3) The employer or PAYE intermediary must use the tax code provided by the Commissioner in relation to a PAYE payment made to the employee after the date of notification. But the tax code does not apply if the employee notifies their employer that their circumstances have changed and, as a result, a different tax code should apply.

Origin: 2004 No 35 s NC 12A(1)-(3)

#### **24H When entitlement to use tax code ends**

- (1) This section applies when an employee becomes no longer entitled to use a certain tax code.
- (2) The tax code does not apply to a PAYE payment made to the employee after the date on which the entitlement ends, unless the payment is salary or wages for a current pay period.
- (3) The employee must notify their employer that their entitlement has ended within the period of 4 days after the date on which they became aware that they are no longer entitled to use the tax code. If the employee provides the notification to the Commissioner, they must notify the Commissioner similarly.
- (4) For the purposes of subsection (3), the employee must give the reason why the tax code no longer applies and the date on which entitlement ended.
- (5) If the employee provides their employer with a tax code notification or tax code certificate within the period of 7 days after the date on which they become aware that they are no longer entitled to use a tax code, the tax code in the notification or certificate applies from the date on which the entitlement to use the earlier code ends.
- (6) When an employee's entitlement to use a certain tax code ends, their employer is not liable for withholding a reduced amount of tax for a payment if they have not received notice that the entitlement has ended.

- (7) An employee is not entitled to use the tax code “ML” in a tax year if the employee knows or expects, or should have known or expected, that they will not be entitled to a rebate of income tax under section KC 3 of the Income Tax Act 2004.

Origin: 2004 No 35 ss NC 8(7), (8), NC 9

#### **24I PAYE tax code notification and certificate**

- (1) An employee who wishes to have the amount of tax for a PAYE payment reduced may notify their employer of the applicable tax code. This subsection applies separately for each employment situation.
- (2) If an employee finds it difficult or impractical to notify their employer as described in subsection (1), they may notify the Commissioner who must then provide a tax code certificate to the employer setting out the applicable tax code. The employee may give the certificate to their employer.
- (3) The tax code notified or set out in a tax code certificate applies to a PAYE payment made to an employee by their employer from—
- (a) the first day of a pay period to which the payment relates up to the date on which the employee is no longer entitled to use the particular tax code if—
    - (i) the employer has no earlier tax code for the employee; or
    - (ii) the notification or certificate changes an earlier tax code for the employee and is provided before the date on which the employer calculates their payroll for the period;
  - (b) the first day of the pay period following that to which the payment relates if the notification or certificate changes an earlier tax code for the employee and is provided after the date on which the employer calculates their payroll for the period.
- (4) A tax code notification must provide for an employee’s statement of their entitlement under the Immigration Act 1987 to work for their employer.
- (5) A tax code notification or tax code certificate delivered to an employer before the start of the tax year but expressed to relate to the tax year, is treated as if it is delivered on 1 April in the tax year.

Origin: 2004 No 35 ss NC 8(2)-(4), (11), NC 8A



*PAYE certificates, notification, and applications*

**24J Proof of payment**

- (1) An employer or PAYE intermediary who is required to withhold and pay to the Commissioner an amount of tax for a PAYE payment must provide a PAYE payment form to the Commissioner by the applicable due date set out in section NA 15 of the Income Tax Act 2004.
- (2) If the PAYE payment form is not provided electronically, it must be signed by the employer or PAYE intermediary, as applicable.
- (3) The Commissioner may release an employer or a class of employers, or a PAYE intermediary or a class of PAYE intermediaries, from the requirement to provide a PAYE payment form if the information is contained in an employer's monthly schedule.

Origin: 2004 No 35 s NC 15(1), (2), (2B)

**24K Certain information required in returns**

- (1) This section applies for the purposes of sections NE 23 and NE 24 of the Income Tax Act 2004 when—
  - (a) an amount of tax for resident passive income paid in a tax year by a company is treated as an FDP credit:
  - (b) an amount of tax for a taxable Maori authority distribution is treated as a Maori authority credit attached to the distribution.
- (2) The company paying the dividend and withholding the amount of tax under section NE 20 of that Act must provide to the Commissioner information in relation to the amount of tax in—
  - (a) its annual FDP account return under section 71; or
  - (b) if paragraph (a) does not apply, its annual imputation return under section 69.
- (3) For the purposes of subsection (2) and the payment of the dividend, the company must provide to the Commissioner information in relation to the dividend in—
  - (a) its dividend statement under section 67 if it is an ICA company; or
  - (b) if paragraph (a) does not apply, a form approved by the Commissioner, containing the information set out in section 67(a) to (c) and (f) and filed no later than 31 May after the end of the tax year.
- (4) The Maori authority making the distribution and withholding the amount of tax under section NE 24 must provide to the Commissioner information in relation to the amount of tax in its annual Maori authority credit account return.

- (5) For the purposes of subsection (4) and the making of the distribution, the Maori authority must provide to the Commissioner in relation to the distribution in the distribution statement prepared under section 68B.

Origin: 2004 No 35 s NF 8(2)-(4)

#### **24L Schedular notification**

- (1) This section applies to a person who is entitled to receive a schedular payment described in section ND 9 of the Income Tax Act 2004.
- (2) Before the person receives the schedular payment, they must notify the person making the payment of the applicable schedular tax code.
- (3) The notification referred to in subsection (2) must be in a form authorised by the Commissioner.

Origin: 2004 No 35 s NC 7(1)

#### **24M Exemption certificates for schedular payments**

- (1) The Commissioner may provide a person who is entitled to receive a schedular payment under section ND 9 of the Income Tax Act 2004 with an exemption certificate setting out the payments for a period for which no amount of tax is to be withheld.
- (2) Subsection (1) does not apply to a payment to a non-resident entertainer.
- (3) The Commissioner may cancel an exemption certificate at any time.
- (4) If the Commissioner cancels an exemption certificate, the person who was provided the certificate must return it within 7 days of the date of cancellation.
- (5) An exemption certificate must not be altered or be used to cause a person making a schedular payment not to withhold an amount of tax for the payment.

Origin: Income Tax (Withholding Payment) Regulations 1979, reg 5

#### **24N Special tax rate certificates for schedular payments**

- (1) The Commissioner may provide a person who is entitled to receive a schedular payment described in section ND 9 of the Income Tax Act 2004 with a special tax rate certificate setting out the amount of tax for the payment, or the rate applying to the payment or a part of each payment as if it were the whole payment.
- (2) Subsection (1) does not apply to a payment to a non-resident entertainer.
- (3) The Commissioner may cancel a special tax rate certificate at any time.
- (4) If the Commissioner cancels a special tax rate certificate, the person who was provided the certificate must return it within 7 days of the date of cancellation.

- (5) A special tax rate certificate must not be altered or be used to cause a person making a schedular payment not to withhold an amount of tax for the payment.

Origin: Income Tax (Withholding Payment) Regulations 1979, reg 6A

**24O Certain information required from agricultural, horticultural, or viticultural employers**

- (1) This section applies when an agricultural, horticultural, or viticultural employer makes a schedular payment for work done or services rendered in a class set out in schedule 1B, part A, clause 4A of the Income Tax Act 2004.
- (2) If the employer is required to provide an employer's monthly schedule to the Commissioner for a particular period, and no amount of tax for the payment is required to be made because an exemption certificate or special tax rate certificate has been provided under section 24M or 24N, as applicable, the employer must include in the schedule the information set out in subsection (4).
- (3) If the employer is not required to provide an employer's monthly schedule for a month, the employer must provide the information set out in subsection (4) in relation to the payment by the 20th day of the month following that in which the payment is made.
- (4) The information referred to in subsections (2) and (3) is—
- (a) the name and tax file number of the employer; and
  - (b) the name of the person who received the payment; and
  - (c) the tax file number of the person who received the payment, if the employer has been supplied the number; and
  - (d) the gross amount of the payment; and
  - (e) the date of the payment; and
  - (f) the number of an exemption certificate or special tax rate certificate provided to the person who received the payment, if the employer has been supplied the number.

Origin: Income Tax (Withholding Payment) Regulations 1979, reg 12A

**24P Variation of requirements**

The Commissioner may vary the requirements set out in sections 24B, 24H, and 24I for a person or a class of persons.

Origin: 2004 No 35 ss NC 7(3), NC 8(10), NC 15(3)

*Resident passive income*

**32E Applications for certificates of exemption**

- (1) A person listed in subsection (2) may apply to the Commissioner for a certificate of exemption.
- (2) The persons are—
  - (a) a registered bank;
  - (b) a building society;
  - (c) the Public Trust or a company that would be a member of the same wholly-owned group of companies as the Public Trust, if it were a company for the purposes of this Act;
  - (d) the Maori Trustee;
  - (e) a trustee company;
  - (f) a person whose main business is—
    - (i) borrowing money or accepting deposits, or receiving credit or selling a credit instrument; and
    - (ii) lending money or granting credit, or buying or discounting a credit instrument;
  - (g) a person that is—
    - (i) a nominee company subject to practice rules made by the Council of the New Zealand Law Society under section 96 of the Lawyers and Conveyancers Act 2006 and operated by a barrister and solicitor or an incorporated law firm; or
    - (ii) a broker's nominee company to which the Securities Act (Contributory Mortgage) Regulations 1988 apply;
  - (h) a practitioner within the meaning of the Lawyers and Conveyancers Act 2006 or incorporated firm within the meaning of that Act in relation to the operation of their trust account which is an account maintained under section 112 of that Act:
  - (i) a person—
    - (i) who has met their obligation to file a return of income under the Inland Revenue Acts within the time allowed; and
    - (ii) whose annual gross income for the tax year in which they last filed a return of income is more than \$2,000,000;
  - (j) a person in an accounting year who reasonably believes their annual gross income for the tax year that corresponds to the next accounting year will be more than \$2,000,000;
  - (k) a person who derives in a tax year an amount that is exempt income under sections CW 31(2), CW 32(2), CW 33 to CW 34, and CW 50 of the Income Tax Act 2004 in relation to their activities in the capacity in which they derive the exempt income:

- (1) a person to whom section DV 8 of the Income Tax Act 2004 applies and who would, but for that section, have net income of an amount less than the amount set out in the section for their most recently ended accounting year.
- (3) The person must apply in writing to the Commissioner, and the application must—
  - (a) state the basis of exemption under subsection (2); and
  - (b) include a declaration by the person or a officer authorised by them that they come within the basis of exemption.
- (4) The person must provide further information in relation to the application as the Commissioner requires.

Origin: 2004 No 35 s NF 9(1)-(3), (8)

### **32F Calculation of annual gross income when threshold met**

For the purposes of section 32E(2)(i), when the person is part of a group of companies, the person's annual gross income is determined by—

- (a) including the total annual gross income in the tax year of other group companies; and
- (b) excluding an amount of assessable income derived by the company or another company in the same group from a transaction or series of related or connected transactions with another company in the group.

Origin: 2004 No 35 s NF 9(8), (10)

### **32G Evidence of annual gross income and consequences of failure to meet threshold**

- (1) This section applies when a person's application for a certificate of exemption is based on their meeting the requirements in section 32E(2)(j).
- (2) The person must provide evidence to satisfy the Commissioner of their annual gross income for the accounting year. They must provide the evidence within the 3-month period after the end of the accounting year.
- (3) For the purposes of subsection (2), the Commissioner may require further evidence, and also for the purposes of section 32L.
- (4) If the person's annual gross income for the tax year referred to in section 32E(2)(j) is less than \$2,000,000, they are liable for late payment penalties in relation to an amount received or derived by them that would have been withheld under the RWT rules, had they not held a certificate of exemption. Section 139B applies to the person as if—

- (a) they had failed to withhold an amount of tax; and
  - (b) the default occurred on each day on which they received or derived a payment from which an amount of tax would otherwise have been withheld.
- (5) In the calculation of estimated annual gross income of a company that anticipates that it will be part of a group of companies for the tax year referred to in section 32E(2)(j), the estimated annual gross income of all other group companies is included.
- (6) Despite subsection (5), in the calculation of the annual gross income of a company for the purposes of this section, an amount of income derived by them or another company in the same group of companies from a transaction or series of related or connected transactions with another company in the group is excluded.
- (7) Despite subsections (2) and (4), the Commissioner may provide a certificate of exemption to, or allow it to be retained by, a person who does not meet the requirements of section 32E(2)(j) if the Commissioner considers that the failure is solely a consequence of extraordinary circumstances that are—
  - (a) beyond the person’s reasonable control; and
  - (b) unlikely to be repeated in later accounting years.
- (8) For the purposes of subsection (6), the Commissioner may remit some or all of a late payment penalty if the Commissioner considers that the failure is solely a consequence of extraordinary circumstances that the person could not reasonably be expected to have foreseen.

Origin: 2004 No 35 s NF 9(6), (7), (9)-(11)

### **32H Providing certificate of exemption when person meets requirements**

- (1) This section applies when the Commissioner has received an application for a certificate of exemption from a person who meets the requirements of section 32E.
- (2) The Commissioner must provide the certificate to the person, setting out the person’s tax file number. The certificate is valid from the starting date set out in the certificate.
- (3) The Commissioner may determine that a person’s application should have an end date, and this date must be set out in the certificate.
- (4) The Commissioner may provide a replacement certificate if an original certificate is lost or destroyed.

Origin: 2004 No 35 s NF 9(4), (5)

**32I Providing certificate of exemption to person who does not meet requirements**

- (1) Despite section 32H, the Commissioner may provide a certificate of exemption for a period to a person who does not meet the requirements in section 32E(2) if the person—
  - (a) will, or is likely to, have for a period total deductions under the Income Tax Act 2004 that are not less than the total amount of assessable income of the person for the period; or
  - (b) would have, or would likely have, in a part of a tax year that falls in the total credits under section LD 3 for resident passive income that are more than the income tax liability of the person for the tax year by an amount not less than \$500.
- (2) Despite subsection (1), the Commissioner may not provide a certificate of exemption to a person unless they have applied in writing as described in section 32E(3), and include in the application a set of budgeted accounts with details, for the period, of the person's projected—
  - (a) total amount of assessable income:
  - (b) total deductions:
  - (c) credits for resident passive income:
  - (d) income tax liability.
- (3) For the purposes of subsection (2), the Commissioner may require the person to provide further information.
- (4) A certificate provided under this section is cancelled under section 32L at the expiry date set out in the certificate.
- (5) If a person provided with a certificate under this section notifies another person that they hold the certificate, the notification must include a copy of the certificate.

Origin: 2004 No 35 s NF 9(12)-(14)

**32J Certificates of exemption for unincorporated bodies**

- (1) This section applies when the Commissioner provides a certificate of exemption to an unincorporated body under section NE 30 of the Income Tax Act 2004.
- (2) The certificate of exemption must name the body as the holder. If the body is a trustee, the certificate must name the trust as the holder.
- (3) No member of the body can be provided with a certificate of exemption in relation to the taxable activity carried on by the body.
- (4) For the purposes of the RWT rules, a notice to the body as holder is treated as served on the body and on each member of the body.

Origin: 2004 No 35 s NF 10(1)(a), (d), (3)

### **32K Failing to meet basis of exemption**

- (1) This section applies when a holder of a certificate of exemption no longer meets the requirements on which their exemption is based.
- (2) If the holder becomes aware that they no longer meet the requirements, they must notify the Commissioner within a period of 5 days after the day on which they became aware, and they must deliver the certificate to the Commissioner.
- (3) The Commissioner may ask the holder to provide the full name and last known address of all persons to whom they have shown the certificate for the purposes of obtaining an exemption from withholding the amount of tax from a payment of resident passive income.

Origin: 2004 No 35 s NF 11(1)

### **32L Cancellation of certificates**

- (1) The Commissioner may cancel a person's certificate of exemption at any time, and notify any person of the fact of the cancellation, when—
  - (a) the Commissioner reasonably believes the person no longer meets the requirements on which their exemption is based; or
  - (b) the person did not meet the requirements on which their exemption was based and obtained the certificate through misleading information; or
  - (c) the person should not have been provided with the certificate; or
  - (d) the person's exemption was based on a ground set out in section 32E(2)(i) or (j), and the evidence provided under section 32G—
    - (i) shows the person did not meet the threshold; or
    - (ii) is unsatisfactory; or
    - (iii) is materially incorrect or misleading; or
  - (e) the person is liable for income tax that remains unpaid by the due date for payment.
- (2) If the Commissioner cancels a certificate of exemption under subsection (1), the Commissioner must notify the person who must deliver the certificate to the Commissioner within a period of 5 days after the date of notification. The person must also comply with a request under section 32K(3) if asked by the Commissioner.
- (3) Despite subsection (1), if the Commissioner considers that a person referred to in subsection (1)(a) to (d) is a person to whom section 32G applies and who has a further basis of exemption apart from that set out in the certificate, the Commissioner must not cancel the certificate except to provide a substitute certificate that has immediate effect.



- (4) A person who receives a notice under subsection (3) must, within a period of 5 days after the date of receipt, notify all persons to whom they have shown the certificate for the purposes of obtaining an exemption under the RWT rules and from whom they expect to receive further payments of resident passive income of the cancellation.
- (5) The Commissioner must publish in the *Gazette*—
- (a) on or before 30 June in each tax year—
    - (i) a list of all certificates cancelled in the previous tax year, excluding a certificate held by a person before cancellation that was later reissued to the person; and
    - (ii) a list of all certificates provided during the previous tax year to a person who had previously held a certificate, excluding a certificate provided to a person who previously held a certificate that was cancelled; and
  - (b) in April, July, October, and January (**month of publication**)—
    - (i) a list of all certificates cancelled during the 3-month period immediately before the month of publication, excluding a certificate held by a person before cancellation that was later reissued to the person in the 3-month period; and
    - (ii) a list of all certificates provided during the 3-month period immediately before the month of publication to a person who had previously held a certificate, excluding a certificate provided to a person who previously in the 3-month period held a certificate that was cancelled.
- (6) The Commissioner may publish a list referred to in subsection (6) by electronic means at any time after the publication referred to in that subsection.
- (7) A person who is required to deliver a certificate of exemption to the Commissioner must deliver all original certificates provided to them by the Commissioner.
- (8) A certificate of exemption ceases to be valid on the 5th working day after the date of publication in the *Gazette* referred to in subsection (6). For a person who is notified of a cancellation by the Commissioner or by the previous holder of a certificate, a certificate ceases to be valid after a period of 5 working days from the date of notification.

Origin: 2004 No 35 s NF 11(2)-(9)

*Non-resident passive income*

**32M Persons with approved issuer status**

- (1) A person who borrows, or has borrowed, or will borrow money, may apply to the Commissioner to have approved issuer status for the purposes of the NRWT rules.
- (2) On making an application under subsection (1), the person is an approved issuer from the date of the application unless the Commissioner—
  - (a) considers that they have been responsible for serious default or neglect in complying with their obligations under the Inland Revenue Acts in the 2-year period leading up to the date of application; and
  - (b) notifies the person within 20 working days after the date of receiving the application that the application is declined.
- (3) The Commissioner may revoke a person's approved issuer status at a particular time if—
  - (a) the Commissioner considers that the person has been responsible for serious default or neglect in complying with their obligations under the Inland Revenue Acts in the 2-year period leading up to that time; or
  - (b) the person asks for revocation of the status.
- (4) The Commissioner must notify the person of a revocation under subsection (3).
- (5) Despite subsection (3), the person continues to have approved issuer status for the purposes of the NRWT rules and Part 6B of the Stamp and Cheque Duties Act 1971 in relation to a payment of interest made after the date of revocation for money lent to the person under a registered security while the person was an approved issuer and before the date of the revocation.

Origin: 2004 No 35 ss NG 5 - NG 7

### *Foreign dividends*

#### **32N Information requirements when payments for foreign dividends reduced**

- (1) This section applies when a company makes a payment for a foreign dividend that is reduced under section NG 5 of the Income Tax Act 2004 by an amount of foreign withholding tax paid in relation to the dividend.
- (2) Before the reduction is made, the company must provide the Commissioner with all the information necessary to determine the amount of the foreign withholding tax.
- (3) The company must provide the information within the time allowed by the Commissioner in a case or class of cases, having regard to the period set out in section LC 13 of the Income Tax Act 2004.

- (4) If the company does not provide the information required under this section, the Commissioner may recover an amount equal to the amount of the foreign withholding tax as if it were income tax payable by the company.

Origin: 2004 No 35 ss NH 2(4), NH 3(6)

*Fringe benefits*

**46B FBT returns for quarters**

- (1) This section applies to an employer who pays their FBT liability under the single rate option or the alternate rate option. The employer chooses the relevant option by providing a return stipulating the selected rate.
- (2) For each quarter of a tax year, the employer must provide a return that—
  - (a) sets out the details of the fringe benefits received by each of their employees in the quarter; and
  - (b) includes a calculation of the amount of FBT payable on the taxable value of the fringe benefits in the quarter.
- (3) The returns must be provided, and the employer is liable to pay the amount of FBT, by the following dates:
  - (a) for a return for each of the first 3 quarters of a tax year, 20 days after the end of the quarter:
  - (b) for a return for the final quarter of a tax year, 31 May after the end of the quarter, unless subsection (4)(a) applies.
- (4) If an employer chooses to pay FBT under sections ND 51 and ND 54 of the Income Tax Act 2004, and the result of the calculation is—
  - (a) a negative number, the employer is entitled to a refund of the overpayment:
  - (b) a positive number, the employer must pay the difference.
- (5) If no fringe benefit has been provided during a quarter, the employer must still provide a return under subsection (3). However, the Commissioner may relieve an employer of this obligation.
- (6) If an employer stops employing staff in a tax year as described in section ND 64 of the Income Tax Act 2004, they must provide a return within 2 months after the end of the quarter in which the employment ceased. For this purpose, subsections (3) and (4), and paragraph (d) of the definition of **date interest starts** apply to the employer.

Origin: 2004 No 35 ss ND 2(3), ND 9(2), (3), ND 10(2)-(5), ND 11, ND 12

**46C FBT returns for years**

- (1) This section applies to an employer who pays their FBT liability under the close company option or the small business option. The employer chooses the relevant option by notifying the Commissioner.

- (2) The employer must provide a return that—
  - (a) sets out the details of the fringe benefits received by each of their employees in the tax year or income year, as applicable; and
  - (b) includes a calculation of the amount of FBT payable on the taxable value of the fringe benefits in the tax year or income year, as applicable.
- (3) For an employer who chooses to pay under the close company option, the return must be provided no later than the employer's terminal tax date for the relevant income year. The employer is liable to pay the amount calculated by the terminal tax date.
- (4) For an employer who chooses to pay under the small business option, the return must be provided no later than 31 May after the end of the relevant tax year. The employer is liable to pay the amount calculated by 31 May.

Origin: 2004 No 35 ss ND 13(5), (6), ND 14(5), (6)

#### **46D FBT returns: changes in payment periods**

- (1) This section applies when an employer chooses to pay income tax on an income year basis under the close company option, and the first day of the relevant income year is not the same day as the first day of a quarter.
- (2) The employer must provide a return and pay FBT under section 46B, treating the period between the first day of the quarter in which the income year starts and the first day of the income year as if it were a quarter.

Origin: 2004 No 35 s ND 15(7), (8)

#### **46E FBT returns: information for calculations**

- (1) This section applies for the purposes of sections ND 59(2), ND 61(4), and ND 62(4) of the Income Tax Act 2004 when an employer asks the Commissioner to replace the FBT liability determined under a set rate with a calculated amount.
- (2) The employer must provide the information within 2 months after notifying the Commissioner that an assessment for the final quarter or year has been made.

Origin: 2004 No 35 s ND 1(6)

*Foreign dividends*

**71B Return requirements for refunds: foreign dividends**

- (1) This section applies for the purposes of section NM 21(3) of the Income Tax Act 2004 when a net loss is used to reduce a company's net income for an income year in which a foreign dividend is paid.
- (2) The company described in section NM 21(1) of that Act must—
  - (a) file a return of income under section 33 for the income year in which the net loss arose; and
  - (b) file a return of income under section 33 for the current income year; and
  - (c) apply to the Commissioner for the refund of the payment for the foreign dividend.
- (3) The company described as group company B in section NM 21(2) of that Act must—
  - (a) file a return of income under section 33 for the income year in which the net loss arose; and
  - (b) notify the Commissioner that payment of some or all of the payment for the foreign dividend is satisfied by reducing the net loss.

Origin: 2004 No 35 s NH 4(5)(b), (c)

*Tax pooling accounts*

**1200E Interest paid on deposits in tax pooling accounts**

- (1) Interest paid by the Commissioner on an amount deposited in a tax pooling intermediary's tax pooling account accrues to the benefit of the intermediary from the date of the deposit.
- (2) The interest referred to in subsection (1) is payable to the intermediary on the date the amount is credited to another account with the Commissioner, or on the date the amount is refunded to the intermediary.
- (3) A deposit in a tax pooling account is treated as tax paid by the intermediary for the purposes of calculating use of money interest, but for no other purpose.
- (4) Subsection (5) applies when a payment is made either by a tax pooling intermediary to their client, or by a client to their tax pooling intermediary, and the payment represents a difference between funds held in a tax pooling account for a period of time and an amount paid for the entitlement to the funds.
- (5) The payment is treated as—
  - (a) a payment of interest to the person who derives the payment for the purposes of section CC 4 of the Income Tax Act 2004, the RWT rules, and the NRWT rules:
  - (b) expenditure incurred in deriving the income of the person making the payment.

*Non-resident passive income*

**165B Recovery of overpaid refunds: non-resident passive income**

- (1) This section applies for the purposes of the NRWT rules when the amount of a refund made to a person is more than the amount properly refundable to them.
- (2) The Commissioner may recover the amount overpaid as if it were income tax.
- (3) If the person has led the Commissioner by wilful default or neglect to pay the refund, the amount of the overpayment is due on the date the refund was paid. In every other case, the amount of the overpayment is due on the 5th working day of the month after that in which the Commissioner notifies the person that the amount of the overpayment is payable.

Origin: 2004 No 35 s NG 16(5)