

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)