

## **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