

NF—Tax on non-resident passive income

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Introductory provisions

NF 1 NRWT rules and their application

Meaning

- (1) The **NRWT rules** means—
- (a) sections LC 1, LC 4, and LD 2 (which relate to foreign tax credits); and
 - (b) this subpart; and
 - (c) sections 32M, 49, 100, Part 9, and sections 165B and 185 of the Tax Administration Act 1994.

Application

- (2) The NRWT rules apply to a person who makes a payment that consists of non-resident passive income.

Defined in this Act: non-resident passive income, NRWT rules, pay

Origin: 2004 No 35 s OB 1 “NRWT rules”

NF 2 Non-resident passive income

Certain interest and dividends

- (1) **Non-resident passive income** which means income derived from New Zealand by a non-resident consisting of—
- (a) a dividend:
 - (b) a royalty:
 - (c) an investment society dividend when the non-resident is not engaged in business in New Zealand through a fixed establishment in New Zealand:
 - (d) interest when the non-resident is not engaged in business in New Zealand through a fixed establishment in New Zealand.

Exclusions

- (2) The following amounts derived by a non-resident are excluded from non-resident passive income:
- (a) an amount of exempt income:
 - (b) an amount of income to which section FC 21 (Amounts derived by non-residents from renting films) applies.

When subsection (4) applies

- (3) Subsection (4) applies in a tax year when a person derives non-resident passive income consisting of—
- (a) a dividend other than an investment society dividend:
 - (b) a royalty for the use, production, or reproduction of, or for the right to use, produce, or reproduce, a literary, dramatic, musical, or artistic work in which copyright subsists:
 - (c) interest or a royalty derived by a life insurer from a company resident in New Zealand when the interest or royalty is treated as arising as a result of the life insurer's election under section EY 48 (Non-resident life insurer may become resident):
 - (d) interest or an investment society dividend when the person paying and the person deriving the interest or dividend are not associated persons.

Final withholding

- (4) If the person is a filing taxpayer, the income tax liability under section BC 7 (Income tax liability of person with schedular income) for each class of schedular income is determined by the amount of tax required to be withheld under this Part.

Application of financial arrangements rules

- (5) The financial arrangements rules do not apply to the calculation of an amount of non-resident passive income.

Interest paid under registered securities

- (6) For the purposes of this section, an amount of interest is paid by an approved issuer under a registered security only if it is treated as paid under section 86I of the Stamp and Cheque Duties Act 1971.

Interest payable by Commissioner

- (7) For interest payable under Part 7 of the Tax Administration Act 1994, an amount of tax for non-resident passive income withheld by the Commissioner is treated as paid on the date it is withheld. Sections 50, 55, 100, and Part 9 of that Act do not apply to the Commissioner and that interest, but the other provisions of the NRWT rules do apply.

Defined in this Act: amount, amount of tax, approved issuer, associated person, business, Commissioner, company, derived from New Zealand, dividend, exempt income, filing taxpayer, financial arrangements rules, fixed establishment, income, income tax liability, interest, investment society dividend, life insurer, non-resident, non-resident passive income, NRWT rules, pay, registered security, resident in New Zealand, royalty, schedular income

Withholding obligations

NF 3 Obligation to withhold amounts of tax for non-resident passive income

Obligation to withhold: person paying

- (1) A person who makes a payment of non-resident passive income must withhold the amount of tax for the payment and pay it to the Commissioner. The obligation to withhold arises under section NA 6(2) (Withholding and payment obligations for passive income) at the time of payment.

When agent or other person receives amount

- (2) Subsection (3) applies if—
- (a) an agent or other person in New Zealand receives a payment of non-resident passive income on behalf of a person entitled to the payment; and
 - (b) some or all of the amount of tax for the payment has not been withheld.

Obligation to withhold: agent or other person

- (3) The agent or other person must withhold the amount of tax referred to in subsection (2)(b) for the payment and pay it to the Commissioner. The obligation to withhold arises at the time of receipt.

Notifying agent or other person

- (4) If, in the circumstances described in subsection (2)(a), the person paying the non-resident passive income has withheld the amount of tax for the payment, they must notify the agent or other person of the amount withheld. Notification must be made at the time the payment is made.

Defined in this Act: amount of tax, Commissioner, New Zealand, non-resident passive income, notify, pay

Origin: 2004 No 35 s NG 8

NF 4 When amounts of tax already withheld

A person is not required to withhold an amount of tax for a payment of non-resident passive income when some or all of the payment consists of resident passive income to the extent to which the amount of tax has already been collected.

Defined in this Act: amount of tax, non-resident passive income, pay, resident passive income

Origin: 2004 No 35 s NF 2(6)

NF 5 When amounts of tax not withheld or partly withheld

Person as filing taxpayer

- (1) When a person is required under section NA 6(2) (Withholding and payment obligations for passive income) to withhold an amount of tax for non-resident passive income and does not withhold the full amount required under this Part, the person deriving the non-resident passive income is treated for this purpose as a filing taxpayer.

Debt payable

- (2) The amount of tax referred to in subsection (1) as not withheld is a debt payable by the person to the Commissioner, and is treated as having become due under section NA 10 (When obligations not met).

Non-cash dividends

- (3) Subsection (2) applies in relation to a non-cash dividend described in section NF 10 as if the amount equal to the amount of tax for the dividend were the amount payable.

Commissioner's powers to recover

- (4) In recovering the amount, the Commissioner may take the steps the Commissioner thinks fit in relation to the person in default or liable to pay, whether or not they are the same person.

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

Origin: 2004 No 35 s NG 13

NF 6 When non-resident passive income paid to agents

Who this section applies to

- (1) This section applies when—
 - (a) an amount is paid to a person (**person A**) who is acting as agent for another person (**person B**) at the time; and
 - (b) some or all of the amount is non-resident passive income.

Obligation to withhold

- (2) At the time the payment is received and to the extent to which it has not already been withheld, person A must withhold the amount of tax for the payment and pay it to the Commissioner.

When amount of tax withheld

- (3) If the person paying the non-resident passive income withholds the amount of tax for the payment that is made to person A, they must notify person A of the amount withheld.

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

Origin: 2004 No 35 s NG 8(2), (3)

Calculating amounts of tax

NF 7 General rate for payments of non-resident passive income

When this section applies

- (1) This section applies to a payment of non-resident passive income other than a payment to which sections NF 8 to NF 12 apply.

Calculation of amount of tax

- (2) The amount of tax for the payment is calculated using the formula—

$$\text{payment} \times 0.15.$$

Defined in this Act: amount of tax, non-resident passive income, pay

Origin: 2004 No 35 s NG 2(1)(c)

NF 8 Certain dividends

When this section applies

- (1) This section applies when a person makes a payment of non-resident passive income that consists of a dividend, except to the extent to which the payment is—
- (a) an investment society dividend; or
 - (b) a supplementary dividend under subpart LE (Non-resident investors); or
 - (c) a conduit tax relief additional dividend under subpart LG (Conduit tax relief credits); or
 - (d) a fully imputed dividend; or
 - (e) an amount of a dividend that is fully credited for FDP; or
 - (f) an amount of a dividend that is fully credited for conduit tax relief.

Calculation of amount of tax

- (2) The amount of tax for the payment is calculated using the formula—

$$\text{dividend payment} \times 0.3.$$

Defined in this Act: amount of tax, conduit tax relief, conduit tax relief additional dividend, dividend, FDP, investment society dividend, non-resident passive income, pay, supplementary dividend

Origin: 2004 No 35 s NG 2(1)(a)

NF 9 When dividends fully imputed

When this section applies

- (1) This section applies for the purposes of section NF 8(1)(d) to determine the extent to which a dividend is fully imputed.

Calculation of extent of imputation

- (2) The extent of imputation is calculated using the formula—

$$(\text{imputation credit amount} + \text{supplementary dividend amount}) \times \frac{1 - \text{rate}}{\text{rate}}$$

Definition of items in formula

- (3) In the formula,—
- (a) **imputation credit amount** is the amount of an imputation credit attached to the dividend:
 - (b) **supplementary dividend amount** is the amount of a supplementary dividend payable under subpart LE (Non-resident investors) for the dividend:
 - (c) **rate** is the percentage that is the basic rate of income tax for companies set out in schedule 1, part A, clause 5, (Basic rates of income tax and ESCT) applying for the tax year in which the dividend is paid.

Defined in this Act: amount, dividend, imputation credit, pay, supplementary dividend, tax year

Origin: 2004 No 35 s NG 2(3)

NF 10 Non-cash dividends

When this section applies

- (1) This section applies when a person makes a payment of non-resident passive income that consists of a non-cash dividend to the extent to which the amount is not fully imputed.

When amount not taxable bonus issue

- (2) The amount of tax for the payment when it is not a taxable bonus issue is calculated using the formula—

$$\frac{\text{rate A}}{1 - \text{rate A}} \times \text{dividend payment} + (\text{rate B} \times \text{amount paid}).$$

Definition of items in formula

- (3) In the formula in subsection (2),—

- (a) **rate A** is—
- (i) for a conduit tax relief additional dividend paid under subpart LG (Conduit tax relief credits) or a dividend to the extent to which the amount of the dividend is fully credited for conduit tax relief, the rate set out in section NF 7; and
 - (ii) the percentage that is the rate of tax set out in section NF 8:
- (b) **dividend payment** is the amount of the dividend paid to the extent to which the amount of the dividend is not fully imputed or fully credited for FDP (as described in sections NF 9 and NF 14), disregarding the amount of tax to be withheld:
- (c) **rate B** is the percentage that is the rate of tax set out in section NF 7:
- (d) **amount paid** is the amount of the dividend paid to the extent to which the amount of the dividend is fully credited for FDP (as described in section NF 14) disregarding the amount of tax to be withheld.

When amount taxable bonus issue

- (4) The amount of tax for the payment when it is a taxable bonus issue is calculated using the formula—

$$(\text{rate A} \times \text{dividend payment}) + (\text{rate B} \times (\text{amount paid} + \text{credit amount})).$$

Definition of items in formula

- (5) In the formula in subsection (4),—

- (a) **rate A** is the percentage that is the rate of tax set out in section NF 8:
- (b) **dividend payment** is the amount of the dividend paid calculated under section CD 6(2) or CD 7(3) (which relate to bonus issues)—
- (i) other than a dividend referred to in the item **bonus issue**:
 - (ii) to the extent to which the amount of the dividend is not fully imputed or fully credited for FDP (as described in sections NF 9 and NF 14), before the amount of tax is withheld:
- (c) **rate B** is the percentage that is the rate of tax set out in section NF 7:
- (d) **amount paid** is the amount of the dividend calculated under section CD 6(2) or CD 7(3) together with the amount of a credit of dividend withholding payment attached to the dividend to the extent to which the

amount of the dividend is fully credited for FDP (as described in section NF 14) before the amount of tax is withheld:

- (e) **credit amount** is the amount of the dividend to the extent to which it is fully credited for conduit tax relief together with a conduit tax relief additional dividend paid for the taxable bonus issue under subpart LG.

Amount treated as amount withheld and paid under NRWT rules

- (6) A person who is liable under this section for the amount of tax for non-resident passive income must pay the amount to the Commissioner. The amount is treated as if it were an amount withheld and paid under the NRWT rules for the purposes of this Act and the Tax Administration Act 1994.

Defined in this Act: amount, amount of tax, Commissioner, conduit tax relief, conduit tax relief additional dividend, dividend, FDP, non-cash dividend, non-resident passive income, NRWT rules, pay, taxable bonus issue, this Act

Origin: 2004 No 35 s NG 9

NF 11 Dividends paid to companies under control of non-residents

When this section applies

- (1) This section applies when—
 - (a) a non-resident formerly held a share in a company (**company A**) resident in New Zealand; and
 - (b) while the non-resident held the share, company A was under the control of the non-resident, or was treated for the purposes of this Act as under the control of persons who include the non-resident; and
 - (c) the non-resident has disposed of the share to another company (**company B**) that is resident in New Zealand and under the control of the non-resident, or is treated for the purposes of this Act as under the control of persons who include the non-resident; and
 - (d) some or all of the price for which company B acquired the share remains after the acquisition unpaid or owing in any way to the non-resident, whether or not the amount is secured.

Dividend derived

- (2) While an amount of the price remains unpaid or owing, a dividend paid to company B in relation to the share is treated as having been paid to the non-resident and as derived as a dividend by the non-resident at the time the dividend is paid.

Defined in this Act: amount, company, control, dividend, non-resident, pay, resident in New Zealand, share

Origin: 2004 No 35 s NG 14

NF 12 Certain amounts of interest

When payment derived jointly with resident

- (1) If a person makes a payment of non-resident passive income that consists of interest derived by 2 or more persons jointly and at least 1 person is a New Zealand resident, the amount of tax for the payment is calculated using the formula—

$$(\text{rate} \times (\text{interest paid} + \text{foreign withholding tax})) - \text{foreign withholding tax}.$$

Definition of items in formula

- (2) In the formula,—
- (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 1 or 1C (Basic amounts of tax for resident passive income):
 - (b) **interest paid** is the amount of interest paid before the amount of tax is determined:
 - (c) **foreign withholding tax** is the amount of foreign withholding tax paid or payable on the amount of interest paid.

Exclusion: when payment by approved issuer

- (3) The amount of tax for a payment of resident passive income is zero if it consists of interest that—
- (a) is paid by an approved issuer for a registered security; and
 - (b) is derived by a person not associated with the approved issuer; and
 - (c) is not a payment to which subsection (1) applies.

Exclusion: when payment by transitional resident

- (4) The amount of tax for a payment of resident passive income is zero if it consists of interest that—
- (a) is paid by a transitional resident in relation to money borrowed by them while non-resident; and
 - (b) is not paid in relation to a business carried on through a fixed establishment in New Zealand; and
 - (c) is derived by a person not associated with the transitional resident; and
 - (d) is not a payment to which subsection (1) applies.

Other payments of interest

- (5) For a payment of non-resident passive income consisting of interest to which subsection (1), (3), or (4) applies, the amount of tax for the payment is calculated using the formula—

$$\text{interest payment} \times 0.15.$$

Treatment as filing taxpayer

- (6) For the purposes of this section, the person referred to in subsection (1) who is a New Zealand resident, is treated as a filing taxpayer.

Defined in this Act: amount of tax, approved issuer, associated person, business, filing taxpayer, fixed establishment, foreign withholding tax, interest, New Zealand resident, non-resident, non-resident passive income, pay, registered security, resident passive income, transitional resident

Origin: 2004 No 35 s NG 2(1)(ab), (b), (c)

Paying amounts of tax

NF 13 Basis for payment of amounts of tax for non-resident passive income

When this section applies

- (1) This section applies when a person estimates for a tax year that they will not be required by the NRWT rules to withhold a total amount of tax for non-resident passive income of \$500 or more.

Two instalments

- (2) The person may pay to the Commissioner the amount withheld for the tax year in 2 instalments.

When threshold reached during tax year

- (3) If the threshold amount of \$500 is reached at a time in a tax year, the person must pay to the Commissioner—
- (a) the amount of tax withheld from the start of the tax year to the end of the month in which the threshold is reached; and
 - (b) for the remainder of the tax year, the amount of tax on a monthly basis.

Defined in this Act: amount of tax, Commissioner, non-resident passive income, NRWT rules, tax year

Origin: 2004 No 35 s NG 11(1)-(3)

NF 14 Treatment of FDP credits

Amount of tax treated as withheld and paid

- (1) A person who is required under the NRWT rules to withhold the amount of tax for non-resident passive income consisting of a dividend is treated as having withheld the amount of tax to the extent of an amount of an FDP credit attached to the dividend.

Calculation of extent of imputation

- (2) The extent to which a dividend is fully credited for FDP is calculated using the formula—

$$\frac{\text{FDP credit amount}}{\text{rate.}}$$

Definition of items in formula

- (3) In the formula,—
- (a) **FDP credit amount** is the amount of FDP credit attached to the dividend:
- (b) **rate** is the percentage that is the rate of resident companies' tax set out in schedule 1, part A, clause 5 (Basic rates of income tax and ESCT), applying for the tax year in which the dividend is paid.

Defined in this Act: amount of tax, company, dividend, FDP, FDP credit, non-resident passive income, pay, tax year

Origin: 2004 No 35 s NG 2(2), (4)

NF 15 Commissioner's power to vary amounts of tax

Special circumstances

- (1) For the purposes of meeting the special circumstances of a case or class of cases, the Commissioner may—
- (a) relieve a person from an obligation to withhold an amount of tax for a payment of non-resident passive income under section NA 6(2) (Withholding and payment obligations for passive income), NF 6, or NF 10; or
- (b) vary the amount of tax that a person must withhold under section NA 6(2).

Exclusion for certain payments of interest

- (2) This section does not apply to an amount of tax for a payment of interest derived jointly with a person resident in New Zealand as described in section NF 11(1).

NRWT rules apply as if amended

- (3) On the exercise of a power under subsection (1), the NRWT rules apply in the particular case as if they were amended in the way in which the power is exercised.

Defined in this Act: amount of tax, Commissioner, interest, non-resident passive income, NRWT rules, pay, resident in New Zealand

Origin: 2004 No 35 s NG 10