

## **NG—Payments for foreign dividends**

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### *Introductory provisions*

#### **NG 1 FDP rules and their application**

##### *Meaning*

- (1) The **FDP rules** means—
- (a) section GC 25 (Avoidance of dividend withholding payments); and
  - (b) section GC 27 (Arrangement to defeat application of dividend withholding payment account provisions); and
  - (c) section LD 8 (Credit of tax for dividend withholding payment credit in hands of shareholder); and
  - (d) section LD 9 (Refund to non-resident or exempt shareholders); and
  - (e) subpart LF (Underlying foreign tax credits); and
  - (f) sections MG 1 to MG 12 (which relate to FDP accounts); and
  - (g) subpart MZ (Terminating provisions); and
  - (h) this subpart; and
  - (i) section OB 6(1)(d) and (e) (Meaning of income tax); and
  - (j) sections 30, 68, 71, 71B, 72, and 102 to 104, Part 7, and sections 139B, 140C, 140D(1) and (3), 181, and 185 of the Tax Administration Act 1994.

##### *Application*

- (2) The FDP rules apply to a company that receives a foreign dividend.

Defined in this Act: foreign dividend

Origin: 2004 No 35 s OB 1 “dividend withholding payment rules”

#### **NG 2 Foreign dividends**

##### *Dividends to which rules apply*

- (1) **Foreign dividend** means—
- (a) a dividend paid by a foreign company that—
    - (i) is derived by a company resident in New Zealand; and
    - (ii) is exempt income of the resident company under section CW 9 or CW 11 (which relate to income from equity); and
    - (iii) is not exempt income under any of sections CW 29 to CW 33 and CW 35 to CW 40 (which relate to income of particular entities or of a certain type):

- (b) a dividend paid by a company resident in New Zealand if, and to the extent to which,—
- (i) the company was not resident in New Zealand previously; and
  - (ii) the amount of the dividend is less than the amount available to the company for distribution as a dividend immediately before becoming resident in New Zealand; and
  - (iii) the dividend is exempt income under sections CW 9 to CW 11 when derived by a resident company.

***Calculating amount of dividend***

- (2) For the purposes of subsection (1)(b)(ii), the amount is calculated after subtracting from the available amount the amount of any earlier dividend to which subsection (1)(b) applies paid by the company.

Defined in this Act: amount, company, dividend, exempt income, foreign company, foreign dividend, resident in New Zealand

Origin: 2004 No 35 s NH 1(2)

***Obligation to make payments***

**NG 3 Obligation to make payments for foreign dividends**

A company resident in New Zealand that receives a foreign dividend in a quarter must pay to the Commissioner a payment for the foreign dividend by the date set out in section NA 15 (Payment dates for interim and other tax payments) after the end of the quarter.

Defined in this Act: Commissioner, company, foreign dividend, pay, resident in New Zealand

Origin: 2004 No 35 ss NH 1(1), NH 3(1)

### *Calculation of payments*

#### **NG 4 Calculating amount of payments for foreign dividends**

##### *Calculation of amount to pay*

- (1) The amount of a payment for a foreign dividend is calculated using the formula—  
 $((\text{dividend amount} + \text{foreign tax} + \text{underlying credit}) \times \text{rate}) - \text{foreign tax} - \text{underlying credit}$ .

##### *Definition of items in formula*

- (2) In the formula,—
- (a) **dividend amount** is the amount of the foreign dividend after subtracting any foreign withholding tax paid in relation to the dividend:
  - (b) **foreign tax** is the amount of any foreign withholding tax paid in relation to the dividend, excluding foreign withholding tax paid in a country listed in schedule 6 (Countries whose taxes receive limited recognition for New Zealand tax purposes):
  - (c) **underlying credit** is the amount of—
    - (i) an underlying foreign tax credit calculated in relation to the dividend under section LF 2 (Granting of underlying foreign tax credit) if it is a positive amount; or
    - (ii) an imputation credit attached to the dividend, if subparagraph (i) does not apply:
  - (d) **rate** is the percentage that is the basic rate of income tax for companies set out in—
    - (i) schedule 1, part A, clause 5 (Basic rates of income tax and ESCT), if the company is not a Maori authority; or
    - (ii) schedule 1, part A, clause 2, if the company is a Maori authority.

Defined in this Act: amount, company, foreign dividend, foreign withholding tax, imputation credit, Maori authority, pay

Origin: 2004 No 35 s NH 2(1)

### *Adjustments to payments*

#### **NG 5 Credit balance in branch equivalent tax account**

##### *When this section applies*

- (1) This section applies when a foreign dividend is paid to a company in relation to an income interest in a CFC, and at the time the dividend is paid, the company is—
  - (a) a BETA company; or
  - (b) part of a group of companies in which another company is a BETA company.

##### *Reducing payment*

- (2) Despite section NG 4, the payment for the foreign dividend may be reduced by the amount of a credit balance in the branch equivalent tax account at the time the dividend is paid. The company makes the election to use the credit balance under section MF 5(1) (Use of credit to reduced dividend withholding payment, or use of debit to satisfy income tax liability).

##### *When dividend paid in relation to income interest in CFC*

- (3) For the purposes of this section, a foreign dividend is paid in relation to an income interest in a CFC if the company holds the income interest in the CFC at any time during—
  - (a) the period that starts at the beginning of the income year of the company in which the dividend is paid and ends with the date the dividend is paid; or
  - (b) the income year of the company immediately before the income year in which the dividend is paid.

Defined in this Act: amount, BETA company, branch equivalent tax account, CFC, company, foreign dividend, group of companies, income interest, income year, pay

Origin: 2004 No 35 s NH 2(2), (3)

#### **NG 6 Using net losses**

##### *When this section applies*

- (1) This section applies when—
  - (a) a company is required to make a payment for a foreign dividend that is paid to it; and

- (b) the company, or another company in the same group of companies,—
  - (i) has a net loss that may be carried forward and used under sections IE 1, IF 1 and, as applicable, IG 2 (which relate to the treatment of net losses) to reduce the net income of the company for the income year in which the foreign dividend is paid to it; or
  - (ii) has a reasonable expectation that, for the income year in which the foreign dividend is paid, it will have a net loss that may be carried forward and used under sections IE 1, IF 1 and, as applicable, IG 2 to reduce the net income of the company for the next income year.

***Maximum reduction***

- (2) The company may choose to use the net loss, so far as it extends, to pay some or all of the payment for the foreign dividend. The maximum reduction is calculated using the formula—

$$\frac{\text{payment}}{\text{rate.}}$$

***Definition of items in formula***

- (3) In the formula,—
  - (a) **payment** is the amount determined under section NG 4:
  - (b) **rate** is the percentage that is the rate of income tax for companies set out in schedule 1, part A, clause 5 (Basic rates of income tax and ESCT), applying for the tax year in which the dividend is paid.

***Time for making election***

- (4) The company must make the election by the relevant due date after the end date set out in section NA 15(3)(c) (Payment dates for interim and other tax payments), or by a later date if the Commissioner allows.

***No actual net loss***

- (5) Subsections (6) and (7) apply if the company chooses under subsection (2) to use a net loss to satisfy a liability to pay some or all of a payment for a foreign dividend, and—
  - (a) the company does not have a net loss; or
  - (b) the company has an insufficient net loss for the reduction; or
  - (c) if 2 companies are part of the same group of companies for part of the relevant income year, the net loss could be used in relation to the net income of the company deriving the dividend only through the application of section IG 2(4) or (5) (Net loss offset between group companies).

*Commissioner's power to overrule*

- (6) The Commissioner may overrule the election under subsection (2) to the extent to which it is appropriate having regard to—
- (a) the amount of the actual net loss of the electing company; and
  - (b) the amount or proportion, or likely amount or proportion, of the net loss of the electing company that could be used under section IG 2(4) or (5).

*Company's liability*

- (7) The company that was initially required to make the payment for the foreign dividend is liable to pay an amount disallowed under subsection (6), and a penalty under section 150 of the Tax Administration Act 1994, as if the deficiency arose at the time of the initial liability.

Defined in this Act: amount, Commissioner, company, foreign dividend, group of companies, income year, net income, net loss, pay

Origin: 2004 No 35 s NH 3(2)-(4)

**NG 7 Reduction of payments for conduit tax relief**

*Reduction*

- (1) A company that is a conduit tax relief company at the time it is required to pay to the Commissioner a payment for a foreign dividend, may reduce the payment by an amount calculated using the formula—

percentage of non-resident shareholders x payment for foreign dividend.

*Definition of items in formula*

- (2) In the formula,—
- (a) **percentage of non-resident shareholders** is the percentage of the company's shareholders not resident in New Zealand as determined under subsections (3) to (9):
  - (b) **payment for foreign dividend** is the amount of the payment for the foreign dividend that would be paid to the Commissioner if this section did not exist, calculated after applying section NG 6.

*Determining percentage of non-resident shareholders*

- (3) The percentage of the company's non-resident shareholders referred to in subsection (2) is the lowest of the following percentages:
- (a) the percentage of direct voting interests that non-residents hold in the company on the date on which the company pays a dividend to all shareholders under subsection (4)(a)(ii):

- (b) if a direct market value circumstance exists, the percentage of direct market value interests that non-residents hold in the company on the date on which the company pays a dividend to all shareholders under subsection (4)(a)(ii):
- (c) if the shares in the company are not all shares of the same class, the percentage of total dividends payable by the company that non-residents would derive if the company were liquidated at the relevant time.

***Timing of determination of percentage of non-resident shareholders***

- (4) For the purposes of this section, the percentage of the company's non-resident shareholders is calculated at the latest of the following dates:
  - (a) the last date before the foreign dividend was received on which the company—
    - (i) paid a dividend to all its shareholders; or
    - (ii) paid a dividend to all holders of shares of 1 of the classes if the company has more than 1 class of shares; or
  - (b) the last day of the tax year that is just before the tax year in which the foreign dividend is received; or
  - (c) for a company that is incorporated after the tax year that is just before the tax year in which the foreign dividend is received by the company, the last day of the quarter in which the dividend is received.

***Conduit tax relief group members***

- (5) If a conduit tax relief group member exists for a company (**company A**), this section applies as if the company referred to in subsection (4) were the company—
  - (a) in which 1 or more non-residents have a direct voting interest; and
  - (b) that has a 100% voting interest in company A, calculated as if section OD 3(3)(d) (Voting interests) did not apply to treat the company's interests to be held by others.

***When subsection (5) does not apply***

- (6) Subsection (5) does not apply if the date for measuring the percentage of non-resident shareholders is before the date of incorporation of company A.

***Listed companies***

- (7) Despite subsection (4), a listed company may use—
  - (a) the date an entitlement to a dividend is determined instead of the date the dividend is paid:
  - (b) a date in the tax year on which it calculates the percentage of its non-resident shareholders.



***Companies with more than 1 class of shares***

- (8) A company with more than 1 class of shares is treated in relation to each class of shares as having the same shareholders on the relevant date that it had on the last date on which a dividend is paid to all shareholders of the class.

***Treasury stock and determination of residence***

- (9) For the purposes of this section,—
- (a) treasury stock is disregarded:
  - (b) the rules for determining residence in sections OE 7 and OE 8 (which relate to conduit tax relief companies) apply.

Defined in this Act: amount, Commissioner, company, conduit tax relief company, conduit tax relief group member, direct market value circumstance, direct market value interest, direct voting interest, dividend, foreign dividend, liquidation, listed company, non-resident, resident in New Zealand, share, shares of the same class, shareholder

Origin: 2004 No 35 s NH 7