

Taxation (International Taxation, Life Insurance, and Remedial Matters) Bill

Officials' Report to the Finance and Expenditure Committee on Submissions on the Bill

Supplementary Paper to Volume 3

Non-disclosure right

Tax treatment of reimbursements and honoraria paid to volunteers

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Non-disclosure right

NON-DISLCOSURE RIGHT

Clauses 437–441

Issue: In support of the amendment

Submission

(38 – KPMG, 68A – Corporate Taxpayers Group)

We strongly support the extension of the right of non-disclosure to discovery proceedings during litigation. *(KPMG)*

The Group welcomes the amendment to extend the right of non-disclosure contained in sections 20B to 20G of the Tax Administration Act to apply to discovery and similar processes that occur during litigation. *(Corporate Taxpayers Group)*

Recommendation

That the submissions be noted.

Issue: Application date

Submission

(32 and 32A – KPMG, 67, 67A and 67B – New Zealand Institute of Chartered Accountants, 68, 68A, 68B and 68C – Corporate Taxpayers Group)

The amendment should have retrospective effect. *(KPMG)*

The application date of this legislation should change to requests for information issued after 1 April 2009. An application date that applies to discovery orders requested after the date of Royal assent is the earliest practicable date. The application date of these measures should restore their original policy intent from the earliest available time. *(New Zealand Institute of Chartered Accountants)*

The Group is extremely disappointed that these provisions are not backdated to when the non-disclosure rules were initially introduced, being 21 June 2005. We strongly submit that these changes should be retrospective to 21 June 2005. Failing reaching an agreement on the application date, we believe that the Ministers of Revenue and Finance should provide a public directive to the Commissioner of Inland Revenue to administer the non-disclosure rules in the manner originally intended, to protect the integrity of the tax system under section 6 of the Tax Administration Act 1994. Likewise, the Governor-General should make a similar direction by way of Order in Council in accordance with section 6B of the Tax Administration Act 1994. The amending legislation should not only apply to challenge proceedings commenced after the date of enactment; rather it should apply to all undisclosed accounting advice

at the date of enactment (that is, even where the challenge proceeding is commenced before the enactment of the bill). (*Corporate Taxpayers Group*)

Comment

As drafted, the amendment will apply to challenges begun on or after the date of enactment. An alternative application date that had any element of retrospectivity would be problematic. In some cases parties may have already disclosed documents as part of the discovery proceedings. As with legal privilege, this could be treated as a waiver of their non-disclosure right or could mean that the discovery process would need to be revisited. Other parties who have not yet disclosed information could (subject to the weight judges give to proposed legislation) be protected by an early application date resulting in inconsistent treatment among taxpayers. Such a change would compound uncertainty and add complexity to proceedings.

In developing this amendment, officials consulted extensively with the New Zealand Institute of Chartered Accountants. The Institute's submission on the bill suggested that the measure should apply if the Commissioner has made a request for information after 1 April 2009. We consider that the same issues that arise in respect of a retrospective application date would apply to this option.

In their supplementary submission, the Institute suggested that the earliest practical time from which the right of non-disclosure could apply is in relation to discovery orders requested on or after the date of Royal assent of the bill. This application date is also problematic in that there may be several requests for information and/or discovery in a case. The provision would therefore be difficult to define. It could also result in application of the non-disclosure right to some but not all such requests in the same case and consequent confusion about which documents were or were not able to be used in litigation.

However, the issue is of considerable concern to the Institute and other groups such as the Corporate Taxpayers Group. Officials have some sympathy for these concerns given that the policy intent of the non-disclosure right was to provide a level of parity of treatment between tax advice provided by lawyers and that provided by accountants/other tax advisers. Officials therefore recommend that the right of non-disclosure apply to future disputes and current disputes which have not advanced to the first conference required under the High Court rules or the Taxation Review Authority regulations as at the date of Royal assent. Discovery action is frequently the first agreed step after the initial conference and therefore this alternative application provision would in many cases be equivalent to one based on discovery, as sought by the Institute, but would provide more certainty.

There is a concern about current cases which raise substantially similar issues to later cases. The concern is that if the earlier case has not had the protection of the non-disclosure right but the later cases do have this protection, the taxpayer may decide to proceed with the later cases given that they have the benefit of the non-disclosure right and could possibly result in a more favourable decision. This could incur significant costs of litigation for both parties. We therefore recommend that an exception be made to the recommended application provision where a substantially similar issue is being considered by the courts. The current application provision in the bill would apply in these cases.

Recommendation

That the amendment apply to future disputes and current disputes which have not advanced to the first conference required under the High Court rules or the Taxation Review Authority regulations as at the date of Royal assent. This recommended application provision will not apply to cases where substantially similar issues are being considered by the courts. The current application provision in the bill will apply instead.

Issue: Application to all forms of court order

Submission

(67 – New Zealand Institute of Chartered Accountants)

The proposed definition of “discovery obligation” should be broadened to a disclosure obligation that includes all forms of court order. The ability to request discovery is only one form of disclosure that courts can require of litigants.

Comment

The amendment includes a proposed definition of “discovery obligation” which is “an order of a court or Taxation Review Authority, or notice of discovery in proceedings before a court or Authority, requiring the disclosure of information to the Commissioner in relation to proceedings before the court or Authority”.

Officials consider that the provision as drafted covers all forms of court order.

Recommendation

That the submission be declined.

Issue: Broaden the amendment to reflect original policy intent

Submission

(67 – New Zealand Institute of Chartered Accountants)

The amendment should be broadened to ensure that the original policy intention of the legislation is successfully implemented and that it is not undermined again. There needs to be a substantive rewrite of the current provisions to ensure that Parliament’s original policy intent is actually carried forward into law, and is robust and effective for taxpayers. The non-disclosure rights are only protection against the Commissioner exercising powers under sections 16 to 19 of the Tax Administration Act. If Inland Revenue were barred from obtaining the information under the non-disclosure right the same information could be obtained from other government departments and passed on to Inland Revenue. We suggest that the non-disclosure right should apply no matter how the Commissioner obtains the information.

We also suggest that the non-disclosure right should be amended to apply also to oral communications.

Comment

Inland Revenue often receives information from third parties. In these cases, non-disclosure may not be possible or practical. We also note that the suggested amendment may go further than similar provisions that apply to legal practitioners.

On the second issue, consultation prior to introduction of the legislation currently in place was premised on non-disclosure in relation to books and documents. Officials consider that further consultation should be undertaken before extending the rule to apply to oral communications, as practices would need to change as well as the legislation being significantly rewritten. However, officials are happy to discuss this further with interested parties. We note that oral communications are included within the ambit of legal privilege.

Recommendation

That the submission be declined in respect of applying the rule no matter how Inland Revenue obtained the information and that further consultation should be undertaken in relation to extending the rule to apply to oral communications.

Tax treatment of reimbursements and honoraria paid to volunteers

OVERVIEW

Clauses 23 and 39

The bill introduces specific tax rules to treat payments that reimburse expenditure incurred in undertaking voluntary activities as exempt income, to remove current uncertainty about the appropriate tax treatment.

The new rules will also make it clear that payments of honoraria will continue to be treated as schedular payments and subject to the PAYE rules.

Twelve submissions were received. Nine explicitly expressed support in principle for the proposed changes. However, one questioned whether the changes are necessary. The remaining submissions gave no indication whether or not they supported the proposed changes.

There is clear support for an unlimited tax exemption for payments that reimburse costs incurred by volunteers, with most agreeing this can best be achieved through a separation of reimbursement payments from honoraria.

A new definition of “volunteer” is critical to the clarity of the proposals and the proposed definition was well-supported. However, three areas of concern were raised: whether a direct or indirect element of public benefit or common good is needed, whether the requirement of New Zealand residence is unduly restrictive of persons here on tourist or other temporary entry visas, and whether volunteers who have entered into an agreement with an agency or organisation about their volunteering role might inadvertently be excluded.

Four submissions seek a partial exemption from income tax for honoraria, while one submission suggests that honoraria should be fully exempt. Of the submissions seeking a partial exemption, the range is from \$500 per person per year to \$5,000 per person per year.

As a result of the submissions, officials propose the following changes to the bill, as introduced:

- clarification of the relationship between section CO 1 (Income from voluntary activities) and section CW 62B (Voluntary activities);
- allowing organisations to make combined payments of honoraria and reimbursements, provided the paying organisation maintains clear records that justify the treatment of the reimbursement portion of the payment;
- enhancing the definition of “volunteer” to allow for benefits that apply more generally to a community;
- clarifying the relationship between section CW 62B and existing section RD 8(3) that allows the Commissioner to determine the amount or proportion of expenditure that a person incurs in deriving a schedule payment, such as an honorarium.

In addition, officials propose a minor modification to the definition of “volunteer” to ensure that certain volunteers are not inadvertently excluded from the tax exemption.

RELATIONSHIP BETWEEN PROPOSED SECTIONS CO 1 AND CW 62B

Submission

(67 – New Zealand Institute of Chartered Accountants, 68A – Corporate Taxpayers Group)

The relationship between the sections CO 1 and CW 62B should be clarified.

Comment

Under the current law an amount must first be income before it can be treated as exempt income.

Over time, administrative practices in some organisations have evolved so that payments to volunteers have been subject to withholding tax at source. In some cases the tax withheld has incorrectly been assumed to be a final tax so that volunteers have not taken the opportunity to claim their expenses incurred as a deduction against their reimbursement payments.

Officials consider that the relationship between the two provisions could be clarified by making it more explicit in section CO 1 that an amount received by a person in undertaking a voluntary activity is, in the first instance, income.

Recommendation

That the submission be accepted. Section CO 1 should be amended to point to the relationship with section CW 62B.

REIMBURSEMENT OF EXPENSES PAID TO VOLUNTEERS TO BE TREATED AS EXEMPT INCOME

Submission

(6 – Volunteering Auckland)

It needs to be clear in the legislation that reimbursement for capital expenditure and maintenance of the volunteer's equipment is also exempt income.

Comment

The proposed legislation draws no distinction on the nature of costs incurred by a volunteer for reimbursement. The tax treatment relates to the reimbursement payment, not to the costs which gave rise to it.

Recommendation

That the submission be declined.

Submission

(67 – New Zealand Institute of Chartered Accountants)

The principle that volunteers should not be subject to tax on the reimbursement of their expenditure and should not be required to file tax returns for reimbursements arising from their voluntary activities is supported.

Comment

The new rules will address long-standing concerns expressed by the community and voluntary sector that reimbursement payments to volunteers are taxed in an inconsistent manner and that volunteers and the organisations they provide voluntary services for incur unnecessary compliance costs.

Recommendation

That the submission be noted.

ESTIMATE OF EXPENDITURE LIKELY TO BE INCURRED MAY BE REIMBURSED

Submission

(67 – New Zealand Institute of Chartered Accountants)

The wording of the provision that would allow reasonable estimates of expenditure to be reimbursed should specifically provide for the amount to be less than the amount incurred by the volunteer.

Comment

The proposal that allows reasonable estimates of expenditure to be reimbursed was introduced to provide flexibility for organisations that prefer to reimburse their volunteers on a planned, regular basis, rather than as ad hoc responses when evidence of actual costs are presented. It is likely that in some periods the costs will exceed the reimbursement payment, while in other periods the payment may exceed the costs. However, on average, the costs can be expected to exceed the reimbursements. A 2007 survey carried out by Victoria University of Wellington showed that, on average, reimbursements received by volunteers represented only 4 percent of the total costs incurred by them. In addition, the technical and administrative information provided by Inland Revenue will make it clear that in estimating expenditure, a paying organisation must have in place adequate controls that would satisfy audit requirements. There are also inherent controls through the limited funding generally available to non-profit organisations to make these types of payments and their accountability to their stakeholders for expenditure of those limited funds. It is therefore considered unlikely that this flexibility would raise any risks to the tax base.

Recommendation

That the submission be declined.

SEPARATION OF REIMBURSEMENT OF EXPENSES FROM HONORARIA

Submission

(35 – PricewaterhouseCoopers)

Proposed section CW 62B(3) is too restrictive.

Comment

New section CW 62B provides that:

- Reimbursement payments that are based on actual expenses incurred by volunteers in undertaking voluntary activities will be treated as exempt income.
- If a paying organisation puts in place a process for making a reasonable estimate of the amount of expenditure likely to be incurred by a volunteer for which reimbursement is payable, then payments based on that estimate will also be treated as exempt income. This will provide flexibility, such as when it is not practical for organisations to reimburse their volunteers on the basis of actual costs incurred. It is intended that this will include reimbursements in non-cash form such as petrol vouchers.

The submission considers that a payer who can clearly identify which part of a payment is honorarium and which part is reimbursement, should not be required to treat the whole payment as a schedular payment and withhold tax; that doing so will increase compliance costs for payers.

Proposed section CW 62B provides for reimbursement payments to be made separately from honoraria for the reimbursement to attract the tax exempt treatment. This was considered necessary to provide certainty for the community and voluntary sector.

An organisation that chooses to make a combined payment of honorarium and reimbursement to a volunteer would need to include only the honorarium portion in their return to Inland Revenue of schedular payments. They would, however, still be required to be able to account for the different nature of the separate parts of the payment for their own accountability and, if needed, audit purposes.

Although only a few submissions on these provisions have raised concerns about the compliance cost aspects of the requirement to separate reimbursements from honoraria, 19 submissions on the November 2007 issues paper, *The tax treatment of honoraria and reimbursements paid to volunteers*, considered that there would be some or significant additional compliance costs incurred in separating the payments.

These provisions were always intended to provide certainty and reduce compliance costs for volunteers and paying organisations. It therefore seems reasonable to introduce the additional flexibility that is sought. Officials consider that this would raise no additional compliance risks, provided the paying organisation maintains clear records that justify the treatment of the reimbursement portion of the payment.

Recommendation

That the submission be accepted.

Submission

(67 – New Zealand Institute of Chartered Accountants)

Proposed section CW 62B(3) should be omitted as it will result in anomalous results due to the inability of some organisations to amend either their constitutions or the underlying legislation.

Comment

The submission considers that while some organisations will be able to reclassify payments as reimbursement of expenditure genuinely incurred or likely to be incurred by volunteers, others will not be able to do so until they are able to amend their constitution, or unless there is enabling legislation.

The submission cites the example of honorary fisheries officers appointed under the Fisheries Act 1996. However, the relevant legislation (section 197(3) of that Act) specifically allows for reimbursement payments to be made separate from and in addition to honoraria. The Ministry of Fisheries has confirmed that honoraria are recognition of the services provided by their honorary fisheries officers and do not contain an element of reimbursement of costs. Actual and reasonable costs are reimbursed only on production of receipts or evidence of travel costs incurred.

The proposed new rules do not require organisations to make changes that might be in conflict with their policies. Instead, they offer choices – to reimburse on the basis of evidence of actual costs incurred, or in anticipation of expenditure likely to be incurred.

Recommendation

That the submission be declined.

Submission

(67 – New Zealand Institute of Chartered Accountants)

The relationship between proposed section CW 62B(3) and existing section RD 8(3) should be clarified as to when the latter section would continue to apply.

Comment

Many organisations will choose to pay reimbursements separately from honoraria so that their volunteers gain the immediate benefits of the exempt treatment. However, it was not intended that the option of obtaining a determination from the Commissioner (provided for in section RD 8(3)) would be removed nor that the new provisions would override a determination that had been made under section RD 8(3).

Officials acknowledge that the relationship between the provisions could be clarified.

Recommendation

That the submission be accepted.

Submission

(68A – Corporate Taxpayers Group)

The words “to the extent” should be included in section CW 62B(3) to make it clear that a payment is exempt only to the extent that it reimburses expenditure. This would render the subsection that defines “honoraria” unnecessary so it could be omitted.

Comment

In part, the effect of what is proposed would be similar to the removal of the requirement to pay honoraria and reimbursements as entirely separate payments. Instead, this result can be achieved by allowing organisations to combine the payments provided they are able to account for the different nature of the separate parts of the payment for their own accountability and, if needed, audit purposes.

We consider that the definition of “honoraria” currently in the bill is needed to provide the certainty sought by the voluntary sector.

Recommendation

That the submission be declined.

DEFINITION OF “VOLUNTEER”

Submission

(6 – Volunteering Auckland, 25 – Volunteering Canterbury, 67 – New Zealand Institute of Chartered Accountants)

The proposed definition of “volunteer” requires the addition of words such as, “for the public benefit” or “for the common good” so that the benefits are not exclusive of volunteers whose activities are of benefit to the environment or historic places, for instance.

Comment

There must be a reimbursement payment by another person for these provisions to be triggered. “Person” is defined in the Interpretation Act 1999 to include “a corporation sole, a body corporate, and an unincorporated body”. However, as the person making the reimbursement payment may not themselves receive the benefit of the volunteer’s activity, officials consider that the definition could be enhanced by also allowing for benefits that apply more generally to a community, rather than only to a person.

Recommendation

That the submission be accepted.

Submission

(37 – Inter-Church Working Party on Taxation)

Members of the Working Party recommend a small addition to the definition of a volunteer’s activities to include in section CW 62B(4)(b)(ii) – “work improving the environment”.

Comment

Officials do not agree with this submission because it would narrow the scope of the definition of “volunteer”.

Recommendation

That the submission be declined.

Submission

(24 – New Zealand Law Society, 62 – Minter Ellison Rudd Watts)

The definition of “volunteer” in proposed section CW 62B(4) should be amended to address the position of volunteers who have formal agreements governing their roles that refer to reimbursing allowances payable to them.

Comment

To be a volunteer for the purposes of the new rules, the definition of “volunteer” requires that a person freely undertakes an activity in New Zealand ... for which there is no purpose or intention of private pecuniary profit. The submissions are concerned that an agreement between an organisation and a volunteer that specifies in advance that the person may receive reimbursement payments could be construed to be in breach of that requirement.

The ability for organisations to make reimbursement payments on the basis of a reasonable estimate of the amount of expenditure likely to be incurred was designed to provide flexibility for organisations and volunteers. A payment that reimburses expenditure incurred cannot provide a profit to the recipient. Research carried out towards the end of 2007 found that, on average, reimbursements paid to volunteers who participated covered only 4 percent of the costs incurred by them.

One of the umbrella volunteer organisations that deals with the types of agreements referred to has advised that agreements are expressed in very general terms to cover the possibility that an organisation may, within the limits of its resources, endeavour to reimburse volunteers for their out-of-pocket expenses. However, it was considered highly unlikely that any organisation would commit in advance to an amount that would or might be paid.

Recommendation

That the submission be declined.

Submission

(67 – New Zealand Institute of Chartered Accountants)

It is not clear what purpose is served by the first of the criteria, in section CW 62B(4)(b)(i), in relation to the activities of a volunteer.

Comment

The community and voluntary sector strongly advocated the adoption of a definition of “volunteer” that would align with examples proposed for the International Year of Volunteers, in 2001. Those examples all suggest freedom of choice in terms of when, where and to what organisations volunteers provide their services.

The definition attempts to succinctly capture those ideas.

Recommendation

That the submission be noted.

Submission

(6 – Volunteering Auckland, 9 – Rugby New Zealand 2011 Limited, 13 – New Zealand Federation of Voluntary Welfare Organisations, 19 – Volunteering New Zealand)

Submissions are concerned about the restrictive nature of the requirement for a volunteer to be New Zealand-resident. They seek reassurance that tourists or others who are in New Zealand subject to the conditions of a temporary entry class visa will not be prevented from being reimbursed for actual costs incurred.

Comment

The conditions of temporary entry class visas, if applicable, would be contained in regulations made under the Immigration Act and is outside the scope of income tax legislation.

Non-residents who earn New Zealand-sourced income are required, in accordance with sections 33A(2) and 33A(3) of the Tax Administration Act 1994, to furnish a return of income for a tax year. If a non-resident receives a reimbursement payment for their voluntary services, the payment must be declared as income and the expenditure incurred claimed as a deduction.

Recommendation

That the submission be declined.

FULL OR PARTIAL EXEMPTION FOR HONORARIA

Submission

(6 – Volunteering Auckland, 13 – New Zealand Federation of Voluntary Welfare Organisations, 19 – Volunteering New Zealand, 25 – Volunteering Canterbury, 32 – KPMG)

Most of the submissions propose a partial exemption for honoraria, but one expresses disappointment that the government has not moved to treat honoraria as tax-exempt. Of those proposing a partial exemption, the range is from \$500 to \$5,000 a year.

Comment

Payments of honoraria are treated as income for tax purposes. They are paid not only to volunteers, but may also be paid to members of statutory and other bodies appointed by the Crown, and to board members and directors of private organisations. Payments of honoraria are treated as schedular payments – tax is deducted at source at 33 cents in the dollar. This is not a final tax.

Under current rules, recipients of honoraria are required to file an income tax return and, if appropriate, claim a deduction for any expenses incurred in the production of the payment before their tax position can be finalised. The new rules will allow organisations to reimburse expenses separately so that volunteers gain an immediate benefit from the tax exemption.

A partial tax exemption at a set level for honoraria would have to be implemented on a per volunteer per organisation basis as one organisation would not know what withholding tax was being deducted by another organisation. This could have the inequitable effect of increasing the total exemption available to individual volunteers to above that set level if they were receiving honoraria from more than one organisation.

If a partial exemption for honoraria were set on a per volunteer basis it would also create resource-intensive and costly administrative problems for Inland Revenue.

The fiscal cost of treating honoraria as fully or partially exempt from income tax, although difficult to quantify, would be significant, and could create broad behavioural changes to take advantage of the new rules, which would increase the fiscal cost. Such an exemption would create an undesirable precedent. It is therefore considered unfeasible to explore further in the current economic and fiscal environment.

Recommendation

That the submission be declined.

OTHER MATTERS RAISED

Submission

(6 – Volunteering Auckland)

Consideration needs to be made for individual volunteers not “attached” to formal volunteer organisations. If [the] voluntary act is valuable to society and the labour is voluntary, the tax on transport and other items should be claimable as would be done if the task were carried out on a paid commercial basis.

Comment

Officials have spoken with Volunteering Auckland to clarify the submission’s intent. Individuals who carry out voluntary activities independent of any formal organisation are unable to claim any reimbursement of costs incurred. Volunteering Auckland is seeking a deduction against other income.

Such costs would not meet the legal tests to be deductible for tax purposes. There could be a case for treating costs incurred in carrying out voluntary activities, where they cannot be reimbursed, as being equivalent to a cash “donation”.

For this reason we recommend that this suggestion be further explored as part of the work on other tax incentives for encouraging a culture of generosity in New Zealand. Officials will report to Ministers on the most recent phase of that work in May 2009.

Recommendation

That the submission be noted.

Submission

(6 – Volunteering Auckland)

An alternative mechanism to fully achieve a “culture of giving” would be to fund charities so that they can fully reimburse the expenditure incurred by their volunteers.

Comment

Funding of voluntary sector organisations does not arise under any of the Revenue Acts. The proposal is therefore outside the scope of this bill.

Recommendation

That the submission be declined.

Submission

(9 – Rugby New Zealand 2011 Limited)

Low-value gifts, tokens or vouchers of appreciation should be incorporated within the tax exemption.

Comment

A similar submission was made by Rugby New Zealand 2011 Limited in response to the officials' issues paper *The tax treatment of honoraria and reimbursements paid to volunteers*. The matter is not dealt with in the proposed amendments because in general, such items are not considered to be in the nature of "income" and therefore would not be included in the recipient's taxable income. Therefore, they could not fall within the scope of the exemption for reimbursement of expenditure incurred by a volunteer.

There have been discussions between officials and Rugby New Zealand 2011 Limited about the nature of the gifts that might be made to volunteers. Those discussions will be ongoing in the lead-up to the Rugby World Cup to achieve maximum possible certainty for volunteers in relation to the treatment of any gifts.

Recommendation

That the submission be declined.

Submission

(25 – Volunteering Canterbury)

Officials should use terms such as "involve" or "engage" when referring to the relationship between organisations and volunteers, as they more accurately describe the contribution that volunteers make than "use".

Comment

The concern arose from the use in the explanatory note to the bill of the expression "volunteers and the organisations that use their services".

The term does not appear in the legislation. However, officials have noted the concern and will take it into account in the development of supporting documentation.

Recommendation

That the submission be noted.

Submission

(Matter raised by officials)

Officials consider that the proposed definition of “volunteer” in section CW 62B(4)(b)(iii) could operate to exclude a volunteer from the proposed tax exemption if the organisation making the reimbursement payment itself carries on a business for pecuniary profit.

A simple modification of that part of the definition would resolve the potential difficulty. This can be done by making it clear there is to be no intention of private pecuniary profit for the volunteer.

Recommendation

That the submission be accepted.

Submission

(Matter raised by officials)

As a consequence of clarifying the relationship between proposed section CW 62B(3) and existing section RD 8(3), officials noted a drafting oversight that had arisen in the rewrite of the Income Tax Act (the Income Tax Act 2007). The former legislation provided for a schedular payment to be reduced by the amount of a determination made by the Commissioner before calculating the amount of withholding tax. However, an equivalent provision was omitted from the Income Tax Act 2007.

The oversight can be easily rectified by the introduction of a new subsection to section RD 11 that allows the Commissioner to reduce the amount of tax in prescribed circumstances.

Recommendation

That the submission be accepted.