



**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA
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GENERAL ARTICLE

Tax on any fees paid to a member of a board, committee, panel, review group or task force

Issued:

GA XX/XX

This item is an update of GA 21/01 which was prepared specifically in relation to the fees paid to a member of a board, committee, panel, review group or task force under the Cabinet Fees Framework published by the Cabinet Office.

How taxation applies to any fees paid to members depends on the personal circumstances of the individual member and the terms of their contract/appointment.

The purpose of this General Article is to assist board members with their withholding tax and GST obligations.

A board member is appointed in a governance role to a variety of other entities, such as a board, committee, panel, review or task force¹ (the Organisation) and provides governance services. This can be contrasted with a director who is appointed in a governance role to provide directorship services to a company. Inland Revenue has existing published guidance to assist directors on how to comply with their tax obligations.

Withholding tax treatment of board members fees

A payment of fees to the member (the board member) of the Organisation is generally a schedular payment and therefore subject to withholding tax as the payment is either:

- A payment of examiners' fees², or honoraria or
- A payment for work or services performed by—
 - a) a local government elected representative:
 - b) an official of a community organisation, society or club:
 - c) a chair or member of a committee, board, or council:
 - d) an official, chair, or member of a body or organisation similar to one described in paragraph (b) or (c).³

For the purposes of (d) a body or organisation is similar to one described in paragraph (b) or (c) if that body or organisation is a finite group of two or more people organised to perform a specified function or purpose.⁴

Where the fee is classified as a schedular payment, the payer has an obligation to deduct withholding tax from the payments before they are made and pay that tax to Inland Revenue.

The withholding tax rate on the payment of a fee to the board member is 33 cents in the dollar unless Inland Revenue has issued an exemption certificate⁵ or a special tax rate certificate to the recipient, or the recipient has chosen their own rate (a minimum of 10 cents in the dollar).⁶

¹ And similar bodies

² Examiners fees is a defined term in Part B of Schedule 4 of the Income Tax Act 2007. This means that if fees have a different description (e.g. Assessor's fees) they may still be subject to withholding tax.

³ Part B of Schedule 4 of the Income Tax Act 2007.

⁴ This means withholding tax ("WHT") applies equally to a committee, panel, review group or task force.

⁵ An exemption certificate for WHT can be applied for online using myIR. In myIR it is a tailored tax application in the income tax account.

⁶ The board member must complete a Tax Rate Notification for Contractors (IR330C) form. Select the appropriate rate activity number (can be 7,11,16 or 22) and sign the form (which is given to the person paying them) otherwise withholding tax must be deducted at the non-notification rate of 45 cents in the dollar.

Tax credit

It is important to understand that if tax is withheld from a payment, a tax credit may arise for any tax withheld which may be offset against the total tax liability for the year. This is the same as what happens for PAYE.

Reimbursement

Reimbursement for expenses incurred in relation to work or services performed by a member is not subject to withholding tax.

Who is treated as receiving the fees?

Whether or not there is a withholding tax obligation in relation to the payment of fees will depend on who is treated as receiving that income for tax purposes.

The starting point is that when you engage an individual as the board member, they are receiving the income and so any withholding tax liability is determined on the basis that the payment is being made to them.

However, there are circumstances where the individual board member will not be receiving the fees as income for tax purposes. This means that they will not have a personal withholding tax liability. These are discussed below.

Another entity is the provider of the board member services

If the board member is performing the service (to which the payment of fees relates) as an agent or representative of another entity, which itself has contractually agreed to provide the board member's services in return for the fee, then the payment of fees is income of that entity and not the board member.

If the fees are income of an entity, such as a trust or partnership, the fees are also subject to withholding tax, unless the entity holds an exemption certificate.

If the fees are income of a company⁷ the payment is not subject to withholding tax.

⁷ This means a "company" as defined in section YA 1 of the Income Tax Act 2007.

Example 1: Partnership contracts with an Organisation to supply partner as a board member

A partnership, contracts with the Water Allocation Board, a statutory body, to supply a partner as the board member for the next financial year. Anderson is the partner chosen to serve on the Board and the engagement/contract reflects that Anderson is appointed as the representative of the partnership to provide the services to the Board.

In this case the fees are income of the partnership, and not Anderson, as it was the partnership which contracted with the Board to supply the board member.

The Water Allocation Board should deduct withholding tax from the payment of board fees unless the partnership holds an exemption certificate. Any tax withheld should be recorded against the partnership's IRD number.

The board member is an employee of the Organisation

A payment of fees to the board member who is also an employee, with a contractual arrangement with the contracting Organisation to provide governance services as part of his or her employment contract is not a schedular payment subject to withholding tax. Such a payment is salary or wages or an extra pay. Payment must be taxed using the PAYE calculator.

Example 2: Employee engaged as a board member

Silvia is the Chief Operating Officer of the Water Allocation Board and as part of her role she is a member of the Water Allocation Board.

As Silvia has been appointed to the Board as part of her employment by the Board any fees she receives as a board member are therefore part of the income arising from her employment and subject to PAYE.

The board member is required to account for the payment to another entity

Generally, board members are appointed based on their individual suitability for the role and they are not answerable to another entity for their decisions. Indeed, in some cases the empowering instruments make it clear that board members are appointed in their individual capacity.

However, that does not mean for tax purposes the fees are necessarily income of the individual.

If the board member is paid a fee or another amount in relation to their engagement in circumstances in which they are required to account for the payment to their employer or the other partners in a partnership, then the fee is the income of that entity and not the board member.

For example, partnerships which provide professional services often provide in their partnership agreements that partners appointed to an Organisation due to their professional expertise must account for fees received as income of the partnership. In that case the income is received by the partnership not the individual partner and withholding tax should be deducted unless the partnership has a certificate of exemption.

Example 3: Partner in a partnership is required to pay fees received to partnership

Harley is a partner in a legal partnership and in that capacity has been supplying legal services to the Water Allocation Board. During, and because of, the legal work Harley undertakes for the Board, together with her good working relationships with the Board, she has been asked to serve a 12-month term on the Board.

As the offer of board membership arises from the provision of legal services, the partnership agreement provides that any fees she receives as a board member are therefore partnership income.

This means that for tax purposes the income is received by the partnership not the individual partner and any withholding tax liability is determined on that basis.

The partnership does not have a certificate of exemption and so withholding tax should be deducted from the fees paid to Harley by the Water Allocation Board. That withholding tax should be allocated to the partnership's IRD number.

In determining whether the required duty exists, Inland Revenue does not expect the payer to enquire into the legal agreements. Rather, confirmation from the board member and the third party at the time of appointment that such a duty exists will be enough.

Equally, when an employee of a third party is asked to join the Organisation, if that request arose because of their employment with that third party, then they may have a fiduciary duty to pay those fees to their employer. If such a fiduciary duty exists, then the fees will be income of the employer and WHT is determined on that basis.

Example 4: Employee of company supplying services to an Organisation is required to pay fees received to their employer

David is an employee of a management consultancy firm - the firm is a registered company. David (as an employee of the company) has been supplying services to the Water Allocation Board. Because of the management consultancy work David undertakes for the Board, together with his good working relationships with the Board, he has been asked to serve a 12-month term on the Board.

David will attend the board meetings in work time and David's employer will continue to pay him during that time. The parties agree that in that context David will pay any fees received to his employer.

The appointment to the Water Allocation Board arises out of David's work for the Board and David will be paid by the firm as an employee while undertaking Water Allocation Board activities.

This means that for tax purposes the fees are income that is received by the employer not the employee. No withholding tax needs to be deducted as companies are not subject to withholding tax.

The payer can accept that the required fiduciary duty exists between the employee and the employer if the employer confirms in writing that an agreement exists between the employer and employee that:

- the employee is required to remit any fees received to the employer,
- the employee and the employer agree that the appointment to board arises out of the employee's employment,
- the employer will continue pay the person for time spent on board activities (if these happen during work time), and
- the employer recognises that the fees will form part of the employer's income for tax purposes.

In these circumstances the Commissioner accepts that the employer can provide the invoice for board members fees. If the employer is a company, the payment of fees is not subject to withholding tax.

Connection

If the payer considers that the reasons for appointing the board member to the Organisation might not have the required connection with the employer/partnership (e.g., the board member was appointed as a result of that board member's standing in their community), the payer should contact Inland Revenue or seek professional advice.

Simply because the board member has asked that a payment is directed to a third party does not by itself establish that the third party has the required duty to account for the tax arising on the fees.

If all that has happened is that the board member has asked the payer to pay someone else, the payer should still treat the payment as being received by the board member (being the person who provided the services). The board member cannot avoid having withholding tax deducted by simply directing the payment to a third party.

A flowchart that illustrates the WHT treatment of board members' fees from an Organisation's perspective is in Appendix 1.

GST treatment of board members fees

The Commissioner has published Public Rulings BR PUB 23/01 to 23/03 [Goods and Services Tax – Directors' fees](#) (BR PUB 23/01 to 23/03) and associated commentary to address the GST treatment of directors' fees and board members' fees. A flowchart that illustrates the GST treatment of board members' fees from a board member's perspective is on page 36 of BR PUB 23/01 to 23/03. The Rulings have an associated fact sheet [BR Pub 23/01 to 23/03 FS 1](#) which provides a summary of the content. There is also an associated Questions we've been asked [QB 23/07](#) which covers the use of personal services companies by directors and board members.

The GST treatment of board members fees is outlined below in very broad terms. Please refer to BR Pub 23/01 to 23/03 and associated commentary, the related fact sheet, and QB 23/07 for comprehensive coverage of these issues.

The board member supplies services in their personal capacity

A payment of fees to the board member, in respect of their personal capacity as a board member, is not subject to GST. However, if a person is carrying on a separate taxable activity⁸ and accepts the appointment to the Organisation as part of that taxable activity⁹ (accepts the office), then any service supplied by that person (as the board member) is deemed to be supplied in the course or furtherance of their taxable activity. In that circumstance the member must charge GST on the services provided to the Organisation.

The board member is contracted to supply services to an Organisation by a third party

A third party may agree to provide the services of the board member to an Organisation. This results in the board member providing their services to a third party, and the third party providing the board member's services to an Organisation.

The board member's liability for GST

If the board member, does not accept the office in the course or furtherance of a taxable activity they have, when supplying services on behalf of a third party, GST would not apply. This is because the board member's services are not supplied as part of carrying on a taxable activity. Therefore, there will be no taxable supply for GST purposes between the board member and the third party.

If the board member, accepts the office in the course or furtherance of taxable activity, when supplying services on behalf of a third party, GST would apply. This is because the board member's services are supplied as part of carrying on a taxable activity. Therefore, the board member is required to account for GST on the supply of their services to the third party.

The third party's liability for GST

The third party as the entity which provided the board member's services, will invoice the Organisation. If the third party is registered or liable to be registered for GST, they are required to account for GST on the supply of the board member's services.

⁸ GST will not apply unless the board member accepts the office in carrying on some other taxable activity separate to the holding of board memberships.

⁹ See section 6 of the Goods and Services Tax Act 1985 for the meaning of "taxable activity."

The board member supplies services as an employee

If the board member, accepts the office in their capacity as an employee of a third party, the fee income is not received by the board member, it is received by the employer who is treated as making the supply of services (section 6(4)).

Where it is considered that an employer will have received the fees for income tax purposes, Inland Revenue accepts that it will be the employer making the supply for GST purposes.

Therefore, if the employer is registered for GST, or liable to be registered for GST, the employer will be required to account for GST on the supply of the board member's services.

The board member supplies services as a partner in a partnership

If the board member accepts the office in their capacity as a partner in a partnership the fee income is not received by the board member, it is received by the partnership who is treated as making the supply of services.

Where it is considered that a partnership will have received the fees for income tax purposes, Inland Revenue accepts that it will be the partnership making the supply for GST purposes. Therefore, if the partnership is registered for GST, or liable to be registered for GST, the partnership will be required to account for GST on the supply of the board member's services.

Recommended Practical Action

The tax treatment of fees paid to members depends on the personal circumstances of the individual member and duties that they have to a third party. Therefore, Inland Revenue recommends that as part of process of appointing and inducting a new member, the tax treatment of payments to them is clarified at that point (rather than at the time of the first payment is due).

Contact

If you have queries about the correct tax treatment of particular fees paid contact Denise Birdling, Team Leader, Crown, Significant Enterprises, Inland Revenue
denise.birdling@ird.govt.nz.

Existing guidance

Inland Revenue's existing published statements of relevance to the above discussion include the following:

- [Public Rulings BR PUB 23/01 to 23/03: GST – Director's fees](#). In particular, BR PUB 23/02: considers the application of GST in relation to the payment of fees to a board member of an organisation where the board member is not appointed by the Governor-General or the Governor-General in Council.
- [BR Pub 23/01 to 23/03 FS 1: GST– Directors' fees and board members' fees \(fact sheet\)](#) which accompanies Public Rulings BR Pub 23/01 to 23/03 which consider the GST treatment of directors' fees and board members' fees. This fact sheet summarises the key conclusions in those three public rulings and the associated commentary.
- [OP 23/02: Commissioner's operational position on professional directors and board members incorrectly registered for GST](#) which gives guidance on how the Public Rulings BR Pub 23/01 to 23/03 will be applied.
- [Questions we've been asked QB 23/07: GST- Directors and board members providing their services through a personal services company](#) considers the GST treatment of a director or board member who provides their services through a personal services company.

About this document

General articles cover an assortment of items that do not fall within the other stated publication types on the IR Tax Technical website.

Appendix 1 – Considerations when making schedular payments to board members

Who is treated as receiving the board members fees for withholding tax purposes?

