

EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA - MŌ TE TĀKUPU ME TE MATAPAKI ANAKE

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Send feedback to | Tukuna mai ngā whakahokinga kōrero ki public.consultation@ird.govt.nz

The views expressed in the statement are not considered to represent a change in the Commissioner's position. The statement proceeds on the basis that proposed changes to the definition of "pension" in clause 11 of the Taxation (Annual Rates for 2025-26, Compliance Simplification, and Remedial Measures) Bill will be passed. However, the statement will not be finalised until the Bill becomes law, which is expected to be in March 2026.

INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI

Income tax – payments by employers on the death of an employee to executors and family

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This interpretation statement considers whether amounts paid by employers on the death of an employee are taxable to the recipients, which could include executors and family members. The statement also considers the deductibility of payments made by employers, whether employers have PAYE obligations in respect of payments, and the duties of executors to file tax returns for the deceased employee and any estate that may arise.

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

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Summary | Whakarāpopoto

1. Following an employee's death, an employer may make payments to the executor of the employee's estate, their family or a third party. These payments might be made to fulfil contractual or other legal obligations, or they may be freely made. This statement addresses the tax issues arising from these payments from both the recipient's and employer's perspectives. It also sets out what executors of the deceased employee's estate need to do in regard to filing the tax returns for the deceased and their estate.

Recipients

2. Where an executor or administrator¹ receives an amount from a deceased employee's employer and it would have been included in the employee's income had the employee been alive when it was received, it is income to the executor. However, the executor can elect to include the amount in a tax return for the deceased employee if it is reportable income, such as salary or wages, and received within 28 days of the death of the employee.
3. Where an executor is also a family member, it will be a question of fact as to which capacity a payment is received in.
4. Amounts paid by employers to executors generally fall into one of three categories:
 - employment income;
 - a pension; or
 - income under ordinary concepts.
5. Amounts paid by the employer are typically employment income where the employment or service was the substantial reason for the payment, such as accrued salary or wages. A gratuitous payment to an executor by an employer that would not have been paid had the employee not provided services is pension income unless paid within one year of the death of the employee. An amount may be income under ordinary concepts if it is paid periodically, regularly or recurrently.
6. Where a person other than the executor receives an amount from the deceased employee's employer, it may be income depending on the circumstances. Amounts that were owed to the employee at the time of their death belong to the estate and the executor needs to deal with any income element.

¹ For brevity, this statement uses the term executor to mean either an executor or an administrator.

7. A gratuitous payment to certain family members that would not have been paid had the employee not provided services to the employer is not pension income if paid within one year of the employee's death.

Employers

8. PAYE obligations arise if the amount paid by the employer is a PAYE income payment. Most payments an employer makes on an employee's death are likely to be PAYE income payments, such as salary or wages, holiday pay, retiring allowances, contractual death benefits and funeral allowances. Different calculations of the amount to be withheld apply depending on whether the payment is "salary or wages" or an "extra pay".
9. Whether payments by the employer are deductible for income tax purposes depends on the application of the normal rules for deductibility. In general, payments are deductible where a nexus (that is, a relationship) exists with deriving income or being in business for the purpose of deriving income. A deduction cannot be claimed if the payment is subject to a limitation, such as the capital limitation.
10. Figure | Hoahoa 1 summarises the tax treatment of payments by employers. It should be read in conjunction with the text from [19] to [86].

Figure | Hoahoa 1 – Summary of the tax treatment of payments by employers

	Income to recipient?			Employer treatment	
Employer payment	Paid to executor	Paid to family	Paid to third party	PAYE	Deductible
Accrued salary or wages	Income to the executor or, if received within 28 days of death, to the deceased employee at the election of executor	Income to the executor or, if received within 28 days of death, to the deceased employee at the election of executor	Income to the executor or, if received within 28 days of death, to the deceased employee at the election of executor	Yes	Yes
Holiday pay owing at time of death				Yes	Yes
Other amounts paid under employment contract (for example, retiring allowances, contractual death benefits, funeral allowances)				Yes	Yes

Gratuitous payment triggered by deceased employee's services	Not income if paid within 1 year of death	Not income if paid within 1 year of death	n/a	No	Depends
Payment in response to a workplace accident	Not income	Not income	n/a	No	Depends, penalties are not deductible

Executors

11. Executors must file returns the deceased employee was required to file or would have been required to file had they remained alive. Executors may also need to file estate returns.

Introduction | Whakataki

12. Following an employee's death, an employer may make payments under the employee's employment contract, a statutory or other legal obligation, or they may be freely made. They might be made to an executor, a family member or a third party.
13. These payments could include:
 - accrued salary or wages;
 - holiday pay owing at the time of death;
 - retiring allowances payable on death;
 - contractual death benefits;
 - contributions to funeral expenses;
 - payments in response to a workplace accident; and
 - compassionate payments.
14. The first part of this interpretation statement is intended to help recipients determine whether the amounts are income, and if so, who bears any tax.
15. The second part is intended to help employers decide whether any PAYE obligations arise and whether the amounts are deductible for income tax purposes.
16. This statement assumes all the parties to any payment an employer makes are New Zealand residents. It also assumes the employer and employee are not associated

persons under the rules in subpart YB. If international or associated person issues exist, we recommend seeking professional advice.

17. The appendix to this statement contains general guidance to assist with understanding:
 - what happens legally when a person dies;
 - who the executors are for tax purposes; and
 - the obligations of executors for filing tax returns for the deceased employee and the estate.
18. Lump sum payments paid on death to a deceased employee's estate or their family by an insurer under a term life insurance policy taken out by an employer are outside the scope of this item. For the tax treatment of these sums, see [QB 18/03](#).²

Tax treatment of employer payments

19. Payments made by an employer on the death of an employee will typically be made to an executor (which may include a family member in their capacity as executor), family members (in that capacity) or a third party, such as a funeral home or a person who takes on the role of providing day-to-day care of children of the deceased employee. Each of these recipients is considered in turn.

Payments received by an executor

20. Payments by employers on an employee's death are often received by the executor of the deceased employee's estate. These include any payments made to the employee's bank account after the employee's death.³
21. The executor may be a family member. It will be a question of fact whether the payment is received in their capacity as an executor or a family member. In general, where the payment represents an employer meeting a contractual or legal obligation owing to the deceased employee, it will likely be a payment made to the person in their capacity as executor. Where it is a payment is made out of compassion, it will likely be a payment to the person in their capacity as a bereaved family member.
22. The taxation of amounts received by an executor is determined by s HC 8. Section HC 8 generally treats amounts received by an executor that would have been included

² QB18/03 Income tax – insurance – term life insurance policy taken out by employer for the benefit of an employee.

³ This is because the property of the deceased vests in the administrator upon grant of administration and is backdated to the date of death under s 24 of the Administration Act 1969. An administrator includes an executor for the purposes of that Act.

in the income of the deceased employee as the executor's income under s CV 12. However, if the amount is reportable income and received within 28 days of the employee's death, the executor may treat that amount as income of the deceased.

23. Section HC 8 provides:

HC 8 Amounts received after person's death

When this section applies

- (1) This section applies when a trustee of an estate of a deceased person receives an amount in an income year that is not income that the person derived during their lifetime, but would have been included in the person's income had they been alive when it was received.

Reportable income received within 28 days after person's death

- (1B) The trustee may treat an amount of reportable income received by the trustee within the period of 28 days starting with the date of the person's death as if it were income that was derived by the person before being received by the trustee.

Income

- (2) An amount not treated as being derived by the person under subsection (1B) is treated under section CV 12 (Trustees: amounts received after person's death) as income derived by the trustee in the income year.

24. The first requirement of s HC 8 is that the amount received was not income derived by the deceased employee during their lifetime. Employees derive income on a cash basis, meaning they are taxed on receipt. As the executor receives the amount in question, it cannot have been received or derived by the deceased employee during their lifetime.

25. The next requirement is that the amount would have been included in the deceased employee's income had they been alive when it was received. Logically, this requires consideration of a hypothetical situation under which the deceased employee is both still alive and the recipient of the payment, even though the contractual (or other) trigger for the payment may be the employee's death.

26. If the employee were still alive and received a payment, it could potentially be their income:

- from employment (s CE 1);
- from a pension (s CF 1);
- under ordinary concepts (s CA 1(2)).

Each of these possibilities is considered from [29].

27. If the payment received by the executor is "reportable income" of the deceased employee and it is received within 28 days of the employee's death, the executor may treat the amount as having been derived by the deceased employee before being received by the executor. They do this by including the amount in a tax return for the

deceased employee. Reportable income includes PAYE income payments from which tax is deducted at source, such as salary or wages, interest, dividends or attributed portfolio investment entity (PIE) income.⁴ The meaning of PAYE income payment is considered in more detail from [70].

28. If the executor treats an amount of reportable income as having been derived by the deceased employee, this may remove the need for an executor to obtain an IRD number and file a tax return for the deceased employee's estate. However, the executor may decide to treat the amount as income derived by the estate. This is because treating the amount as being derived by the deceased employee rather than the estate may result in more tax to pay overall due to the applicable income tax thresholds and differing social policy implications.⁵

Employment income

29. Section CE 1 deals with employment income and relevantly provides:

CE 1 Amounts derived in connection with employment

Income

- (1) The following amounts derived by a person in connection with their employment or service are income of the person:
- (a) salary or wages or an allowance, bonus, extra pay, or gratuity:
 - (b) expenditure on account of an employee that is expenditure on account of the person:
 - (bb) the value of accommodation referred to in sections CE 1B to CE 1E:
 - (c) [Repealed]
 - (d) a benefit received under an employee share scheme:
 - (e) directors' fees:
 - (f) compensation for loss of employment or service:
 - (g) any other benefit in money.
- ...

30. In summary, an amount a person derives in connection with their employment or service and that is one of the items listed in s CE 1(1)(a) to (g) is their employment income under s CE 1.

⁴ Section 22D(3) of the Tax Administration Act 1994.

⁵ For example, where the deceased employee had a student loan all reportable income in a deceased's tax return is taken into account for repayment purposes, whereas income in the estate return is not.

31. In the current context, the key question is whether an amount received by the executor but which the deceased employee is hypothetically treated as receiving as though they were alive is derived “in connection with” their employment or service.
32. In the Commissioner’s view, “in connection with” means the employment or service relationship must be the substantial reason for the employer’s payment.⁶ The test is not whether the payment is made in return for services.⁷ The test is also not whether “but for” the employment or service the payment would not have arisen.⁸ In other words, the fact a recipient of a payment had to be an employee is not determinative by itself.
33. When determining whether an amount is derived in connection with a deceased employee’s employment or service, it is the employer’s reason for making the payment that is relevant.⁹
34. Where the amount is payable under a term of the deceased employee’s employment contract (whether express or implied and whether or not the payment is discretionary), the Commissioner considers the employment relationship will be the substantial reason for the payment. This is because the right or potential to receive the payment is part of the terms under which the employee agreed to provide their services to the employer.¹⁰
35. Even where a payment is not provided for in the employee’s employment contract, the employment relationship may still be the substantial reason for it. In the Commissioner’s view, the requisite causal relationship is likely to be established where the employer’s payment arises out of a policy of the employer.¹¹ This is illustrated in Example | Taura 1. However, each payment needs to be considered on its own facts.

Example | Taura 1 – Accrued salary, holiday pay and discretionary amount paid

Jane dies at home half way through a pay period. Therefore, her employer owes her accrued salary. Jane had also accrued 10 days of holiday pay at the time of her death. Jane’s employer has a policy of paying discretionary amounts to the estates of deceased employees in recognition of their service, based on the number of years of

⁶ See BR Pub 09/02: Federal Insurance Contributions Act (FICA) – fringe benefit tax (FBT) liability *Tax Information Bulletin* Vol 21, No 4 (June 2009): 2 at 7–8.

⁷ See *Smith v FCT* (1987) 74 ALR 411 per Wilson J at 414.

⁸ *J & G Knowles & Assocs Pty Ltd v FCT* [2000] FCA 196 at 29.

⁹ *Laidler v Perry (Inspector of Taxes)* [1965] 2 All E.R. 121 at 126 per Lord Reid and 128 per Lord Hodson.

¹⁰ *EMI Group Electronics Ltd v Coldicott (HM Inspector of Taxes)* [1999] STC 803 at 810.

¹¹ *Smith v FCT* 87 ATC 4,883 at 4,894 per Toohey J and *Shell New Zealand Limited v CIR* (1994) 16 NZTC 11,303 (CA) at 11,306.

service. Jane's employer pays the discretionary amount and the other amounts owing to Jane's executor within 28 days of her death and withholds PAYE on the payments.

Section HC 8 applies as the amounts Jane's executor received were not derived in Jane's lifetime but would have been her income had she been alive when they were received. This is because the substantial reason for each payment was Jane's employment or service. In particular, the substantial reason for the discretionary payment was Jane's employment as it was the policy of the employer to pay such amounts and the amount was paid in recognition of and by reference to her years of service. The payments would have fallen under either s CE 1(1)(a) or s CE 1(1)(g) if they had been received by Jane.

As the amounts are reportable income (being PAYE income payments under s RD 5) and were received within 28 days of death, the executor can choose to treat them as Jane's income. The election is made by the executor including the amounts in a tax return for Jane. Alternatively, the amounts can be treated as trustee income and included in an IR6 return for the estate.

36. An employer's payment is less likely to be in connection with the employee's employment or service if there are reasons apart from, or not sufficiently connected to, the employment or service that explain why the employer made the payment. Courts have at times considered the employment relationship to be no more than part of the background facts or a "mere historical connection".¹² In these situations, the employment or service may not be sufficient enough to categorise the employer's payment as employment income.
37. In *FCT v Rowe*,¹³ the Australian Federal Court considered whether an ex-gratia payment Queensland's Government made to a former local government employee was income. The payment was in respect of legal costs the employee incurred in successfully defending himself against a workplace complaint. Burchett J, for the majority, concluded that the payment was too remote from the employment to be caught by the Australian equivalent of s CE 1. He stated at page 635:

The payment was in no sense a reward for his services during his employment by the Council, which had long since been determined. It was a recognition of the wrong done to him, and also of the fact that he had been forced to shoulder the task of sharing in an inquiry undertaken by the government for public purposes. The payment was not a remuneration, but a reparation.

¹² See *FCT v Rowe* (1995) 131 ALR 622 (FCA) at 644 per Drummond J and *FCT v Dixon* (1952) 10 ATD 82 (HCA) (*Dixon's case*) at 84 per Dixon CJ and Williams J.

¹³ *FCT v Rowe* (1995) 131 ALR 622 (FCA).

38. In summary, Burchett J concluded the payment was reparation for the wrong done to the former employee and not remuneration for his employment services. The Federal Court's decision was confirmed by the majority of the Full High Court.¹⁴
39. Consistent with the decision in *Rowe*, the Commissioner considers it is likely that a payment made in response to a workplace accident resulting in the death of an employee will not be sufficiently connected to the employment relationship to be income under s CE 1. This is illustrated in Example | Tauira 2. However, the treatment of each payment will turn on its particular facts. For further guidance on when payments by employers might not be employment income, see [BR Pub 06/05](#).¹⁵

Example | Tauira 2 – Payments to executor following workplace accident not income

Ravi dies in a workplace accident. Before an investigation by WorkSafe, Ravi's employer decides to pay his estate \$50,000 to acknowledge the loss of Ravi's life. In a subsequent court case, Ravi's employer is ordered by the court to pay a further \$150,000 to the estate as reparation for wrongdoing in relation to the accident.

Section HC 8 does not apply. Even though the amounts were received by the executor and not derived during Ravi's lifetime, they would not have been employment income to Ravi had he received them when alive. This is because the payments were made in response to the accident and a court order, respectively. It follows that the substantial reason for the payments was not the employment relationship.

Consideration must also be given as to whether the payments are income under another category.

40. Where an employer makes a payment to an executor on the death of an employee otherwise than under the terms of the employment contract, compassion may be the substantial reason for the payment. In such cases the amount would not be employment income of the deceased under s CE 1 had they been alive when it was received. Again, each payment needs to be considered on its own facts. For further guidance on when voluntary payments by employers may be employment income, see [IS 23/11](#).¹⁶
41. The final requirement of s CE 1 is that the amount is one of the items listed in s CE 1(1)(a) to (g). The Commissioner considers that as monetary payments are involved the relevant categories are likely to be items identified in para (a) such as

¹⁴ *FCT v Rowe* (1997) ATC 4,317 at 4,322.

¹⁵ BR Pub 06/05: Assessability of payments under the Employment Relations Act for humiliation, loss of dignity, and injury to feelings at 10.

¹⁶ IS 23/11 Income tax: Income – when gifts are assessable income at 41.

salary, wages, an allowance, an extra pay, or a gratuity or the catch-all para (g), being any other benefit in money.

42. A payment which is not employment income may be pension income or income under ordinary concepts.

Pension income

43. Section CF 1(g)¹⁷ treats a pension as income in the hands of the recipient. The question in the current context is whether an amount the deceased employee is hypothetically treated as receiving is a pension that would have been included in their income if they had been alive when it was received for the purposes of s HC 8.
44. A pension is usually a periodic or regular amount a third-party pension provider pays on an employee's retirement or death. Pensions paid by third-party providers are outside the scope of this interpretation statement. However, s CF 1(2) defines pension to include certain gratuitous payments. The definition states:

pension—¹⁸

- (a) includes a gratuitous payment made to a person **or a trustee of their estate if that person**, or their parent, child, spouse, civil union partner or de facto partner, former spouse, civil union partner or de facto partner, or dependant, **provided services to** the payer when the payment would not have been made if the services had not been provided; and
- (b) does not include a payment made to-
- (i) the person because of, and within 1 year after, the death of that parent, child, spouse, civil union partner or de facto partner, former spouse, civil union partner or de facto partner, or dependant:
 - (ii) **a trustee of the person's estate because of, and within 1 year after, the person's death.**

¹⁷ Clause 11 of the Taxation (Annual Rates for 2025-26, Compliance Simplification, and Remedial Measures) Bill proposes to change the definition of pension. This interpretation statement proceeds on the basis that the change will be passed on or about 31 March 2026.

¹⁸ The bolded text below is the new wording proposed by the Bill.

45. In the context of a payment by an employer on the death of an employee, the elements of the definition of pension are that:
- a gratuitous payment is made by the employer;
 - the payment would not have been made but for the services provided by the deceased employee; and
 - the recipient is the executor of their estate; but
 - the definition excludes a payment made to the executor of the deceased employee's estate if made within 12 months of the employee's death.
46. Each element is explained in more detail immediately below.
47. "Gratuitous" is not defined in the Act, so bears its ordinary meaning. The *Oxford English Dictionary*¹⁹ defines it as:
- Freely bestowed or obtained; granted without claim or merit; provided without payment or return; costing nothing to the recipient; free.
48. This means the payment must be given freely and not to satisfy any legal obligation of the payer. It is a payment in the nature of a gift. The provision was intended to catch voluntary amounts paid to former employees as adjustments for the effects of inflation on pensions²⁰ but is not limited solely to payments in those circumstances. In the Commissioner's view, a payment made under a term of a deceased employee's employment contract (whether express or implied and whether or not the payment is discretionary) will not be gratuitous in nature and needs to be considered under employment income.
49. The next requirement of the definition is that the "payment would not have been made if the services had not been provided". This requires a causal connection – that is, but for the provision of the services by the deceased employee the payment would not have been made. If the payment is not connected to the services provided by the employee, it will not be pension income.
50. Where the gratuitous payment is made to the executor of the deceased employee's estate because of and within 12 months of the employee's death, it is excluded from the definition of pension.
51. Because most payments of this nature will be made within 12 months of the employee's death, they will be excluded from being a pension. However, for payments made after this period, there may be an issue as to whether they are a pension. It will be a question of fact as to what motivated the payment in these cases. A

¹⁹ *Oxford English Dictionary* (online version, Oxford University Press, 2023, accessed 13 June 2024).

²⁰ *Public Information Bulletin* No 135 Feb 1986.

compassionate payment made by an employer 12 months after the death of an employee is unlikely to be employment income under s CE 1, but it could be a “pension” if the reason for the payment was motivated by the services provided by the deceased employee to the employer. Alternatively, there may be situations where the payment is not a pension because the employer and employee had a relationship outside the employment relationship, such as both being parents of children at the same school or golfing friends.

52. The Commissioner also considers that payments made following the death of an employee in a workplace accident will typically not fall within the definition of pension as they will be made in response to the accident or a court order rather than the prior services of the employee. In contrast, a gratuitous payment in response to an accident outside the workplace causing death could be pension income unless paid within one year of death.
53. Example | Taura 3 illustrates the payment of a gratuitous amount by an employer to an executor.

Example | Taura 3 – Gratuitous payment to estate

Kristoph was employed by Tree Climbers Limited when he died in an accident at home. He had worked for them for 14 years. In addition to unpaid wages, Tree Climbers Ltd paid \$5,000 to Kristoph’s father in his capacity as executor with a message of condolence to the family. The payment was made 6 weeks after Kristoph’s death. There was no contractual obligation requiring this payment, and it was not made under a policy of the employer.

The payment is gratuitous and was made in response to the services Kristoph provided Tree Climbers Limited. The payment would not have been made but for the provision of those services. Therefore, if Kristoph had lived to receive it, it would have been included in his income as a pension.

However, because the payment was made within 1 year of Kristoph’s death, the exclusion applies and the amount is not income of the executor.

Income under ordinary concepts

54. Section CA 1(2) treats an amount as income of a person if it is their income under ordinary concepts. Section CA 1(2) is a catch-all provision for items of income that do not fall within another provision in part C.
55. In the current context, the question is whether an amount received by the executor would have been income of the deceased employee under ordinary concepts if they had been alive when it was received.

56. Section CA 1(2) provides:

CA 1 Amounts that are income

...

Ordinary meaning

- (2) An amount is also income of a person if it is their income under ordinary concepts.

57. In *Reid v CIR*,²¹ Richardson J considered that an amount was assessable income under s 65(2)(l) of the Income Tax Act 1976 (a predecessor of s CA 1(2)) if the amount was income under ordinary concepts and no other specific provision in what is now part C of the Act applied.
58. In *A Taxpayer v CIR*,²² the Court of Appeal considered whether the taxpayer was assessable on money the taxpayer had stolen from their employer. To be assessable the stolen funds had to come within one or more of the paragraphs of s 65(2) of the Income Tax Act 1976, including "income derived from any other source" (per s 65(2)(l) of the Income Tax Act 1976). As the most recent appellate decision to consider the meaning of "income", the case is significant. The court concluded that the stolen funds were not income and were a transfer of capital.
59. In reaching that conclusion, Richardson P stated at 13,355:

The courts as the interpreters of legislation are required to determine the meaning of income in the legislative context and in the context of particular problems. Given New Zealand's legal history it is not surprising that the courts looked to English jurisprudence for guidance. It was natural for English courts to apply property and trust law concepts, eg entitlement as between life tenant and remaindermen, in determining the application and scope of English revenue laws. And as indicative of a property base concept, until 1976 income tax in New Zealand was dealt with in a single statute, along with the earlier in time land tax.

Thus **income is perceived as a gain derived from property which leaves the property intact – a fruit of the tree as distinct from the tree itself, a crop as distinct from the land. Again, income is a flow of money or money's worth, a series of periodic receipts arising from the ownership of property or capital, or from labour, or a combination**, eg rent, interest and dividends, salary and other personal exertion receipts, annuities and business receipts. And the source of the transaction which produces the dollar may be relevant in determining assessability as well as being relevant geographically in international tax matters. **A further underlying notion is the idea of gain from the carrying on of an organised activity – an employment, a business or**

²¹ *Reid v CIR* (1985) 7 NZTC 5,176 (CA).

²² *A Taxpayer v CIR* (1997) 18 NZTC 13,350 (CA).

profession, an adventure in the nature of trade, or a business deal – directed to the making of gain. [Emphasis added]

- 60. In summary, income is something that comes in and is often shown by its periodicity, regularity or recurrence.
- 61. It is difficult to conceive of a situation where the employer would make regular payments to an executor that would have been income to the deceased employee had they been alive. Nevertheless, there may be facts and circumstances where this category of income is relevant.

Payments received by a family member

- 62. The recipient of the payment may not be the executor. An employer can pay an amount owed to a deceased employee directly to a family member, provided certain requirements are met.
- 63. These requirements are set out in s 65 of the Administration Act 1969 and discussed in the appendix at [92]. These amounts legally belong to the estate and the executor needs to account for any income component such as accrued salary or wages.
- 64. This is illustrated in Example | Tauira 4.

Example | Tauira 4 – Discretionary payment to deceased employee's partner

Jon was employed under a collective agreement with Employer Co. The agreement provided for payment of a cash grant at the company's discretion to a deceased employee's surviving partner, their dependent children or their estate. Any payment was based on the length of the person's service.

Jon had worked for Employer Co for 7 years before he died of natural causes. Employer Co exercised its discretion under the agreement to make a lump sum payment to Jon's partner of an amount based on Jon's service.

The payment was made under the collective agreement and was calculated by reference to Jon's years of service. It follows that the substantial reason for the payment was the employment relationship and the amount was Jon's employment income.

Even though the payment was made to Jon's spouse, the payment belongs to Jon's estate and the executor needs to return the amount as income.

- 65. Gratuitous payments made by a deceased employee's employer to certain people within 12 months of death are not pension income. The relevant people are the

deceased's parent, child, spouse, civil union or de facto partner, former partner or dependant.

66. It seems unlikely that an employer would make regular payments to family members following the death of an employee but if this occurred consideration would need to be given to whether the amounts were income under ordinary concepts to the recipient (see from [54]).

Payments received by a third party

67. Under s 65(2) of the Administration Act 1969, which is discussed in the appendix at [92], an employer can pay amounts owed to the deceased employee to listed people if certain requirements are met, including that they apply or consent to receive the amount. These people include family members but also third parties such as any person who has the role of providing day-to-day care for any children of the deceased that are minors. Should no person apply or consent to receive a payment, the employer can pay the funeral expenses of the deceased employee or reimburse any person who has paid them. As noted above at [63], these funds belong to the estate and the executor needs to account for any income component.
68. An employer could also make a gratuitous payment to a third party, such as a funeral home for the costs of the funeral or a donation to a charity.
69. Depending on the nature of the payment and the recipient, the payment may be income to the recipient under another provision in part C. This is illustrated in Example | Taurira 6.

Example | Taurira 5 – Gratuitous payments to a funeral home and charity

Sharmar dies from a rare disease while an employee. In memory of Sharmar, his employer makes a donation to a research facility investigating the disease. The employer also pays for a small funeral as Sharmar had no close family.

The research facility is a charity and exempt from tax, meaning the payment is not taxable.

The funeral home is a normal business and the payment to them is business income.

Does PAYE need to be deducted?

70. If an employer's payment is a PAYE income payment, PAYE needs to be deducted when it is made.²³
71. A PAYE income payment includes salary or wages and extra pay.²⁴ Salary or wages and extra pay are defined separately because the amount of PAYE on each type of payment is calculated differently.
72. Salary or wages means a payment of salary, wages, or allowances made to a person in connection with their employment.²⁵ The definition also includes:
- a bonus, commission, gratuity, overtime pay or other pay of any kind;²⁶ and
 - a gratuitous payment as described in paragraph (a) of the definition of pension in s CF 1(2) (that is, a payment as described at [44] but not if the amount falls within the exclusion as described at [50]).²⁷
73. There is no definition of "payment" for the purpose of the definitions of PAYE income payment, but "pay" is defined in s YA 1. Pay, for an amount and a person, includes to deal with the amount in their interest or on their behalf.
74. This includes an amount paid to an executor, family member or third party of unpaid salary or wages, accrued holiday pay, retiring allowances, contractual death benefits and funeral allowances.
75. Salary or wages do not include an extra pay.²⁸ Extra pay is relevantly defined as a payment that is:²⁹
- made to a person in connection with their employment;
 - not a payment regularly included in salary or wages payable to a person for a pay period;
 - not overtime pay; and
 - made in one lump sum or two or more instalments.
76. The payment of accrued holiday pay on an employee's death is an extra pay because it is a lump sum additional to the employee's ordinary entitlement. Similarly, one-off

²³ Section BE 1(1).

²⁴ Section RD 3(1)(a).

²⁵ Section RD 5(1)(a).

²⁶ Section RD 5(1)(b)(i).

²⁷ Section RD 5(6)(a).

²⁸ Section RD 5(1)(c)(ii).

²⁹ Section RD 7(1).

payments that are employment income under s CE 1 are also an extra pay. This could include a retiring allowance paid on death, contractual death benefits or a funeral allowance, whether paid to the executor or a family member.

Is the payment deductible?

77. Whether a payment made on an employee's death is a deductible expense for the employer depends on the normal rules of deductibility.
78. Section DA 1 set outs the general permission. A person is allowed a deduction for an amount of expenditure or loss to the extent they incur it in deriving their income or in the course of carrying on a business for the purpose of deriving their income. These are referred to as the first and second limbs of s DA 1.
79. A person (whether or not they are in business) may claim deductions for expenditure incurred in deriving their income under the first limb of s DA 1. Under the second limb, the expenditure or loss must be incurred "in the course of carrying on" a business. A sufficient relationship (or nexus) must exist between the expenditure and the business that is being carried on.³⁰ It is a question of fact and degree in each case.
80. To determine whether the general permission is satisfied, it is necessary to ascertain the true character of the expenditure, and consider the relationship between the advantage the employer was seeking to gain from the expenditure and the employer's income-earning process. Whether a business incurs a cost as part of its operations to earn income is usually determined objectively. However, subjective matters may be relevant where the cost was incurred by choice and the relationship between the expenditure and the business operations is more remote.
81. In the Commissioner's view, payments made by an employer on the death of an employee under a term of the deceased's employment contract or under a policy of the employer will typically satisfy the nexus test. Such a payment includes unpaid salary or wages, accrued holiday pay, retiring allowances payable on death, contractual death benefits and funeral allowances.
82. It is a question of fact whether a gratuitous payment by the employer will satisfy the nexus test. In some cases, such a payment made to acknowledge the personal relationship between the employer and the employee and their family may fail to satisfy the nexus test because the gesture of goodwill and support for the deceased's family is not sufficiently related to the employer's income earning process. In other cases though, a payment may be viewed by the employer as a necessary business expense to promote general staff welfare and the need to be seen as a good employer. Factors to consider could include the circumstances in which the employee died, the

³⁰ *CIR v Banks* (1978) 3 NZTC 61,236 (CA) and *Buckley & Young Ltd v CIR* (1978) 3 NZTC 61,271 (CA).

number of employees and the transparency of the payment. An employer who wishes to claim a deduction has the onus of proof to establish the nexus of any expenditure to the income-earning process.

83. It is also a question of fact whether a payment made in response to a workplace accident will satisfy the nexus test. As in the previous paragraph, an employer who wishes to claim a deduction has the onus of proof to establish the nexus of any expenditure to the income-earning process. Where an employer makes a payment for wrongdoing imposed by any statute or regulation it will not be deductible.³¹
84. If an item of expenditure satisfies the nexus test, the next step is to consider whether any general limitations apply to deny a deduction. Even where the nexus test is satisfied, a deduction may be disallowed under the limitations to deductibility set out in s DA 2. For example, under s DA 2(1) a person is denied a deduction to the extent the cost is of a capital nature (the capital limitation). Whether the capital limitation (or any other limitations) apply to the payment of an amount that is employment income depends on the facts.³²
85. For more discussion on the deductibility rules in general, see paras [9] to [32] in [IS 22/01](#).³³
86. Instead of making a payment to the executor of the deceased employee or their family, an employer that is a company may choose to make a charitable donation. Payments of this nature are dealt with under s DB 41. If the payment is made to a donee organisation, a deduction up to the amount of the company's net income in the absence of the payment may be available.

Draft items produced by the Tax Counsel Office represent the preliminary, though considered, views of the Commissioner of Inland Revenue.

In draft form these items may not be relied on by taxation officers, taxpayers, or practitioners. Only finalised items represent authoritative statements by Inland Revenue of its stance on the particular issues covered.

Send feedback to | Tukuna mai ngā whakahokinga kōrero ki
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³¹ IS 09/01: Fines and penalties – income tax deductibility states that fines and penalties are not deductible (interpretation statement, Inland Revenue, October 2009).

³² *Christchurch Press Co Ltd v CIR* (1993) 15 NZTC 10,206 (HC).

³³ IS 22/01: Income tax – deductibility of costs incurred due to COVID-19 (interpretation statement, Inland Revenue, April 2022).

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Income Tax Act 1976, s 65

Income Tax Act 2007, ss BD 3, BE 1, CA 1, CE 1, CF 1, CV 12, DA 1, DA 2, HC 8, RD 2, RD 3, RD 5, RD 7, RD 10, YA 1 ("pay", "trustee"), subpart YB

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About this document | Mō tēnei tuhinga

Interpretation statements are issued by the Tax Counsel Office. They set out the Commissioner's views and guidance on how New Zealand's tax laws apply. They may address specific situations we have been asked to provide guidance on, or they may be about how legislative provisions apply more generally. While they set out the Commissioner's considered views, interpretation statements are not binding on the Commissioner. However, taxpayers can generally rely on them in determining their tax affairs. See further [Status of Commissioner's advice](#) (Commissioner's Statement, Inland Revenue, December 2012). It is important to note that a general similarity between a taxpayer's circumstances and an example in an interpretation statement will not necessarily lead to the same tax result. Each case must be considered on its own facts.

Appendix: Executors and their return-filing obligations

87. This appendix summarises.

- what happens legally when a person dies (see from [88]);
- administration of small estates (see from [92])
- the returns an executor³⁴ needs to file for the deceased employee (see from [99]); and
- the returns an executor needs to file for any estate (see from [104]).

What happens legally when a person dies

88. When a person dies, their assets and debts become part of their estate. An estate is a bundle of assets and liabilities held by an executor or administrator in the right of the deceased. An estate is not a trust, although testamentary trusts can arise out of an estate. Assets that are jointly owned do not enter the estate but are transferred to the joint owner by survivorship.
89. If the deceased leaves a valid will, the executor is responsible for collecting the assets, repaying debt, paying expenses and distributing the balance according to the terms of the will. It is usually necessary to apply for authority to do this using the probate process administered by the High Court under the Administration Act 1969. It may also be necessary to make an application for the appointment of an administrator if the nominated executor dies or refuses the appointment.
90. If the deceased does not leave a will, they are said to have died intestate and the court will usually appoint an administrator. Any balance of the estate is distributed according to statutory rules in s 77 of the Administration Act 1969. Broadly, the order of priority is a spouse or partner, then children, parents, siblings, grandparents, uncles, aunts and finally the Crown.
91. If the estate does not involve land and amounts owing do not exceed the prescribed limit (see at [93]), administration can often be done without the need to make an application to the High Court due to s 65 of the Administration Act 1969. This provision can apply to amounts employers owe deceased employees.

³⁴ For brevity, this appendix uses executor to mean executor or administrator unless the context otherwise requires.

Administration of small estates

92. In the case of smaller estates not involving land, it is possible for the estate to be administered without formal application to the High Court. Section 65 of the Administration Act 1969 relevantly states:

65 Payment without administration

...

- (2) **In the event of the death of any person to whom any sum of money not exceeding the prescribed amount is payable by** the trustees of a superannuation fund, a society, a bank, **an employer of the deceased person at or within 6 months before the date of his or her death**, a local authority, a trustee corporation, Kāinga Ora–Homes and Communities, the Accident Compensation Corporation, the chief executive of the department for the time being responsible for the administration of the Social Security Act 2018, or the Crown respectively, **whether the death occurred before or after the commencement of this section, it shall be lawful for the** trustees of the superannuation fund, society, bank, **employer**, local authority, trustee corporation, Kāinga Ora–Homes and Communities, the Accident Compensation Corporation, the chief executive of the department for the time being responsible for the administration of the Social Security Act 2018, or the Crown, as the case may be, **without requiring administration of the estate of that deceased person to be obtained in New Zealand, and on receiving such evidence as it considers satisfactory that the person has died and that administration of his or her estate has not been obtained in New Zealand, to pay the sum or any part thereof to any of the following persons:**

- (a) **the widow, widower, surviving civil union partner, or children of the deceased person:**
- (aa) **a surviving de facto partner of the deceased person:**
- (b) **the persons beneficially entitled to the estate of the deceased person under the will or on the intestacy of that person:**
- (c) **any person appearing to be entitled to obtain administration of the estate of the deceased person in New Zealand:**
- (d) **any person related by blood or marriage or civil union to the deceased person who undertakes to maintain the children of that person who are minors or any of them:**
- (e) **any person who has and is exercising the role of providing day-to-day care for any of the children of the deceased person who are minors:**

provided that no payment shall be made to any person unless he or she applies for or consents to receive that payment.

- (3) **It shall be lawful for** the trustees of a superannuation fund, a society, a bank, **an employer of the deceased person at or within 6 months before the date of his or her death**, a local authority, a trustee corporation, Kāinga Ora–Homes and Communities, the

Accident Compensation Corporation, the chief executive of the department for the time being responsible for the administration of the Social Security Act 2018, or the Crown, respectively, **out of the money to which subsection (2) applies, to pay the funeral expenses of a deceased person, or to refund the amount of those expenses to any person who has paid them, in any case where no person has applied for or consented to receive payment of the money under subsection (2).**

...

- (6) Any payment made in good faith pursuant to this section to a person to whom the maker of the payment has reasonable grounds to believe that payment may be made under this section shall be valid against all persons whomsoever, and the maker of the payment shall be absolutely discharged from all liability in respect of money paid by him or her under this section.
- (7) Every person to whom money is paid pursuant to this section shall be liable to apply the money in due course of administration, and the maker of the payment may, if he or she thinks fit, without being liable to see to the application of the money, require any such person to give sufficient undertakings, by bond or otherwise, that the money so paid will be so applied.

[Emphasis added]

- 93. In summary, s 65(2) of the Administration Act 1969 permits an employer to pay an amount owing to the deceased employee directly to the people listed in the section if they apply for, or consent to, the payment as long as it does not exceed the prescribed amount. The prescribed amount is a sum not exceeding \$40,000 under the Administration (Prescribed Amounts) Regulations 2009.³⁵
- 94. The employer must receive such evidence as they consider satisfactory that the employee has died and administration of the estate has not been obtained in New Zealand. An employer (and the other payers mentioned) has the discretion not to pay in the absence of formal approval from the High Court.
- 95. Section 65(7) of the Administration Act 1969 states that the recipient is liable to apply the money in the due course of the administration. This means the recipient must apply the funds for the benefit of the estate. This could include paying the amount to the executor, as executors have a fiduciary duty to collect all assets of the deceased. The employer can, if they see fit, require the person to give sufficient undertakings, by bond or otherwise, that the money will so be applied.
- 96. Section 65(6) of the Administration Act 1969 discharges the employer from all liability if payment is made in good faith to a person the employer believes on reasonable grounds may receive it.

³⁵ The amount increased from \$15,000 on 24 September 2025 by regulation 5 of the Administration (Prescribed Amounts) Amendment Regulations 2025.

97. If no person applies or consents to receive an amount owing by an employer to which s 65(2) of the Administration Act 1969 applies, s 65(3) of the Administration Act 1969 permits the employer to pay the funeral expenses of the deceased or reimburse the expenses of any person who has paid them. As above, the funds legally belong to the estate and employers have the discretion not to make payments.
98. Where a person dies without a will and no executor is appointed, ss 22F(5) and (6) of the Tax Administration Act 1994 allow a person to confirm the final account of a deceased individual subject to the prepopulated account process (autocalc) if they are included on a list published by the Commissioner. This also allows them to provide additional income information. The list of people is published in [OS 19/02](#)³⁶ and corresponds to the persons referred to in s 65(2) of the Administration Act 1969.

Returns an executor needs to file for the deceased employee

99. When a person dies, their obligations to file returns and make assessments pass to the executor of their estate. The executor is liable for any tax due by the deceased taxpayer. Section 43 of the Tax Administration Act 1994 states:

43 Income tax returns and assessments by executors or administrators

- (1) The executor or administrator of a deceased taxpayer must furnish the same returns of income and make the same assessments that the taxpayer was required to furnish or make, or would have been required to furnish or make, if the taxpayer had remained alive.
- (2) The Commissioner may from time to time require the executor or administrator to furnish such further returns of income for the deceased taxpayer as the Commissioner considers necessary.
- (3) Income tax assessed in respect of a deceased taxpayer, whether or not under subsection (1), is to be treated as a liability incurred by the deceased taxpayer during their lifetime, and the executor or administrator of the taxpayer is liable for the same accordingly.

100. The requirement is to file the same returns and make the same assessments the deceased would have been required to make if they had remained alive. Section 33 of the Tax Administration Act 1994 specifies what returns are required. It distinguishes between those taxpayers subject to the autocalc process and those who need to file returns.
101. For the 2019 and later years, if the deceased employee had only reportable income such as salary or wages and was subject to the autocalc process, the executor is

³⁶ OS 19/02: Persons who are permitted to confirm an income statement of a deceased person or provide information to the Commissioner to finalise the tax account of a deceased person.

required to confirm the final account. This is deemed to be a return and assessment. This is illustrated in Example | Tauira 6.

- 102. If the deceased employee had income and was not subject to the autocalc process, the executor is required to file an IR3 return for the deceased employee.
- 103. If the deceased employee was not required to file a return, no return is required.

Example | Tauira 7 – Final returns of the deceased employee

Yon dies on 20 April 2025. His income consisted of salary and interest in the 2025 and 2026 income years. The final amounts are paid to his executor on 7 May 2025.

Salary and interest are reportable income. Yon's executor needs to confirm a final account for amounts of income received in the year ended 31 March 2025. This is something Yon would have been required to do if he had remained alive.

Yon's executor is also required to confirm a final account for the period from 1 April to 20 April 2025. This period falls in the 2026 income year and is a return Yon would have been required to file had he remained alive. His executor can choose to include the amounts received on 7 May 2025 in this return as they are amounts of reportable income received within 28 days of death or include them as trustee income in a return for the estate

Returns an executor needs to file for the estate

- 104. Section 33 of the Tax Administration Act 1994 also requires the executor to file returns for income earned by the estate until it is wound up. For administrative convenience, this is done by filing an [IR6](#) return.³⁷ This is the same form trusts use. The executor needs to apply for an IRD number for the estate.
- 105. An executor is not required to file a return if the estate is non-active. In general, a non-active estate has no income or deductions. Small amounts are disregarded, such as amounts of income that would be reportable income if derived by an individual and are \$1,000 or less and administration costs that total \$1,500 or less for the tax year.³⁸ If the estate has an IRD number, the executor must also provide a declaration that the estate is non-active on form [IR633](#).³⁹ These requirements are illustrated in Example | Tauira 8.

³⁷ Income tax return: Estate or trust – IR6.

³⁸ Section 43B(3) of the Tax Administration Act 1994.

³⁹ Non-active trust declaration – IR633.

Example | Taura 8 – Filing of returns by non-active estate

The executor of Benjamin's estate is nearing the end of the administration. In the 2025 income year, the executor received \$500 from a term deposit. Bank charges and administration expenses were nominal. The estate has an IRD number.

As the amount of income is under \$1,000 and expenses are not more than \$1,500, the executor is not required to file a return as long as an IR633 is filed declaring the estate is non-active. The IR633 is required as the estate has an IRD number.