

DETERMINATION > COVID-19 VARIATION

Variation in relation to ss HM 25(3)(a) and HM 72(2)(b) of the Income Tax Act 2007 (PIE exit rules)

Issued: 20 April 2022

COV 22/17

EFFECTIVE: 18 March 2022 to 30 September 2022

Variation

The Commissioner of Inland Revenue has, under the discretion provided under section 6I of the Tax Administration Act 1994, made the following statutory variation:

For the purposes of meeting the requirements of ss HM 14 and/or HM 15, the time period specified in s HM 25(3)(a) of “6 months plus one day” is extended to “12 months”.

If the above variation is applied, the time period in s HM 72(2)(b) is extended by replacing “12-month” period with “18-month” period.

This is subject to the conditions that:

- The failure to meet any of the requirements of ss HM 14 and HM 15, under s HM 25(1)(a)(ii), and remedy that failure as required by s HM 25(1)(b)(ii), is due to circumstances arising either from the imposition of COVID-19 response measures or as a consequence of COVID-19.
- When applying the extended period of time in s HM 25(3)(a) under this variation, the last day of the quarter to remedy a failure to meet a requirement, described as the “the second quarter” in s HM 25(1)(b)(ii), must be on or before 30 September 2022.
- The entity has taken all reasonable steps within its control to attract investors and limit investor interests, as required by ss HM 14 and HM 15, within the first 12 months of the date on which the entity becomes a PIE.

Application date

This variation applies from 18 March 2022 to 30 September 2022.

Dated at Wellington on 20 April 2022.

Jonathan Rodgers

Group Leader – Tax Counsel Office

Inland Revenue

Background (material under this heading does not form part of the variation)

Summary of effect

1. The effect of the variation to s HM 25(3)(a) is to extend the period of time after which an entity becomes a PIE, or an investor class is formed, before s HM 25(1) applies. The variation will mean that an entity will have 12 months from the day the entity becomes a PIE, or an investor class is formed, before s HM 25(1) applies.
2. The variation effectively extends the maximum period of time to remedy a failure to meet the requirements in ss HM 14 and HM 15 to 18 months (from 12 months) from the day the entity becomes a PIE, or an investor class is formed. The variation only applies to failures to meet s HM 14 and/or s HM 15 under s HM 25(1)(a)(ii). The variation will not apply to any failure to meet the requirements of ss HM 11 to HM 13.
3. The effect of the variation to s HM 72(2)(b) is that, for newly formed funds, the entity's PIE election does not take effect if there is a failure to meet the requirements of s HM 14 and/or s HM 15 in every quarter of the 18-month period, after the date on which the election would be effective, and there was a loss of PIE status under s HM 25 (as varied). This is to ensure that an entity that still does not meet the relevant requirements of s HM 25(1)(a)(ii) following the extended period of time in the variation, is treated as if its election did not take effect.
4. This extension of the timeframe in s HM 72(2)(b) is intended to mirror the extension of the timeframe in s HM 25(3)(a).

Provisions affected

5. Sections HM 25(3)(a) and HM 72(2)(b) of the Income Tax Act 2007.

Application of variation

6. This variation applies to an entity that has failed to meet the requirements under the PIE rules in ss HM 14 (minimum number of investors) or HM 15 (maximum investor interests) and has failed to remedy those requirements within the timeframe under s

HM 25, due to circumstances arising either from the imposition of COVID-19 response measures or as a consequence of COVID-19.

7. Customers can choose not to apply the variation to their circumstances. You can make that decision by taking a tax position, such as in a tax return, or by telling us. If you've already complied with the existing legislation in taking a tax position, we will consider that you have not chosen to apply the variation.

References

Legislative references

Tax Administration Act 1994: ss 6H and 6I

Income Tax Act 2007: ss HM 25(3)(a) and HM 72(2)(b)

About this publication

To help customers manage the impacts of COVID-19, the Commissioner now has a discretion to vary a requirement under an Inland Revenue Act (including for these purposes, the Unclaimed Money Act 1971). This discretion is found in ss 6H and 6I of the Tax Administration Act 1994 and applies from 17 March 2020 to 30 September 2022. This variation is an exercise of that power.