

GENERAL ARTICLE

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

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This item has been 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.

Withholding tax

A payment of fees to a member of a board, committee, panel, review group or task force¹ (“a board member”) 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 a 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 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 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 will arise for any tax withheld which will 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 who is treated as receiving that income for tax purposes.

The starting point is that when you engage an individual as a 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 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 member services

If the 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 member's services in return for the fee, then the payment of fees is income of that entity and not the member.

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

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

Example

A partnership, contracts with the Water Allocation Board, a statutory body, to supply a partner as a 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 a 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 member is an employee of the Board, committee, panel, review group or task force

A payment of fees to a member who is also an employee, with a contractual arrangement with the contracting Board, committee, panel, review group or task force to provide **directorship duties** 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

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 member is required to account for the payment to another entity

Generally, 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 members are appointed in their individual capacity.

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

If a 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 fees is the income of that entity and not the member.

For example, partnerships which provide professional services often provide in their partnership agreements that partners appointed to a board, committee, panel, review group or task force 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

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 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 of a board, committee, panel, review group or task force, 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

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.

Then the employer can provide the invoice for the fees and where the employer is a company, then the payment of the fees is not a schedular payment.

Connection

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

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

GST

A payment of fees to a member, in respect of their capacity as a board member, is not subject to GST. However, if a person is carrying on a taxable activity and accepts the appointment to the board as part of that taxable activity, then any service supplied by that person (as a member) is deemed to be supplied in the course or furtherance of their taxable activity. Accordingly, in that circumstance the member can charge GST on the services provided to the board, committee, panel, review group or task force.

If the member accepts office in their capacity as an employee of a third party or as a partner in a partnership, the fee income is not received by the member, it is received by the employer or partnership who will supply the invoice for the services provided to the board.

Where it is considered that an employer or partnership will have received the fees for income tax purposes, Inland Revenue accepts that it will be the employer or partnership making the supply for GST purposes. Therefore, the employer or partnership can issue a tax invoice in relation to that supply.

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
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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.