

Income tax – Government payments to businesses (grants and subsidies)

Issued | Tukuna: 4 July 2023

IS 23/06

This interpretation statement provides guidance on how ss CX 47 and DF 1 apply to payments of grants and subsidies to businesses. Where these provisions apply, a grant or subsidy paid by a local authority, public authority or public purpose Crown-controlled company to a business is not taxable and the expense funded by the grant is non-deductible.

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

Contents | Ihirangi

Summary Whakarāpopoto	3
Introduction Whakataki	6
Overview of the grant provisions	6
Terms used and examples provided in this statement	6
Analysis Tātari.....	7
Payment is from a local authority, public authority or PPCCC	10
Payment is made for a business that a person carries on	11
Payment is made to a business	11
Business must be carried on.....	12
Payment is in the nature of a grant or subsidy or a grant-related suspensory loan.....	13
Grant or subsidy is a payment made without obligation	13
Grant-related suspensory loan is a grant in some cases.....	14
Payment corresponds to deductible expenditure or depreciable property	15
Payment and expense correspond	16
Payment is for expenditure for which a business would be allowed a deduction	17
Deductible expense can be incurred at any time.....	18
Income subsidies are taxable	21
Non-deductible expenditure is not subject to the grant provisions	21
Unconditional payment is generally not taxable when it is derived	22
Payment is usually income when it is derived	22
Conditional payments may delay derivation	23
Deductions are denied when the expense is incurred	24
Amount of deduction denied is the amount of the payment	24
Payment and expense must correspond to each other	25
Provisions apply to surplus funds	26
Business must keep records to show deductions are denied.....	28
Legislation Whakature.....	30
References Tohutoro.....	33
About this document Mō tēnei tuhinga	34

Summary | Whakarāpopoto

1. Sections CX 47 and DF 1 (the grant provisions) are specific provisions that apply to payments in the nature of a grant or subsidy from a local authority, public authority or public purpose Crown-controlled company (PPCCC) to a business. The grant provisions are intended to make grants tax neutral to a business. That is, s CX 47 treats the payments as non-taxable and s DF 1 treats expenses funded by such payments as non-deductible.
 2. This means that expenses that are usually deductible are no longer deductible (to the extent that the grant funds the expense). For depreciable property, the cost base of the asset acquired, constructed, installed, or extended by grant funds, is reduced by the amount of the payment. Depreciation loss is calculated based on the reduced cost.
 3. A payment in the nature of a grant or subsidy has one or more of the following characteristics:
 - it is paid gratuitously (without obligation) out of public funds by the Crown or another public body;
 - it is paid to further objectives in the public interest;
 - it is often made to public, charitable or private bodies to confer benefits on third parties; and
 - it is made to promote or encourage an industry or enterprise.
 4. In many cases it will be clear when the grant provisions apply, for example where the payment is:
 - paid by a public authority, local authority or PPCCC;
 - in the nature of a grant or subsidy;
 - paid to a business for use in the business; and
 - funding deductible or depreciable expenditure and is fully spent on that expenditure.
 5. In many cases, it will also be clear when the grant provisions do not apply, for example where the payment is:
 - made to a person who is not carrying on a business;
 - made to a person who is carrying on a business, but the payment is not for that business;
 - a loan under the Small Business Cashflow Scheme or various research and development (R&D) related payments;
-

- not in the nature of a grant or subsidy, for example, payments for services; or
 - not provided for deductible expenses or depreciable property, for example a payment:
 - provided to top up income (an income subsidy) as that is not provided for any expense and is subject to ordinary principles (usually taxable); or
 - for expenses that are not deductible (referred to as “black-hole expenditure”).
6. However, in some situations it will not be clear how the grant provisions apply. This is where:
- the payment is not for any specific expenditure;
 - the payment is not spent in the same year in which it is derived; or
 - there are surplus funds.
7. In these situations, the Commissioner considers:
- The payment and the expenditure it funds must correspond to each other. This means the payment must be intended to be spent on deductible expenditure or depreciable property, but specific expenditure does not need to be identified. For example, where a business receives a payment for:
 - a specific expense, as long as the payment funds the specific expense and that expense is usually deductible to the business, the payment will correspond to the expense;
 - a capital asset, as long as the payment funds the asset and the asset is depreciable property, the payment will correspond to that asset; and
 - general operational expenses to use as it sees fit, as long as the payment funds the types of expenses that are usually deductible to the business, the payment will still correspond to the expense.
 - The terms and conditions of a payment, or the fund from which the payment is made, will generally indicate whether it is provided for deductible or depreciable expenditure.
 - A payment that is subject to the grant provisions is not taxable when it is derived. Generally, a payment is derived when a business can keep the payment. In some cases, however, payments may have conditions attached that mean a business does not derive the payment until those conditions are met. For example, a requirement to repay a payment if a condition is not met will mean the payment, or the part of it that is repayable, has not been derived.

- It does not matter if a payment is derived in one year but not spent until another year. The provisions apply provided corresponding deductible expenditure will be incurred. However, it is expected that the expenditure will be incurred within a reasonable timeframe.
 - Deductions that correspond to the payment are denied to the extent they are funded by the payment. Similarly, the cost of depreciable property is reduced to the extent of the payment. Any expenditure incurred that exceeds the payment is still deductible. That is, where there is a shortfall in funding, the ordinary principles of deductibility apply to any additional expenditure used to meet that shortfall.
 - The grant provisions operate on the basis that grants are to be tax neutral. Where the full payment is not spent on relevant expenditure, it is expected that the surplus is spent on other deductible expenses or depreciable property and deductions to the full extent of the payment are also denied.
8. The implications of these conclusions are as follows:
- Many grant payments will be caught by the grant provisions and will be non-taxable and non-deductible.
 - Any payment for general or specific deductible expenses or depreciable property is not taxable when it is derived. An equivalent amount of deductions are denied when the expenses are incurred. The cost of an item of depreciable property is reduced by the amount of the payment and depreciation losses are calculated based on the reduced cost.¹ This treatment ensures tax neutrality of the payment.
 - If a payment is made to reimburse expenditure that was incurred in a prior year, a business may need to amend previous assessments to reverse out any deductions previously claimed.
9. The Commissioner expects businesses to spend any payments in accordance with their terms and within a reasonable time. Businesses must keep records to demonstrate the payment has been spent in their business and corresponding deductions, to the amount of the payment, have not been claimed.

¹ The reduction in cost will also affect other depreciation calculations that rely on the cost of an item of depreciable property.

Introduction | Whakataki

Overview of the grant provisions

10. Sections CX 47 and DF 1 contain the grant provisions. The provisions were introduced in 1973 to cater for grants available at that time. The wording of the provisions has changed over time. Uncertainty exists about how the grant provisions apply, particularly where the payment is not for any specific expenditure, is not spent in the same year in which it is derived, or where there are surplus funds.

Terms used and examples provided in this statement

11. In this Interpretation Statement, reference to a:
 - public authority includes a local authority and a PCCCC;
 - grant or payment includes a grant, subsidy and grant-related suspensory loan; and
 - deductible expense includes expenditure in the acquisition, construction, installation, or extension of an item of depreciable property
12. This statement provides examples to illustrate how the grant provisions apply. The examples do not reflect existing or previous grants or entities; they are illustrative only.

Analysis | Tātari

13. Section CX 47(1) states:

Section CX 47 Government grants to businesses

When this section applies

- (1) This section applies when—
- (a) a local authority, public authority, or a public purpose Crown-controlled company makes a payment to a person for a business that the person carries on; and
 - (b) the payment—
 - (i) is in the nature of a grant or subsidy to the person; or
 - (ii) is a grant-related suspensory loan to the person; and
 - (c) the payment is not in the nature of an advance or loan other than a grant-related suspensory loan; and
 - (d) the payment corresponds to—
 - (i) expenditure that they incur and for which they would be allowed a deduction in the absence of section DF 1 (Government grants to businesses);
 - (ii) expenditure that they incur in acquiring, constructing, installing, or extending an asset for which they would have an amount of depreciation loss in the absence of section DF 1

14. Subsections (1) and (1B) of s DF 1 state:

Section DF 1 Government grants to businesses

When this section applies

- (1) This section applies when—
- (a) a local authority, public authority, or a public purpose Crown-controlled company makes a payment to a person for a business that the person carries on; and
 - (b) the payment—
 - (i) is in the nature of a grant or subsidy to the person; or
 - (ii) is a grant-related suspensory loan to the person; and
 - (c) the payment is not in the nature of an advance or loan other than a grant-related suspensory loan; and

- (cb) the payment is not an amount of a loan under the small business cashflow scheme under section 7AA of the Tax Administration Act 1994; and
- (cc) the payment is not an amount of a loan made under the research and development loan scheme; and
- (d) the person does not make an election that section CX 47(4) (Government grants to businesses) apply to the payment.

...

When subsection (2) applies

- (1B) Subsection (2) applies when, in the absence of this section, the person would be allowed a deduction for expenditure by the person to which the payment by the local authority, public authority or public purpose Crown-controlled company corresponds.

15. Both ss CX 47 and DF 1 apply where the:
 - payment is from a local authority, public authority or PPCCC;
 - payment is to a person for a business that the person carries on;
 - payment is in the nature of a grant or subsidy or is a grant-related suspensory loan; and
 - corresponding expense is one for which the business would be allowed a deduction if s DF 1 did not apply.
16. These four requirements are discussed in more detail in the following paragraphs.
17. Subsections (3) and (4) of s CX 47 set out payments not subject to the grant provisions:

Exclusions

- (3) This section does not apply to a grant made under the Agriculture Recovery Programme for the Lower North Island and Eastern Bay of Plenty, to the extent to which the grant relates to expenditure—
 - (a) incurred by the recipient before the grant; and
 - (b) for which the recipient would be allowed a deduction in the absence of section DF 1.

Further exclusion

- (4) A person may choose that this section not apply to a payment under a grant to the extent to which—

- (a) the grant is made to the person for the person's business as a research and development growth grant; and
- (b) the payment is withheld until the conditions of the grant are satisfied; and
- (c) in the absence of section DF 1, the person would be allowed for an income year before the income year of the payment,—
 - (i) a deduction for expenditure to which the payment corresponds;
 - (ii) depreciation loss resulting from expenditure to which the payment corresponds.

Another exclusion

- (5) This section does not apply to an RDTI transition support payment

18. Section DF 1 also contains exclusions:

When this section applies

- (1) This section applies when—
 - ...
 - (cb) the payment is not an amount of a loan under the small business cashflow scheme under section 7AA of the Tax Administration Act 1994; and
 - (cc) the payment is not an amount of a loan made under the research and development loan scheme; and
 - (d) the person does not make an election that section CX 47(4) (Government grants to businesses) apply to the payment.

When this section does not apply

- (1BA) This section does not apply to the extent to which a payment described in subsection (1) is—
 - (a) the payment of an R&D loss tax credit and the person's expenditure is attributable to that payment;
 - (b) an RDTI transition support payment and the person's expenditure is attributable to that payment.

19. Some of the payments specified in the grant provisions are no longer available to businesses. For present purposes, the current payments specifically excluded from the grant provisions are:

- loans under the Small Business Cashflow Scheme;
- loans under the R&D Loan Scheme;

- an R&D tax loss credit granted under subpart MX (see further "[New legislation – Taxation \(Annual Rates for 2015–16, Research and Development, and Remedial Matters\) Act 2016](#)", *Tax Information Bulletin* Vol 28, No 3 (September 2016)); and
- an R&D tax incentive transition support payment (see further "[Amending the exclusion of expenditure related to a government grant](#)", *Tax Information Bulletin* Vol 33, No 6 (July 2021): 79)²

20. These payments are covered by other legislative provisions.

Payment is from a local authority, public authority or PPCCC

21. The first requirement of the grant provisions (which are set out at [15]) is that the payment is from a local authority, public authority or PPCCC.
22. "Local authority" means a local authority as defined in s 5 of the Local Government Act 2002 and includes a regional council and territorial authority, which are also defined in that section. Section YA 1 also specifies entities that are local authorities.
23. A "public authority" means every department or instrument of the Executive Government of New Zealand and includes bodies set out in the definition in s YA 1.
24. A "PPCCC" means:
 - a company listed in schedule 35 (public purpose Crown-controlled companies); or
 - a company (the wholly-owned subsidiary) that has 100% of its shares owned directly or indirectly by a company listed in schedule 35 if the wholly-owned subsidiary's primary purpose is the carrying out of a public policy objective of the Government of New Zealand (s YA 1).
25. Payments from a local authority, public authority or PPCCC may sometimes be made through local organisations. For example, when grants are paid to businesses in specific regions following a localised event. In such cases, grant recipients should check who provided the funds to make the payment.
26. Example | Taura 1 illustrates when a payment is not from the government.

² R&D Growth Grants were also excluded from the grant provisions where the business elected, under s CX 47(4), to treat such payments as taxable income (see further "[Consequential R&D amendments](#)", *Tax Information Bulletin* Vol 23, No 1 (February 2011): 84). The R&D Growth Grants Scheme ended on 31 March 2021 and was replaced by the R&D tax incentive transition support payment.

Example | Taurira 1: Payment not from government

Following the temporary closure of the only road into a small rural town, a local Business Support Group, made up of local business owners, sets up a fund for affected businesses to assist with offsetting expenses while the road is closed. The local council contributes to the fund as do businesses outside the area and the general public.

Any payment from the fund will be from the Business Support Group, not the government, therefore the grant provisions will not apply to any payments.

Payment is made for a business that a person carries on

27. The second requirement of the grant provisions is that a local authority, public authority or PPCCC makes a payment to a person for a business that a person carries on.

Payment is made to a business

28. For tax purposes, an amount has been paid to a business when it has been distributed to it, credited to an account for it or dealt with in its interest or on its behalf (s YA 1, definition of "pay").
29. The payment must be made to a business. It is a question of fact whether a person is carrying on a business. A "business" is defined broadly in s YA 1 as including "any profession, trade, or undertaking carried on for profit".
30. The leading case on what constitutes a business is *Grieve v CIR* (1984) 6 NZTC 61,682 (CA). *Grieve* concerned a farming activity that, ultimately, did not generate any profits. The issue was whether the taxpayers were carrying on a farming business so they could claim deductions for losses incurred. The Court of Appeal held that whether a taxpayer is in business involves a two-fold inquiry as to the:
 - nature of the activities carried on; and
 - intention of the taxpayer in engaging in those activities.
31. In the leading judgment, Richardson J identified six factors relevant to determining whether a taxpayer is carrying on a business:
 - the nature of the activity;
 - the period over which the activity is engaged in;
 - the scale of operations and volume of transactions;

- the commitment of time, money and effort;
 - the pattern of activity; and
 - financial results.
32. Richardson J also stated that it might be helpful to consider whether the operations involved are characteristic of that kind of business. However, ultimately, it is the character and circumstances of the particular venture that are crucial. Richardson J stated at [61,691]:

It may be helpful to consider whether the operations involved are of the same kind and are carried on in the same way as those which are characteristic of ordinary trade in the line of business in which the venture was conducted. However, in the end it is the character and circumstances of the particular venture which are crucial. Businesses do not cease to be businesses because they are carried on idiosyncratically or inefficiently or unprofitably, or because the taxpayer derives personal satisfaction from the venture.

33. Therefore, whether a business exists is a question of fact in each case. However, a business must be in existence and the payment must be provided to the business itself for the grant provisions to apply. Example | Taura 2 illustrates when a payment is not made for use in a business.

Example | Taura 2: Payment not received by business

Zee owns a painting and decorating business and is known in the community for their artistic flair. Zee offers to donate their time to paint a mural at the local school. They apply for a grant for the art supplies from their local authority. The local authority makes the payment to Zee's business bank account.

Although the payment has been made to Zee's business account, it has not been paid to their business and is not for use in the business. Zee has received the grant in their capacity as a volunteer for use in a community project.

The payment is therefore not subject to the grant provisions.

Business must be carried on

34. A person starting up a business may not be in business when they receive a grant. The decision whether a business is being carried on is always one of fact and degree. Its resolution depends on the nature of the activities carried on and the taxpayer's intention in engaging in those activities (as set down in *Grieve*). A determination of the point at which a taxpayer makes a firm commitment to go into a business is critical for establishing the earliest time at which that business may have commenced.

Commitment alone, however, is insufficient. The profit-making structure must also have been established and current operations must have begun to conclude that the business has commenced. For more information on when a business commences, see [IS 17/01: Income tax – deductibility of feasibility expenditure](#) (Interpretation Statement, Inland Revenue, Wellington, 2017).

Payment is in the nature of a grant or subsidy or a grant-related suspensory loan

35. The third requirement of the grant provisions is that the payment is in the nature of a grant or subsidy or a grant-related suspensory loan. The grant provisions do not define what a payment in the nature of a grant or subsidy is but there is relevant case law.

Grant or subsidy is a payment made without obligation

36. Case law has established that a payment in the nature of a grant or subsidy has one or more of the following characteristics:
- it is paid gratuitously (without obligation) out of public funds by the Crown or another public body;
 - it is paid to further objectives in the public interest;
 - it is often made to public, charitable or private bodies to confer benefits on third parties; and
 - it is made to promote or encourage an industry or enterprise.
37. In deciding whether a payment is in the nature of a grant or subsidy, it is the character or quality of what is paid and of the consideration given that are crucial, not its receipt in the hands of the payee.³
38. For further information on the nature of a grant or subsidy, see:
- Interpretation Statement "[Treaty of Waitangi settlements: GST treatment](#)", *Tax Information Bulletin* Vol 14, No 9 (September 2002): 50; and

³ See *Placer Development Ltd v Commonwealth of Australia* (1969) 121 CLR 353 (HCA), *First Provincial Building Society v FC of T* (1995) 95 ATC 4,145, *GTE Sylvania v R* [1974] CTC 751, *Reckitt & Coleman v FCT* 74 ATC 4,185, *Director General of Social Welfare v S & D De Morgan* (1996) 17 NZTC 12,636 and *Kena Kena Properties Ltd v A-G* (2002) 20 NZTC 17,433.

- Question We've Been Asked [GST Treatment of Funding Provided to Treaty of Waitangi Claimants by the Crown through the Office of Treaty Settlements](#) (Inland Revenue, Wellington, 2006).

Grant-related suspensory loan is a grant in some cases

39. Government payments to businesses do not include payments in the nature of an advance or a loan. An "advance" is when money is handed over to someone before it is due.⁴ A "loan" is an amount of money or a credit that a person lends or gives, whether or not that lending or giving is secured or evidenced in writing.⁵
40. However, the grant provisions do apply to a "grant-related suspensory loan" which is defined in s YA 1:

grant-related suspensory loan means a loan—

- (a) that—
 - (i) is made by a public authority; and
 - (ii) is not a loan of the kind described in section CF 2(1) (Remission of specified suspensory loans); and
 - (iii) includes the term that the liability of the borrower may be wholly or partly remitted; or
- (b) that is made by the Rural Banking and Finance Corporation of New Zealand as an irrigation suspensory loan and designated as such; or
- (c) that is made by the Rural Banking and Finance Corporation of New Zealand as a West Coast drainage suspensory loan and designated as such

41. Therefore, under s YA 1, a loan is a grant-related suspensory loan if it is made by a public authority (and is not designated as a specified suspensory loan by a public authority) and it:
- includes the term that the liability of the borrower may be wholly or partly remitted; or
 - was granted by the Rural Banking and Finance Corporation of New Zealand (now ANZ Bank) as a West Coast drainage or irrigation suspensory loan.

⁴ As defined in the *Concise Oxford English Dictionary* (12th ed rev, Oxford University Press, New York, 2011).

⁵ As defined in s YA 1.

Payment corresponds to deductible expenditure or depreciable property

42. The fourth requirement of the grant provisions is that the payment corresponds to deductible expenditure or depreciable property.
43. Subsection CX 47(1)(d) states:

When this section applies

- (1) This section applies when—
- ...
- (d) the payment corresponds to—
- (i) expenditure that they incur and for which they would be allowed a deduction in the absence of section DF 1 (Government grants to businesses);
 - (ii) expenditure that they incur in acquiring, constructing, installing, or extending an asset for which they would have an amount of depreciation loss in the absence of section DF 1.

44. Subsections (1B) and (3) of s DF 1 state:

When subsection (2) applies

- (1B) Subsection (2) applies when, in the absence of this section, the person would be allowed a deduction for expenditure by the person to which the payment by the local authority, public authority or public purpose Crown-controlled company corresponds.

...

When subsection (4) applies

- (3) Subsection (4) applies when—
- (a) expenditure by the person in the acquisition, construction, installation, or extension of an item of depreciable property is expenditure to which the payment by the local or public authority corresponds; and
 - (b) in the absence of this section, the person would be allowed a deduction for an amount of depreciation loss for the item of depreciable property.

45. These sections require that the:
- payment and the expense correspond to each other, and
 - payment is for expenditure for which a business would be allowed a deduction.

Payment and expense correspond

46. The word “corresponds” is not defined in the Act. The *Concise Oxford English Dictionary* (12th ed rev, Oxford University Press, New York, 2011) defines “correspond” as having a close similarity, matching, agreeing almost exactly, or being analogous or equivalent.
47. In *Chevron Australia Holdings Pty Ltd v Commissioner of Taxation (No 4)* [2015] FCA 1,092, the ordinary meaning of the word correspond was considered in the context of whether parts of two international tax treaties corresponded to each other. The Federal Court (at [562]) referred to the ordinary meaning of corresponds as “be similar or analogous, to be equivalent in function”.
48. The ordinary meaning of the word corresponds must be considered in the context of the grant provisions and the purpose of those provisions (s 10 of the Legislation Act 2019). The word corresponds is used in both ss CX 47 and DF 1.
49. The ordinary meaning of the word corresponds indicates a similarity, matching or equivalence between two things. In the context of the grant provisions, this means there needs to be a similarity, matching or equivalence between a payment and a deductible expense. This is referred to as the necessary relationship (or nexus) between the payment and the expense. Uncertainty has existed about the scope of the relationship between the payment and the expense.
50. On one hand, it could be argued that the nexus between a payment and an expense is a narrow one. That is, for a payment to correspond to an expense, the payment must match a particular expense. This approach requires that the person providing the payment must specify what the payment is provided for, for example a payment for the purchase of a specific item of plant. Adopting a narrow nexus gives rise to issues about whether the provisions can be satisfied for payments that may be of a more general nature, for example a payment for general operational expenditure. Adopting a narrow nexus limits the scope of the grant provisions to only payments that are provided for specific expenses.
51. On the other hand, it could be argued that the nexus is a wide one. That is, for a payment to correspond to an expense, the payment must match only a more general (non-specified) expense, provided such general expenditure is ordinarily deductible. Under this view, a payment for general operational expenditure corresponds to any operational expense (which is ordinarily deductible) such as paying staff wages and vehicle maintenance costs.
52. The Commissioner considers that the grant provisions do not constrain the ordinary meaning of the word corresponds to a narrow nexus. There is no legislative

requirement that a payment must be for a specific expense. The ordinary meaning of corresponds is wide enough to enable the wider view to be taken.

53. This means that where a payment is made for a business's general operating expenditure, that payment will be similar, analogous to or equivalent to any type of general operating expenditure that the business uses it for (as long as the expense is deductible). The same principle applies where a payment is made to fund unspecified capital expenses – as long as the item the payment funds is depreciable property and within the terms of the payment, the payment and the expense will correspond.
54. On balance, the Commissioner considers that the meaning of the word corresponds and the absence of anything in the provisions requiring a narrow interpretation to be taken, supports the view that the nexus between the payment and the expense in the grant provisions is a wide one. A wide nexus is available under the ordinary meaning of the word corresponds (as being something similar to or analogous). A wide nexus results in consistent tax treatment across a wider variety of government grants. When viewed in light of the intended purpose of the grant provisions, a wider nexus is consistent with the purpose of making government grants tax neutral.
55. Therefore, the Commissioner considers that a payment will correspond to deductible expenditure where the payment is either for a specific deductible expense (for example to help fund the purchase of a specific item of plant) or more general deductible expenditure (for example to help fund general operating expenses).

Payment is for expenditure for which a business would be allowed a deduction

56. The provisions require that either the expenditure is deductible or is on an item of depreciable property (for which a depreciation loss can be deducted). For a business to be allowed a deduction for an expense, the expense must first be incurred.
57. The requirement to incur an expense in order to claim a deduction is set out in the general permission in s DA 1. Under the general permission, a business can claim a deduction to the extent to which it is incurred by the business carrying on its business for the purpose of deriving its assessable and/or excluded income. Such expenditure is deductible under s DA 1, provided that none of the general limitations in s DA 2 applies.
58. Some business expenses, however, are not deductible as they are not incurred for the purpose of deriving income, for example payments to satisfy tax obligations or the payment of dividends to shareholders. Therefore, these types of payments do not fall within the grant provisions.

59. The capital limitation prevents expenditure of a capital nature being deductible under the general permission. However, s DA 4 permits a deduction for a depreciation loss for capital expenditure on depreciable property.
60. Other limitations in s DA 2, such as the private limitation, also prevent a deduction for an expense being claimed. These types of payments also do not fall within the provisions (although it seems unlikely that grant or subsidy payments would be given to a business for private expenses).
61. Subsection DF 1(7) states that s DF 1 overrides the general permission. This means s DF 1, not s DA 1, determines whether a deduction is allowed when the grant provisions apply.

Deductible expense can be incurred at any time

62. In terms of when the grant provisions require a deductible expense to be incurred, the relevant provision is subs CX 47(1)(d):

- (d) the payment corresponds to—
 - (i) expenditure that they incur and for which they would be allowed a deduction in the absence of section DF 1 (Government grants to businesses):
 - (ii) expenditure that they incur in acquiring, constructing, installing, or extending an asset for which they would have an amount of depreciation loss in the absence of section DF 1.

63. Subsection CX 47(1)(d) uses words that are present tense – “that they incur” rather than the past tense, which was previously used – “incurred”. The section also refers to deductions in the future tense – “for which they would be allowed a deduction”.
64. Case law indicates that little weight should be given to tenses used in legislation.⁶ However, it can be argued that the change to the present and future tense in subs CX 47(1)(d) supports the view that there is no timing requirement for the incurrance of the expense in relation to the derivation of the payment. That is, the payment will correspond to an expense that a business incurs or will incur, whenever that time is. This change in tenses could relate to the fact that when the provisions were enacted, grants were paid under a reimbursement model. However, this is no longer the case and grants may be paid before or after an expense has been incurred.

⁶ *Public Trustee v McKay (Minister of Health)* [1969] NZLR 995 (CA) and *R v Lewis* [1975] 2 NZLR 490.

65. While the tenses used in the grant provisions may not be persuasive in determining the correct interpretation of the provision, the tense changes (from “incurred” to “incur”) are, in the Commissioner’s view, relevant and could indicate the approach to be taken to determine when an expense needs to be incurred for the provisions to apply. The Commissioner also notes that, in recent years, there has been a move towards the use of the present tense in legislation for plain language reasons.
66. On balance, the Commissioner considers that the wording of s CX 47 does not restrict the incurrance of an expense to any particular time. The use of the present and future tense in the current provisions indicate the grant provisions do not require an expense to have already been incurred before a grant payment is made. That is, the wording of the section is broad enough to allow expenses to be incurred either before or after a payment has been made. This is consistent with the fact grants can be paid out before the relevant expense has been incurred. Adopting this interpretation results in consistent tax treatment across a wider variety of government grants.
67. In the Commissioner’s view, while s DF 1 overrides the general permission, but not s CX 47, the two sections are intended to apply to the same payments (as set out at [15] and [19]). This means that if s CX 47 applies to payments for expenses that are yet to be incurred, s DF 1 applies to deny deductions in relation to the same payments when that expenditure is eventually incurred.
68. The Commissioner, therefore, considers that the grant provisions can apply to payments that reimburse expenditure as well as payments for future expenditure. As long as the payment is for deductible or depreciable expenditure that the business has incurred or will incur at some point, the grant provisions will apply. Payments that are not for deductible expenditure or depreciable property are discussed at [72]–[75].
69. Accordingly, a grant will correspond to an expense when it is intended to fund deductible expenditure or depreciable property generally or specifically and the recipient business has incurred or will incur that expenditure at some point in time.
70. The terms or conditions of a grant or the parameters of the fund that provided the grant will generally indicate whether a grant was provided for deductible expenditure.
71. This means the grant terms do not have to specify an exact expense that the grant is provided for. Example | Tauria 3 illustrates how this approach applies to a payment for a specific expense, and Example | Tauria 4 illustrates how it applies to a payment for general expenditure.

Example | Tauria 3: Payment corresponds to a specific expense

In April 2021, the Kanapu local authority introduces a fund to help retain part-time hospital staff. Initiatives that help to retain such staff are eligible for a payment.

The Kanapu Centre provides childcare for staff who work at Kanapu Hospital. The centre wishes to extend its opening hours to provide childcare to staff working until 10pm.

In July 2021, the centre applies to the local authority fund for a \$50,000 grant, stating it wants the money to help employ additional childcare staff. Better childcare services would help retain hospital staff.

In August 2021, the centre receives a payment from the fund and, in September 2021, successfully employs additional childcare staff.

Because the centre intends to use the payment to employ staff and the local authority provided the grant for that purpose, the payment and the expense correspond to each other. Therefore, assuming the whole payment is spent, the \$50,000 payment is not taxable and \$50,000 of the costs associated with employing additional staff is not deductible. Therefore, the total amount of staff wage costs, which would ordinarily be deductible, must be reduced by \$50,000.

Example | Tauria 4: Payment corresponds to general expenditure

Trainmewell is a vocational training organisation providing training courses nationally. As a result of increasing demand, Trainmewell decides to build a purpose-built facility in Kettering to offer residential training courses.

In November 2021, when the new facility is opened, Kettering Regional Council gives Trainmewell \$40,000 towards facility operating expenditure.

Trainmewell incurs operating expenditure of \$300,000 during the year, including expenditure on employees, teaching materials, travel, electricity and insurance.

The payment is subject to the grant provisions because it was provided for general operating expenditure even though the council did not specify exactly what the payment was to be used for.

Trainmewell needs to retain records to demonstrate that operating expenditure of \$40,000 has not been deducted in its tax return.

Income subsidies are taxable

72. A public authority, local authority or PPCCC may provide payments to businesses that are not for deductible expenditure or depreciable property, for example a subsidy paid to replace lost income or to supplement income.
73. Such payments do not correspond to a deductible expense, so do not satisfy the fourth requirement of the grant provisions. In these situations, the payment falls under ordinary tax principles. An income subsidy is usually taxable income to a business recipient.
74. Example | Taura 5 illustrates a grant payment that does not correspond to deductible expenditure.

Example | Taura 5: Payment does not correspond to a deductible expense

In October 2021, a bush fire breaks out in South Canterbury. It spreads across several farms, damaging crops and assets. In November 2021, the Government announces a subsidy for affected businesses to top up their income to make up for some of the income lost from being unable to harvest and sell their produce.

Hau's farm receives a subsidy of \$15,000, and Hau later decides to put that money towards a new robot harvester (depreciable property) to replace the harvester destroyed by the fire.

Because the subsidy is provided to top up Hau's income and not for a deductible expense or depreciable property, the subsidy is not subject to the grant provisions. Therefore, the subsidy is taxable, being of an income nature under ordinary principles, and any depreciation loss for the harvester is determined under the ordinary deductibility rules.

Non-deductible expenditure is not subject to the grant provisions

75. A public authority, local authority or PPCCC may also make a payment to a business to subsidise business expenditure that is not ordinarily deductible or depreciable (sometimes known as "black-hole expenditure"). In that case, the payment does not correspond to deductible expenditure or depreciable property, so the grant provisions do not apply. Ordinary principles apply to the payment.

Unconditional payment is generally not taxable when it is derived

76. Section CX 47(2) states that, subject to certain exceptions, when a payment in the nature of a grant or subsidy is paid by a public authority to a business for deductible expenditure:

Excluded income

- (2) The payment is excluded income of the person.

77. Subsection CX 47(2) does not state when the payment is to be treated as non-taxable, which could cause confusion as to how to treat the payment when it is received and spent in different income years. For example, it could be argued that the use of the word "payment" in s CX 47(2) means a grant becomes non-taxable when the payment is received. However, it could also be argued that, because the payment must correspond to an expense, the payment is taxable until it is spent (and then adjustments to past periods need to be made to treat past payments as non-taxable).
78. The Commissioner considers the payment becomes non-taxable when it is derived (and is not taxable regardless of whether it has been spent in the year of derivation). Under s BD 3, an amount is income at the time it is derived, unless a provision in any of parts C or E to I provides for allocation on another basis. Section CX 47(2) does not alter the time of derivation under ordinary principles or otherwise state that a payment is to be allocated on another basis. No other provisions in parts C or E to I apply to alter the time of derivation.

Payment is usually income when it is derived

79. The time of derivation of a grant payment is determined by case law in accordance with s BD 3(3). General principles from the case law on derivation are as follows:
- In relation to the derivation of income generally, the appropriate method for recognising income is the method that gives "a substantially correct reflex of the taxpayer's true income": *CT (SA) v Executor Trustee and Agency Company of South Australia Ltd* (1938) 63 CLR 108 at 154.
 - In *Arthur Murray (NSW) Pty Ltd v FCT* (1965) 14 CLR 314, the High Court of Australia held that amounts paid for services in advance of the services being supplied did not constitute income derived until they were earned by the provision of the services for which the payment was made.

- In *Case N30* (1991) 13 NZTC 3,266 the Taxation Review Authority held that prepayments would be recognised as income at the time it became apparent that the recipient was no longer required to provide the services for which payment was made.
 - In *CIR v Molloy* (1990) 12 NZTC 7,146, the High Court held that commissions advanced to an insurance agent did not have the quality of income earned and derived by the agent at the time they were received. This was because the commissions were not earned unless the insurance policy remained in force for two years.
80. Two general principles can be drawn from the above case law on the derivation of income:
- A payment is not derived by a taxpayer until it is earned by the taxpayer providing the quid pro quo (for example, the services) for which it is paid.
 - The contingency that all or some part of the receipt might have to be repaid if the quid pro quo is not provided is relevant for determining whether the receipt has been derived.
81. For more information on when income is derived, see *Interpretation Statement IS 16/06: Income tax – timing – when is income from professional services derived?* (Interpretation Statement, Inland Revenue, Wellington, 2016).

Conditional payments may delay derivation

82. The principles in [76]–[80] are relevant to establishing the point at which a business derives income. These principles apply to all types of income, including payments that are subject to the grant provisions. If a payment has conditions attached, derivation occurs when the terms are satisfied such that the business can unconditionally keep the payment.
83. Some terms attached to a payment will not affect the time of derivation. For example, a business may be required to submit a report to a public authority to detail how it spent a payment from that authority. Unless failure to meet this condition means the payment, or part of it, has to be repaid, this term is likely to be more of an obligation than a condition of the payment. It is only where a payment, or part of it, has to be repaid if conditions are not met, that the time of derivation will be delayed. Generally, any funds that are required to be repaid because a condition of a payment has not been fulfilled are not derived by the business.
84. Example | Tauira 6 illustrates when a conditional grant is derived under ordinary principles.

Example | Taura 6: Derivation of a conditional payment

In January 2022, the Government announced an apprenticeship scheme to encourage refugees to train as electricians and plumbers. The scheme will make a \$5,000 payment to each business that employs a refugee as an apprentice and retains the apprentice for at least six months. The payment is made to participating businesses in increments every fortnight. At the end of the six-month period, if a business has retained the apprentice, it keeps the payment and derives the income at this point. If a business has not retained its apprentice, it cannot keep any of the payment and must repay it. In that case, the business will not have derived any part of the payment.

Deductions are denied when the expense is incurred

85. As noted at [62], s CX 47 applies to payments that correspond to expenditure that a business incurs. Once the corresponding expense is incurred by the business, s DF 1 then denies a deduction for that expense. The Commissioner expects a business will incur the relevant expenditure within a reasonable timeframe (which may, in some cases, also be part of the terms of the grant or subsidy).
86. Where an expense is incurred and the business has already claimed a deduction and a payment is subsequently provided to reimburse that cost, a business needs to amend earlier assessments to reverse out those previously claimed deductions. This requires the business to request an amendment to its earlier assessments under s 113 of the Tax Administration Act 1994.⁷

Amount of deduction denied is the amount of the payment

87. Subsections (2) and (4) of s DF 1 state that when the four requirements set out in [15] are met:

No deduction (with exception)

- (2) The person is denied, to the extent of the amount of the payment, the deduction that they would have been allowed in the absence of this section.
- (3) ...

⁷ The Commissioner would consider such requests under [SPS 20/03](#), *Standard Practice Statement: Requests to amend assessments* (Inland Revenue, Wellington, 2020).

Amount of depreciation loss

- (4) For the purpose of quantifying the amount of depreciation loss, the amount of the expenditure is reduced by the amount of the payment.

88. Section DF 1(2) denies the deduction “to the extent of the amount of the payment”.
89. Section DF 1(4) reduces the amount of expenditure on an item of depreciable property (that is, the cost of acquiring, constructing, installing or extending the property) “by the amount of the payment”. Any depreciation loss is then calculated on the reduced cost of the depreciable property.⁸
90. As with s CX 47, s DF 1 applies when a local authority, public authority or PPCCC makes a payment in the nature of a grant or subsidy to a person for a business that the person carries on. Therefore, the two provisions apply to the same type of payments. Although s DF 1 does not specifically refer to the payment being subject to s CX 47, the payment referred to is the grant or subsidy, so is the same “payment” that has been treated as non-taxable under s CX 47. This could be seen as a presumption that the whole payment is to be spent on relevant business expenditure. The wording of subs (2) and (4) shows an intention that it is the amount that has been treated as non-taxable under s CX 47 that is denied as a deduction.

Payment and expense must correspond to each other

91. The grant provisions also require that a payment and an expense correspond to each other. The meaning of the word “corresponds” in s CX 47 was discussed at [46]–[55]. As well as connecting the non-deductible expense to the non-taxable grant for the purposes of s CX 47, the word corresponds in s DF 1 is also used to specify the amount of the deduction that is denied. Nothing in s DF 1 indicates that the word corresponds should be given a different meaning.
92. Accordingly, because corresponds has the same meaning as in s CX 47, the word indicates a wide nexus can exist between the expenditure and the payment. This means the word corresponds in s DF 1 can apply to link any deductible or depreciable business expenditure to a payment. Therefore, the wording of s DF 1 is broad enough to link the payment to any deductible expenditure the payment is ultimately spent on, not necessarily just a specific expense the payment was provided for.

⁸ Where the depreciation regime refers to the cost of an item of depreciable property, the cost of the item will be reduced by the amount of the grant applied to it. For example, if an item of grant-funded depreciable property is later disposed of, the reduced cost base may affect whether any depreciation recovery income arises on disposal.

93. Once expenditure corresponds to the payment, subss (2) and (4) of s DF 1 then apply to deny a deduction or to reduce the cost of the item of depreciable property. Together, subss (2) and (4) indicate that the amount of the deduction to be denied, or the reduction of the cost base of the asset, is an amount equivalent to the whole payment.
94. As only the amount of the payment is denied under s DF 1, additional expenses are still deductible. For example, where a payment covers \$9,000 of a \$10,000 expense, the \$9,000 is not deductible but the additional \$1,000 is (as long as the expense is usually deductible). Example | Taura 7 illustrates this point for deductible expenditure. Example | Taura 8 illustrates the cost of depreciable property that is partly funded by a payment.

Example | Taura 7: Deduction denied corresponds to the non-taxable payment

A business receives a grant of \$30,000 to fund the wages of an apprentice. The business pays the apprentice \$39,000 and reduces the deduction it takes for its wage bill for the year by \$30,000. It treats the \$30,000 grant as not taxable. The remaining amount of \$9,000 is still deductible.

Provisions apply to surplus funds

95. As discussed at [87]–[94], under s DF 1, the amount of the deduction to be denied is equal to the amount of the payment received. Where an expense is greater than the amount of a payment received, a deduction is still allowed for any additional amount spent that exceeds the amount of the payment.
96. An issue that arises is how the provisions apply where there are surplus funds. That is, where a payment received exceeds the cost of the relevant expenses, and where the grantor does not require repayment of any surplus amount.
97. Where a non-specific grant payment is provided to a business (for example, a payment for general business expenses), the terms of the grant would cover any general expenses incurred by the business. Therefore, any business expense that is deductible will correspond to the payment (to the extent of the payment) and no surplus funds would arise. The issue regarding surplus funds arises only where the payment is provided for a specific expense.
98. As noted at [90], the wording of s DF 1 operates on the basis that the whole payment is disallowed as a deduction.

99. In the Commissioner's view, this means an amount equivalent to the whole payment received is denied as a deduction. In the case of a payment for a specific expense, where the expense is less than expected, there will be surplus funds from the payment. The Commissioner considers it likely that a business will spend those surplus funds on other expenses within its business, which are likely to be deductible to the business. In that case, where the surplus funds are applied to other deductible expenses or depreciable property, the Commissioner considers these expenses will still correspond to the payment, so are denied a deduction to the extent of the payment.
100. This approach is consistent with the wording used in s DF 1 that denies deductions to the extent of the amount of the payment. This approach is also consistent with the policy intent of tax neutrality. Example | Taura 8 and Example | Taura 9 illustrate this point.

Example | Taura 8: Use of surplus funds within business

In mid-March 2022, the Kanapu Centre (from Example | Taura 3) realises it has \$3,000 left from the \$50,000 grant payment it received from the Kanapu local authority for employing staff. The local authority does not require those funds to be repaid. As all the staff costs for the year have been met, and the centre needs to add additional play equipment to the playground, the centre uses the leftover funds on additional play equipment.

Although the local authority provided \$50,000 specifically for staffing, only \$47,000 was needed to meet staff costs. As the centre has used the surplus \$3,000 on capital items for which a depreciation loss is deductible, the grant provisions apply to both the \$47,000 of staff costs and the \$3,000 capital expenditure. Therefore, the whole \$50,000 is non-taxable income.

The Kanapu Centre should reduce its deductible wages expense for the year by \$47,000.

The item(s) of play equipment that the surplus \$3,000 was spent on should have their cost bases reduced by the same amount. For example:

Wooden Tower purchase price	\$7,900
Minus surplus grants funds	(\$3,000)
Cost of item	\$4,900

The Kanapu Centre can claim depreciation for the playground equipment using the cost base of \$4,900.

Example | Tauria 9: Use of surplus funds within business

The mission of Hogo-solo Limited is to produce sustainable and affordable transport options for sole passengers. The company does not qualify for any R&D incentives but receives a \$250,000 grant from the EcoTransport Fund (a public authority) towards its development of the Hogo, an electric-powered hoverboard with a seat. The Hogo is designed to transport only one passenger at a time and be used on- and off-road. The Hogo takes up less space than a car, requires no parking as it can be folded up and carried, and requires less energy than a car to produce and run.

The company finds it needs only \$180,000 from EcoTransport to finish the Hogo's development, as private investors have already funded most of the development. The EcoTransport payment is not conditional and not repayable if it is not spent on development costs. Hogo-solo Limited splits the surplus \$70,000 on other expenses - \$30,000 for new crash test dummies (which are depreciable) for its other transport options and \$40,000 to send its engineers to Europe to meet with their European counterparts to discuss new technology.

As the payment was provided to Hogo-solo Limited for use in its business on deductible or depreciable expenditure, it is non-taxable income to the company. Although it only spent \$180,000 on developing the Hogo, the company spent the remainder of the funds on other expenditure, for which, in the absence of s DF 1, a deduction would be available. Therefore, under s DF 1, an amount to the value of \$250,000 must be denied by Hogo-solo Limited in its business as follows:

- Hogo-solo prototype - reduce cost base, for depreciation purposes, by \$180,000
- Crash-test dummies – reduce cost base, for depreciation purposes, by \$30,000
- Overseas trip for engineers – reduce cost of trip by \$40,000 (reduce deductions for trip by \$40,000)

Business must keep records to show deductions are denied

101. A non-taxable grant does not need to be included in a business tax return, but businesses are required by s 15B of the Tax Administration Act 1994 to:

- keep all necessary information (including books and records) and maintain all necessary accounts or balances required under the tax laws; and

- disclose to the Commissioner in a timely and useful way all information (including books and records) that the tax laws require the taxpayer to disclose.
102. Accordingly, a business that receives a payment in the nature of a grant or subsidy from a public authority should keep appropriate records to demonstrate how the payment has been spent and that deductions to the amount of the payment have been denied. Businesses may also consider whether keeping the payment in a separate account may assist with record-keeping. Example | Taura 10 illustrates how a small business might keep records. For more general information on record-keeping, see [IR1008: Record keeping – checklist](#) (Inland Revenue, Wellington, 2019).

Example | Taura 10: Business must keep records

Naeem's Natty Nappies sells designer reusable nappies for the discerning baby. Naeem works from home in a small sleepout. An influencer promotes the Natty Nappies on their social media account, leading to a significant increase in business for Naeem.

Naeem applies for a grant of \$10,000 from the local authority towards the rental of a unit from which to increase production. Naeem has only one bank account for all income and expenses (whether business or personal), and the grant is paid into that account.

Naeem struggles to keep track of their business income and expenses using the one account and asks an accountant for advice. The accountant advises Naeem to:

- open a second bank account and use that for the business so Naeem can keep track of their business income and expenses more easily
- download a copy of their bank statement every month into a spreadsheet, and
- highlight the \$10,000 in the spreadsheet, noting the amount is a non-taxable grant and is to be used for rent.

Naeem follows this advice and now has a record of the grant payment and the corresponding expenses they cannot claim a deduction for.

Legislation | Whakature

103. Section CX 47 states:⁹

Section CX 47 Government grants to businesses

When this section applies

- (1) This section applies when—
 - (a) a local authority, public authority, or a public purpose Crown-controlled company makes a payment to a person for a business that the person carries on; and
 - (b) the payment—
 - (i) is in the nature of a grant or subsidy to the person; or
 - (ii) is a grant-related suspensory loan to the person; and
 - (c) the payment is not in the nature of an advance or loan other than a grant-related suspensory loan; and
 - (d) the payment corresponds to—
 - (i) expenditure that they incur and for which they would be allowed a deduction in the absence of section DF 1 (Government grants to businesses);
 - (ii) expenditure that they incur in acquiring, constructing, installing, or extending an asset for which they would have an amount of depreciation loss in the absence of section DF 1.

Excluded income

- (2) The payment is excluded income of the person.

Exclusions

- (3) This section does not apply to a grant made under the Agriculture Recovery Programme for the Lower North Island and Eastern Bay of Plenty, to the extent to which the grant relates to expenditure—
 - (a) incurred by the recipient before the grant; and
 - (b) for which the recipient would be allowed a deduction in the absence of section DF 1.

⁹ Sections CX 47 and DF 1 were amended by the Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act (No 2) 2022 to include reference to PPCCs with effect from 18 March 2019.

Further exclusion

- (4) A person may choose that this section not apply to a payment under a grant to the extent to which—
- (a) the grant is made to the person for the person's business as a research and development growth grant; and
 - (b) the payment is withheld until the conditions of the grant are satisfied; and
 - (c) in the absence of section DF 1, the person would be allowed for an income year before the income year of the payment,—
 - (i) a deduction for expenditure to which the payment corresponds;
 - (ii) depreciation loss resulting from expenditure to which the payment corresponds.

Another exclusion

- (5) This section does not apply to an RDTI transition support payment.

104. Section DF 1 states:**Section DF 1 Government grants to businesses***When this section applies*

- (1) This section applies when—
- (a) a local authority, a public authority, or a public purpose Crown-controlled company makes a payment to a person for a business that the person carries on; and
 - (b) the payment—
 - (i) is in the nature of a grant or subsidy to the person; or
 - (ii) is a grant-related suspensory loan to the person; and
 - (c) the payment is not in the nature of an advance or loan other than a grant-related suspensory loan; and
 - (cb) the payment is not an amount of a loan under the small business cashflow scheme under section 7AA of the Tax Administration Act 1994; and
 - (cc) the payment is not an amount of a loan made under the research and development loan scheme; and
 - (d) the person does not make an election that section CX 47(4) (Government grants to businesses) apply to the payment.

When this section does not apply

- (1BA) This section does not apply to the extent to which a payment described in subsection (1) is —
- (a) the payment of an R&D loss tax credit and the person's expenditure is attributable to that payment;
 - (b) an RDTI transition support payment and the person's expenditure is attributable to that payment.

When subsection (2) applies

- (1B) Subsection (2) applies when, in the absence of this section, the person would be allowed a deduction for expenditure by the person to which the payment by the local authority, public authority or a public purpose Crown-controlled company corresponds.

No deduction (with exception)

- (2) The person is denied, to the extent of the amount of the payment, the deduction that they would have been allowed in the absence of this section.

When subsection (4) applies

- (3) Subsection (4) applies when—
- (a) expenditure by the person in the acquisition, construction, installation, or extension of an item of depreciable property is expenditure to which the payment by the local authority, public authority or a public purpose Crown-controlled company corresponds; and
 - (b) in the absence of this section, the person would be allowed a deduction for an amount of depreciation loss for the item of depreciable property.

Amount of depreciation loss

- (4) For the purpose of quantifying the amount of depreciation loss, the amount of the expenditure is reduced by the amount of the payment.

Amendment of assessment

- (5) Despite the time bar, the Commissioner may amend an assessment at any time in order to give effect to this section.

Exclusion [Repealed]

- (6) {Repealed}

Link with subpart DA

- (7) This section overrides the general permission.

References | Tohutoro

Legislative references | Tohutoro whakatureture

Income Tax Act 2007, ss BD 3, CX 47, DA 1, DA 2, DA 4, DF 1, subpart MX, YA 1 (“business”, “grant-related suspensory loan”, “local authority”, “pay”, “public authority”, “public purpose Crown-controlled company”), schedule 35

Legislation Act 2019, s 10

Local Government Act 2002, s 5 (“local authority”, “regional council”, “territorial authority”)

Tax Administration Act 1994, ss 15B, 113

Taxation (Annual Rates for 2022–23, Platform Economy, and Remedial Matters) Act (No 2) 2022

Case references | Tohutoro kēhi

Arthur Murray (NSW) Pty Ltd v FCT (1965) 14 CLR 314 (HCA)

Case N30 (1991) 13 NZTC 3,266 (TRA)

Chevron Australia Holdings Pty Ltd v Commissioner of Taxation (No 4) [2015] FCA 1,092 (FCA)

CIR v Molloy (1990) 12 NZTC 7,146 (HC)

CT (SA) v Executor Trustee and Agency Company of South Australia Ltd (1938) 63 CLR 108 (HCA)

Director General of Social Welfare v S & D De Morgan (1996) 17 NZTC 12,636 (CA)

First Provincial Building Society v FC of T (1995) 95 ATC 4,145 (FCA)

Grieve v CIR (1984) 6 NZTC 61,682 (CA)

GTE Sylvania v R [1974] CTC 751 (FCA)

Kena Kena Properties Ltd v A-G (2002) 20 NZTC 17,433 (PC)

Placer Development Ltd v Commonwealth of Australia (1969) 121 CLR 353 (HCA)

Public Trustee v McKay (Minister of Health) [1969] NZLR 995 (CA)

R v Lewis [1975] 2 NZLR 490 (CA)

Reckitt & Coleman v FCT 74 ATC 4,185 (NSWSC)

Other references | Tohutoro anō

"Amending the exclusion of expenditure related to a government grant", *Tax Information Bulletin* Vol 33, No 6 (July 2021): 79.

www.taxtechnical.ird.govt.nz/tib/volume-33--2021/tib-vol-33-no6

Concise Oxford English Dictionary (12th ed rev, Oxford University Press, New York, 2011).

"Consequential R&D amendments", *Tax Information Bulletin* Vol 23, No 1 (Feb 2011): 84.

www.taxtechnical.ird.govt.nz/tib/volume-23--2011/tib-vol23-no1

GST Treatment of Funding Provided to Treaty of Waitangi Claimants by the Crown through the Office of Treaty Settlements (Question We've Been Asked, Inland Revenue, Wellington, 2006).

www.taxtechnical.ird.govt.nz/questions-we-ve-been-asked/2006/gst-treatment-of-funding-provided-to-treaty-of-waitangi-claimants-by-the-crown-through-the-office-of

IR1008: Record keeping – checklist (Inland Revenue, Wellington, 2019).

www.ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir1000---ir1099/ir1008/ir1008-2019.pdf?modified=20200513034138&modified=20200513034138
<https://www.ird.govt.nz/-/media/project/ir/home/documents/forms-and-guides/ir1000---ir1099/ir1008/ir1008-2019.pdf?modified=20200513034138&modified=20200513034138>

IS 16/06: Income tax – timing – when is income from professional services derived?

(Interpretation Statement, Inland Revenue, Wellington, 2016).

www.taxtechnical.ird.govt.nz/en/interpretation-statements/is-1606-income-tax-timing-when-is-income-from-professional-services-derived

IS 17/01: Income tax – deductibility of feasibility expenditure (Interpretation Statement, Inland Revenue, Wellington, 2017).

<https://www.taxtechnical.ird.govt.nz/interpretation-statements/is-1701-income-tax-deductibility-of-feasibility-expenditure>

"Treaty of Waitangi settlements: GST treatment", *Tax Information Bulletin* Vol 14, No 9 (September 2002): 50.

www.taxtechnical.ird.govt.nz/tib/volume-14---2002/tib-vol14-no9

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](#) (*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.