Inland Revenue
Te Tari Taake

INTERPRETATION STATEMENT | PUTANGA WHAKAMĀORI

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

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IS 26/13

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 (ITA) unless otherwise stated.

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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 regarding filing the tax returns for the deceased and their estate.

Recipients

2. Where an executor or administrator[1] 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 tax obligations.

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

7. Gratuitous payments to family members of the deceased employee that would not have been paid had the employee not provided services to the employer are 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. Employers may also need to make KiwiSaver contributions or student loan repayment deductions from payments made following the death of an employee.

10. 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.

11. A table summarising the tax treatment of payments by employers is provided as Appendix 1.

Executors

12. 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

13. 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.

14. 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.

15. 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.

16. The second part is intended to help employers decide whether any PAYE obligations arise and whether the amounts are deductible for income tax purposes.

17. 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.

18. Appendix 2 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.

19. 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

20. 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.

[2] QB 18/03: Income tax – insurance – term life insurance policy taken out by employer for the benefit of an employee, *Tax Information Bulletin* Vol 30, No 3, (April 2018): 26.

Payments received by an executor

21. 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]

22. 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.

23. 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 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.

24. 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.

25. 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,

[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.

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.

26. 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.

27. 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 [30].

28. 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 [83].

29. 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.

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

Employment income

30. 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.
>
> …

31. 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.

32. 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. The phrases "in connection with", "in relation to" and "in respect of" all have similar meanings. These expressions are usually given a very wide meaning by the courts but the degree of relationship required depends on the context in which the expression is used.

33. In most cases where an amount is payable under a term of the deceased employee's employment contract, such as accrued salary or wages or holiday pay, the payments clearly will be made "in connection with" employment. However, where an employer makes a payment that is discretionary or is not expressly provided for in the employment contract, or the employer voluntarily chooses to make a payment to an employee or someone else, then it can be more difficult to determine whether that payment is made "in connection with" employment.

34. The New Zealand courts have recognised that it is the relationship between the payment and the employment that will indicate whether the payment is employment income. For example, in *Louisson v Commissioner of Taxes* the Court of Appeal was

asked to decide if voluntary payments made by an employer to a past employee to make up the difference between the amount of the employee's previous salary and their military pay while serving in the armed forces during World War II were payments made in connection with employment.[5] The Court of Appeal was satisfied that while the amounts were payments made by an employer to an employee (ie, within and because of the employment relationship in the widest sense) the payments were not employment income because the payments themselves were gifts made on personal grounds and not payments for services. That is, there was not the necessary relationship between the payments and the employment for the payments to have been made in connection with employment. This decision is consistent with the later Australian High Court decision in *Dixon's* case involving similar facts.[6]

35. On the other hand, in *Shell New Zealand Limited v CIR*, the Court of Appeal held that payments intended to incentivise an employee to relocate by compensating them for housing costs incurred as a result of changing locations were employment income.[7] This was the case even though the payments were not specifically provided for in the employment contract but instead were contemplated as part of a staff manual. In this case the Court found that the relationship between the payments and the employment was so close it could only be characterised as being in respect of or in relation to employment.

36. Similar distinctions have been made by the Australian courts in the employment context such as in *Smith v FCT*.[8] *Smith* concerned the tax treatment of a payment made by an employer to an employee under an "encouragement to study" scheme. The study payment in *Smith* was held to be taxable as employment income as the relationship between the employee's employment and the payment was substantial. It was held that a benefit is "in respect of, or for or in relation to" employment where there is a connection between the benefit received and the employment. In *Smith* (unlike in *Louisson* or *Dixon's* case), when all the circumstances were considered there was no element of gift or personal bounty or of considerations extraneous to the employment relationship that might indicate the payment was not made in connection with employment.

37. In the Commissioner's view the decision in *Smith* is consistent with *Shell New Zealand* but goes further by acknowledging, as in *Louisson*, that there can sometimes be other reasons for payments being made, so that some payments to employees may **not** be made in connection with employment. Where an objective analysis of the relationship and the reason for the payment indicates employment is a substantial reason for the

[5] *Louisson v Commissioner of Taxes* (NZ) (No. 2) (1942) 7 ATD 236 (CA).

[6] *FCT v Dixon* (1952) 86 CLR 54 (HCA).

[7] *Shell New Zealand Limited v CIR* (1994) 16 NZTC 11,303 (CA).

[8] *Smith v FCT* (1987) 74 ALR 411 (HCA).

employer making the payment, there will be a sufficient relationship between the payment and the employment for the payment to be made in connection with the employee's employment. However, if it can be objectively established that considerations extraneous to the employment relationship are the substantial reason for the employer's payment the payment will not be employment income. While an employee may not have received the payment *but for* the fact of employment, that does not *necessarily* make it a payment in connection with employment. The fact that an employee is selected for payment because of their employment relationship, does not automatically characterise the payment as employment income. Also, the fact that an employer makes payments voluntarily does not of itself determine that the payment is not employment income.

38. The test is not whether the payment is made in return for services.[9] The test is also not whether "but for" the employment or service the payment would not have arisen.[10] In other words, the fact a recipient of a payment had to be an employee is not determinative by itself.

39. 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.[11]

Voluntary compassionate payment by employer

40. In line with the case law, the Commissioner also accepts that sometimes employers do make payments for reasons extraneous to the employment relationship. Where those reasons are substantial, then the payments are not made in connection with employment. The Commissioner recognises that when an employee dies and an employer makes a voluntary compassionate payment to the employee's family or another third party, then that could be a situation in which the payment is not made substantially in connection the employment relationship and so the payment is not employment income.

Reparation payment by employer

41. Another situation in which an employer's payment is less likely to be made in connection with the employee's employment or service is where a payment is made for a wrong done to a former employee and not as remuneration for employment services.

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

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

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

Courts have at times considered the employment relationship to be no more than part of the background facts or a "mere historical connection".[12]

42. 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.

43. 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]

Summary

44. In summary, based on the case law the Commissioner's view is that "in connection with employment" means the employment relationship must be the substantial reason for the employer's payment. On balance, the Commissioner considers this to be a relatively low threshold to meet and it may not always be easy to objectively establish that a payment made by an employer to an employee is not made in connection with employment. For example, in most cases, where the amount is payable under a term of the deceased employee's employment contract, the employment relationship will be the substantial reason for the payment. Similarly, even where a payment made under the employment contract is discretionary, the employment relationship may still be the substantial reason for it. In the Commissioner's view, the threshold may also be met where the employer's payment arises out of a documented policy of the employer (like in *Shell*), or even, on occasions, out of a well-established employment practice, as in *Smith*.[15]

45. However, the Commissioner also recognises, as in *Louisson* and *Rowe*, that sometimes employers do make payments substantially for reasons extraneous to the employment

[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).

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

[15] *Shell New Zealand Limited v CIR* (1994) 16 NZTC 11,303 (CA) and *Smith v FCT* (1987) 74 ALR 411.

relationship eg, voluntary compassionate payments to the family of a deceased employee, or payments made to compensate for a wrong done by an employer. And in those situations where the employer can objectively establish that the payment was not made in connection with employment it will not be employment income.

Examples

46. The following 3 examples illustrate these principles in the context of payments made by employers to the executor or family of a deceased employee.

47. Example | Tauira 1 illustrates payments made by an employer on death including a discretionary bereavement payment provided for in the employment contract.

Example | Tauira 1 – Accrued salary, holiday pay and discretionary payment

Jane dies at home halfway 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. Under Jane's employment contract Jane's employer has the discretion of paying an amount to her estate in recognition of her service, based on the number of years of 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 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.

48. Example | Tauira 2 illustrates a voluntary compassionate payment which is not employment income. Each payment needs to be considered on its own facts and the employer's purpose needs to be established objectively.

Example | Tauira 2 – Voluntary compassionate payment not employment income

Steve had worked for Pacific Fern Corporation for 10 years when he died. His employment contract included a provision stating that should he die while employed, the company, in its discretion, may make an ex-gratia compassionate payment to Steve's family.

Pacific Fern holds a small life insurance policy over its employees as a whole which provides it with cover in the event of any staff member dying. The policy is to protect Pacific Fern from costs and losses to the business when a staff member dies. Any proceeds from a claim under the policy are payable only to the company, and not to any individual staff member or their family.

At the time of Steve's death, Pacific Fern was aware that he was survived by his wife and three young children. The company made inquiries about the family's circumstances and decided to make a one-off ex gratia compassionate payment of $6,000 to the executor for the benefit of the family to help meet its immediate needs.

The fact the employment contract contemplates Pacific Fern making a discretionary ex-gratia payment on death suggests, in the first instance, that the payment is employment income. However, in this case, the employer can demonstrate that there were other reasons for it making the payment for Steve's family. Accordingly, the payment is not employment income. Further, the fact that Pacific Fern used some of the proceeds from its life policy to fund the compassionate payment is not a relevant consideration.

Pacific Fern's substantial reason for making the payment in this case is compassion for the family. Pacific Fern considered the personal circumstances and immediate needs of the family, and made the payment for that reason. The payment was not reward for Steve's employment or services to Pacific Fern. While the employment relationship was clearly a reason for the payment, in this case, the employer demonstrated it was not the substantial reason.

49. Example | Tauira 3 illustrates a payment made following a workplace accident. Each payment needs to be considered on its own facts and the employer's purpose needs to be established objectively.

Example | Tauira 3 – Payment 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 employer's payments in each case was not the employment relationship, and so the payments were not made in connection with employment and so are not employment income under s CE 1.

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

51. For further guidance on when payments by employers may or may not be employment income, see:

- IS 23/11: Income tax: Income – when gifts are assessable income,[16] and
- BR Pub 06/05: Assessability of payments under the Employment Relations Act for humiliation, loss of dignity, and injury to feelings.[17]

52. A payment which is not employment income may still be income to the recipient as pension income under s CF 1 (see below) or as income under ordinary concepts (see [66]).

Pension income

53. Section CF 1(g) 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 (as that term is defined in s CF 1(2)) that would have

[16] IS 23/11: Income tax: Income – when gifts are assessable income *Tax Information Bulletin* Vol 36, No 1 (January 2024): 34 at 41.

[17] BR Pub 06/05: Assessability of payments under the Employment Relations Act for humiliation, loss of dignity, and injury to feelings *Tax Information Bulletin* Vol18, No 7 (August 2006): 9 at 10.

been included in their income if they had been alive when it was received for the purposes of s HC 8.

54. 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—**
>
> (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.

55. 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.

56. Each element is explained in more detail immediately below.

57. "Gratuitous" is not defined in the Act, so bears its ordinary meaning. The *Oxford English Dictionary*[18] defines it as:

> Freely bestowed or obtained; granted without claim or merit; provided without payment or return; costing nothing to the recipient; free.

58. 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

[18] *Oxford English Dictionary* (online version, Oxford University Press, 2023, accessed 15 July 2026).

on pensions[19] 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 will not be gratuitous in nature and needs to be considered as employment income (see [32]).

59. The next requirement of the definition is that the "payment would not have been made if the services had not been provided". This is a different test from the "substantially in connection with" test in s CE 1 (see [37]). It requires a causal connection – that is, but for the provision of the services by the deceased employee the payment would not have been made. Or, expressed positively, a gratuitous payment is a pension when it is made by an employer to an employee (or their executor or relative) because the employee provided services to the employer.

60. In situations where an employee has died, a gratuitous payment made to the executor of the deceased employee's estate because of and within 12 months of the employee's death, is specifically excluded from the definition of "pension".

61. 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 and being taxable under s CF 1. However, where gratuitous payments are made after this period, it is likely they will be taxable as a pension unless there is some relationship (other than the employment relationship) between the employer and the employee that is the reason for the payment.

62. A gratuitous payment made by an employer 12 months after the death of an employee is unlikely to be employment income under s CE 1 if the employer made the payment substantially for reasons extraneous to the employment relationship (eg, for compassionate reasons) (see [40]). However, such a payment could be taxable under s CF 1 as a "pension". This is most likely if the payment was motivated by the services provided by the deceased employee to the employer. Occasionally there may be situations where the payment is motivated by a relationship outside the employment relationship, such as both being parents of children at the same school or golfing friends, and in that situation the payment may not meet the definition of a pension in s CF 1(2)(a).

63. In the event an employer makes a gratuitous payment more than 12 months after an employee's death and that payment is a pension as defined in s CF 1(2)(a), then that payment will be taxable income to the deceased's employee's estate. The payment is treated as a payment of "salary or wages" under s RD 5(6)(a) of the PAYE rules, and so PAYE deductions should be made. This is illustrated in Example | Tauira 4.

[19] *Public Information Bulletin* No 135, February 1986.

Example | Tauira 4 – Income top-up payments to family for 5 years

Under an arrangement with ACC, Jay receives 80% of his deceased partner Julie's earnings for five years following her death. Instead of making a one-off gratuitous payment to the family within 12 months of Julie's death her employer decides, based on the family's circumstances and the age of the children, that it can help Julie's family best by providing an annual 20% top-up payment to Jay to restore the total family income to 100% of Julie's pre-death earnings over the same five-year period as ACC.

None of the employer's gratuitous annual top-up payments are employment income under s CE 1. The first annual top-up payment is not taxable as pension income under s CF 1 providing it is made within 12 months of the Julie's death. However, the remaining 4 annual top-up payments will be taxable to Julie's estate as a pension under s CF 1(2)(a). The exclusion in s CF 1(2)(b) does not apply to those payment as they are made more than 12 months after Julie's death. Under s RD 5(6)(a) the 4 top-up payments are treated as salary or wages and so the employer is required to deduct PAYE from the amounts.

64. The Commissioner also considers that payments made following the death of an employee in a workplace accident typically will not fall within the definition of pension as they will not be gratuitous when made in response to a court order, and are not motivated by the employment relationship. In contrast, a payment in response to an accident *outside* the workplace causing death could be a gratuitous payment and therefore pension income unless paid within one year of death.

65. Example | Tauira 5 illustrates the payment of a gratuitous amount by an employer to an executor following an accident at home.

Example | Tauira 5 – Gratuitous payment to deceased employee's estate not a pension

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 voluntarily 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 substantial reason for Tree Climbers making the payment was compassion for Kristoph's family, and so the payment was not employment income under s CE 1.

The payment is gratuitous and would not have been made but for the services Kristoph provided Tree Climbers Limited. There was no relationship other than the employment relationship between Tree Climbers Limited and Kristoph. Therefore, if Kristoph had lived to receive it, it would have satisfied the definition of "pension" in s CF 1(2)(a) and been included in his income as a pension.

However, because the payment was made within 1 year of Kristoph's death, the exclusion in s CF 1(2)(b) applies and the amount is not a "pension" and so the payment is not income of the executor under s CF 1.

Income under ordinary concepts

66. 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.

67. 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.

68. 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.

69. In *Reid v CIR*,[20] 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.

70. In *A Taxpayer v CIR*,[21] 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.

71. In reaching that conclusion, Richardson P stated at 13,355:

[20] *Reid v CIR* (1985) 7 NZTC 5,176 (CA).

[21] *A Taxpayer v CIR* (1997) 18 NZTC 13,350 (CA).

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

72. In summary, income is something that comes in and is often shown by its periodicity, regularity or recurrence.

73. 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

74. 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.

75. These requirements are set out in s 65 of the Administration Act 1969 and discussed in Appendix 2 at [121]. These amounts legally belong to the estate and the executor needs to account for any income component such as accrued salary or wages.

76. Example | Tauira 6 illustrates the situation where an employer makes a payment to a deceased employee's partner.

Example | Tauira 6 – 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.

77. 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.

78. 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 [66]).

Payments received by a third party

79. Under s 65(2) of the Administration Act 1969, which is discussed in Appendix 2 at [121], 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 [75], these funds belong to the estate and the executor needs to account for any income component.

80. An employer could also make a gratuitous compassionate payment to a third party, such as a funeral home for the costs of the funeral or a donation to a charity. Such amounts will not be taxable to the employee's estate if not employment income or

made within 12 months of the employee's death, but will be taxable to the funeral home or other recipient in the ordinary course of business.

81. 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 | Tauira 7.

Example | Tauira 7 – Gratuitous payments to a funeral home and charity

Sharmar dies from a rare disease while an employee. Shamar was a respected employee, and his employer wanted to publicly recognise his contribution to the company by donating in his memory $1,000 to a research facility investigating the disease.

The employer actively pursues a policy of being a good employer, in order to obtain the benefits of low staff turnover and good standing in the community. To this end, the employer also chose to pay for a small funeral as Sharmar had no close family and the funeral provided his long-term work colleagues with a suitable opportunity to farewell him for which they were grateful.

The research facility is a charity and exempt from tax, meaning the $1,000 payment is not taxable.

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

Employer obligations

82. Depending on the nature of an employer's payment to a deceased employee, their executor or their relatives, an employer may have certain tax obligations to:

- make PAYE deductions,
- pay FBT, or
- make KiwiSaver or student loan deductions.

Does PAYE need to be deducted?

83. If an employer's payment is a PAYE income payment, PAYE needs to be deducted when it is made.[22]

[22] Section BE 1(1).

84. A PAYE income payment includes salary or wages and extra pay.[23] Salary or wages and extra pay are defined separately because the amount of PAYE on each type of payment is calculated differently.

85. Salary or wages means a payment of salary, wages, or allowances made to a person in connection with their employment.[24] The definition also includes:

- a bonus, commission, gratuity, overtime pay or other pay of any kind;[25]
- a periodic payment of a pension, allowance, or annuity made to a person or their spouse, civil union partner, de facto partner, child, or dependant in connection with the past employment of the person;[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 [54] but not if the amount falls within the exclusion as described at [60]).[27]

86. 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.

87. 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.

88. 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.

89. 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 payments that are employment income under s CE 1 are also an extra pay. This could

[23] Section RD 3(1)(a).
[24] Section RD 5(1)(a).
[25] Section RD 5(1)(b)(i).
[26] Section RD 5(4)
[27] Section RD 5(6)(a).
[28] Section RD 5(1)(c)(ii).
[29] Section RD 7(1).

include a retiring allowance paid on death, contractual death benefits or a funeral allowance, whether paid to the executor or a family member.

Is there any liability for FBT?

90. A liability for fringe benefit tax is very unlikely to arise on the occasion of an employee's death. Ordinarily, employers will not have a contractual or legal obligation to assist with a deceased employee's funeral costs. Usually such assistance is provided by an employer for substantially compassionate reasons. Accordingly, any benefit arising is not provided in connection with employment, and so there is no FBT liability.

91. One of the few times a FBT liability might arise on the death of an employee is where the employer organises a function for the deceased employee's work colleagues and family. In that situation a fringe benefit may be provided to the employees, depending on whether the function is held on the employer's premises or somewhere else.

92. On the rare occasions that an employment contract requires the employer to arrange and pay for an employee's funeral (so that the employer is invoiced by the funeral home) the Commissioner does not consider a fringe benefit liability will arise. This is because when the benefit is provided the employee is deceased and relatives of a deceased employee will not be associated with the employee when the benefit is provided. Alternatively, if the employer is required under the employment contract to reimburse the executor or the family for the cost of the funeral, the reimbursement will be taxable to the employee's estate as employment income.

What are the KiwiSaver and student loan repayment obligations?

93. The general rule for employers for KiwiSaver contributions and student loan repayments is that the KiwiSaver contribution rules are intended to mirror the PAYE rules, and student loan repayments cease from after the date of the employee's death.

KiwiSaver

94. The rules for employers making KiwiSaver contributions are set out in part 3 of the KiwiSaver Act 2006. There are no specific rules governing the death of an employee, but under s 67 the PAYE rules are treated as if applying to contributions. Therefore, it follows that there is an expectation of symmetry between the deductions made for PAYE purposes and the deductions made for contributions to KiwiSaver.

95. Under s 66 the general rule is that the employer must make deductions of contributions from each payment of the employee's gross salary or wages of an amount equal to the agreed contribution rate. For KiwiSaver purposes, the definition of

"salary or wages" specifically includes extra pays (as defined in s RD 7 of the ITA) – and so would include amounts the employer is obliged to pay on the death of an employee under the employment contract (eg, a bereavement grant).

96. Under s 101A the employer must pay compulsory employer contributions for an employee in respect of salary or wages relating to a period during which the employee meets the requirements of s 101C. An employee will cease meeting the requirements of s 101C when they die. This means employer compulsory contributions are only required in respect of salary and wages that relate to periods up to the death of the employee.

97. In practice, KiwiSaver contributions received by Inland Revenue after being notified of an employee's death are returned to the employee or their estate rather than being passed on to the fund provider. This is pragmatic because the member's KiwiSaver fund balance may have been transferred by the fund manager to the employee's executor. Under clause 9 of the KiwiSaver scheme rules in schedule 1 to the KiwiSaver Act, when a member dies, on application by the executor, the fund manager pays the accumulated balance of the member's fund to the executor.

Student loans

98. The outstanding balance of an employee's New Zealand student loan balance is reduced to nil with effect from the day of death.[30] Therefore, following an employee's death there is no longer any obligation for the employee to make repayments. This means that from the date of death the employer no longer has an obligation to make repayment deductions for an employee. Accordingly, any amounts paid by the employer after the employee's death (including payments in respect of amounts accrued up to the date of death but paid by the employer after the date of death) do not need to have loan repayments deducted from them.

99. The Commissioner has the power in s 198(1) to take whatever steps are necessary to ensure the SLSA is applied as it should have been. So, for example, if an employer makes a deduction following an employee's death that should not have been made, the Commissioner can rectify that, including by returning the deducted amount to the employee's estate.

Further assistance

100. If an employer is unsure whether to make deductions or contributions, they can contact Inland Revenue for assistance. In the event employers do make unnecessary

[30] Section 197 of the Student Loan Scheme Act 2011.

deductions or contributions Inland Revenue will ensure the appropriate amounts are returned to the estate.

Is the payment deductible?

101. Whether a payment made on an employee's death is a deductible expense for the employer depends on the normal rules of deductibility.

102. 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. The degree of nexus, or connection, required to satisfy each of the two limbs of deductibility (s DA 1(1)(a) and s DA 1(1)(b)) is the same. But what the expenditure must have a sufficient nexus with is different.[31]

103. 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. It is a question of fact and degree in each case.

104. To determine whether a sufficient relationship exists 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. [32] Determining the advantage the taxpayer was seeking to gain from the expenditure is a subjective matter. It requires considering the taxpayer's purpose at the time they incurred the expenditure.[33] If it transpires that no income is derived as a result of the expenditure, this does not necessarily mean the expenditure was not incurred for the purpose of deriving income. Ultimately, a taxpayer's subjective purpose or purposes in incurring expenditure will be a question of fact. Determining the taxpayer's purpose involves an objective analysis of surrounding circumstances, including the effect of the expenditure (*National Distributors*).

105. In the Commissioner's view, payments made by an employer on the death of an employee which are employment income will satisfy the nexus test. Such payments

[31] *NRS Media Holdings v CIR* (2018) 28 NZTC 23,079 (CA).

[32] *CIR v Banks* (1978) 3 NZTC 61,236 (CA), *Buckley & Young Ltd v CIR* (1978) 3 NZTC 61,271 (CA) and *NRS Media Holdings Ltd v CIR* [2018] NZCA 472...).

)...

[33] *CIR v National Distributors Ltd* (1989) 11 NZTC 6,346 (CA).

include unpaid salary or wages, accrued holiday pay, retiring allowances payable on death, contractual death benefits and funeral allowances.

106. It is a question of fact whether a compassionate or other gratuitous payment by the employer will satisfy the nexus test. The fact there may be substantially compassionate reasons for an employer's payment will not necessarily preclude it from being deductible. For example, if an employer can show that making a compassionate payment to a deceased employee's family aligns with their values of being a good employer, the general permission may be satisfied. Businesses commonly want to be seen as good employers, not only to their existing employees but also more widely. Having a reputation as a good employer can be beneficial to a business by reducing staff turnover and improving overall organisational performance. It can also enhance how the business is perceived by its customers.

107. Example | Tauira 8 illustrates the deductibility of payments made by an employer on the death of an employee.

Example | Tauira 8 – Deductibility of accrued salary and a voluntary compassionate payment

Frank died while working as a driver for a trucking company as an employee. His employment contract did not provide for a bereavement grant to be paid on the event of his death. His employer knew Frank supported his elderly parents in the rented home they shared. To buy Frank's grieving parents some time before having to shift out of their home they made a compassionate payment to Frank's executor equivalent to three months' rent. This payment was in addition to Frank's accrued wages up to the date of his death and his accrued holiday pay.

The trucking company actively pursues a policy of being a good employer to obtain the benefits of low staff turnover and good standing in the community. In turn, this positive reputation helps the company obtain freight contracts in a competitive market.

The trucking company can claim a deduction for each of the payments. The accrued wages and holiday pay are deductible as employment expenditure. The compassionate payment is deductible as a business expense. While the company was not obliged under Frank's employment contract to make the compassionate payment for his parents, in this case there is a sufficient nexus with the employer's income-earning process to support a deduction. This is the case even though the payment to the executor is not taxable income. In addition to making the payment on compassionate grounds, the employer's action was also made for sound business purposes, to enhance its reputation as a good employer and reputable company.

108. [IS 26/10](): Income tax implications of providing sponsorship provides further guidance on the deductibility of expenditure which may be incurred for purposes other than simply deriving income.[34]

109. In some cases, a gratuitous compassionate payment will not be deductible. This will be the case where the gesture of goodwill and support for the deceased's family is not sufficiently related to the employer's income earning process. For example, where a payment is made to acknowledge the personal relationship between the employer and the employee and their family. In that case the facts would not support a finding that the purpose of the employer's payment is to benefit the business and its income-earning process.

110. Factors to consider when deciding whether a compassionate or other gratuitous payment is deductible could include:

   - the circumstances in which the employee died – if the death was work-related the payment may have a closer nexus to the employer's income earning process,
   - the purpose of the payment – to understand any positive impact the payment may have on the income-earning business of the employer,
   - the employer's record of being seen as a good employer,
   - the number of employees in the organisation – a smaller organisation might suggest there are closer personal relationships, or there might be greater opportunity for transparency,
   - any other relationships between the employer and the employee that might have motivated the employer to make the payment.

111. An employer who wishes to claim a deduction for a gratuitous payment has the onus of proof to establish the nexus of any expenditure to the income-earning process.

112. 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.[35]

113. 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

[34] IS 26/10: Income tax implications of providing sponsorship *Tax Information Bulletin* Vol 38, No 4 (May 2026).

[35] IS 09/01: Fines and penalties – income tax deductibility states that fines and penalties are not deductible *Tax Information Bulletin* Vol 21, No 9 (December 2009): 11.

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.[36]

114. For more discussion on the deductibility rules in general, see paras [9] to [32] in IS 22/01: Income tax – deductibility of costs incurred due to COVID-19.[37]

115. 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.

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

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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 1 – Summary of the tax treatment of payments by employers

Figure | Hoahoa 1 – Summary of the tax treatment of payments by employers made after an employee's death

<table>
<tr><th></th><th colspan="3">Income to recipient</th><th colspan="4">Employer treatment</th></tr>
<tr><th>Employer payment</th><th>Paid to executor</th><th>Paid to family</th><th>Paid to third party</th><th>PAYE</th><th>KiwiSaver</th><th>Student Loan</th><th>Deductible to employer</th></tr>
<tr><td>Accrued salary or wages</td><td rowspan="3">Income to the executor or, if received within 28 days of death, to the deceased employee at executor's election</td><td rowspan="3">Income to the executor or, if received within 28 days of death, to the deceased employee at executor's election</td><td rowspan="3">Income to the executor or, if received within 28 days of death, to the deceased employee at executor's election</td><td>Yes</td><td>Yes</td><td>No</td><td>Yes</td></tr>
<tr><td>Accrued holiday pay</td><td>Yes</td><td>Yes</td><td>No</td><td>Yes</td></tr>
<tr><td>Other amounts paid under employment contract (eg, retiring allowances, contractual death benefits, funeral allowances)</td><td>Yes</td><td>Yes</td><td>No</td><td>Yes</td></tr>
<tr><td>Gratuitous payment to family or executor of deceased employee</td><td>Not income if paid within 1 year of death</td><td>Not income if paid within 1 year of death</td><td>n/a</td><td>No</td><td>No</td><td>No</td><td>Depends, but may be deductible</td></tr>
<tr><td>Payment in response to a workplace accident</td><td>Not income</td><td>Not income</td><td>n/a</td><td>No</td><td>No</td><td>No</td><td>Depends, but penalties not deductible</td></tr>
</table>

Appendix 2 – Executors and their return-filing obligations

116. This appendix summarises.

- what happens legally when a person dies (see from [117]);
- administration of small estates (see from [121])
- the returns an executor[38] needs to file for the deceased employee (see from [128]); and
- the returns an executor needs to file for any estate (see from [133]).

What happens legally when a person dies

117. 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.

118. 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.

119. 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.

120. If the estate does not involve land and amounts owing do not exceed the prescribed limit (see at [122]), 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.

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

Administration of small estates

121. 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]

122. 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.[39]

123. 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.

124. 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.

125. 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.

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

126. 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.

127. 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: Persons permitted to confirm income statement of a deceased person[40] 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

128. 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.

129. 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.

130. 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

[40] 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 *Tax Information Bulletin* Vol 31, No 4 (May 2019): 173.

required to confirm the final account. This is deemed to be a return and assessment. This is illustrated in Example | Tauira 9.

131. 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.

132. If the deceased employee was not required to file a return, no return is required.

Example | Tauira 9 – 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

133. Section 33 of the 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.[41] This is the same form trusts use. The executor needs to apply for an IRD number for the estate.

134. 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.[42] If the estate has an IRD number, the executor must also provide a declaration that the estate is non-active on form IR633.[43] These requirements are illustrated in Example | Tauira 10.

[41] Income tax return: Estate or trust – IR6 (form, Inland Revenue, 2026).

[42] Section 43B(3) of the Tax Administration Act 1994.

[43] Non-active trust declaration – IR633 (form, Inland Revenue, April 2023).

Example | Tauira 10 – 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.