

## **INTERPRETATION STATEMENT: IS 17/06**

### **Income tax – application of schedular payment rules to directors’ fees**

---

All legislative references are to the Income Tax Act 2007 (the Act) unless otherwise stated. Relevant legislative provisions are reproduced in the appendix to this Interpretation Statement.

### **Contents**

Summary.....	1
<b>Paying a director’s fee – what do you need to know?.....</b>	<b>2</b>
Who have you contracted with to provide directorship services? .....	2
<b>Payments of directors’ fees to individuals .....</b>	<b>3</b>
GST registration does not affect the requirement to withhold .....	4
The “shareholder-employee” exception .....	4
<b>Payments of directors’ fees to non-individuals .....</b>	<b>4</b>
Companies .....	5
<b>Public, local, and Māori authorities .....</b>	<b>7</b>
Voluntary schedular payments .....	8
<b>Your obligations when you are required to withhold from directors’ fees .....</b>	<b>8</b>
Withhold at the time of payment .....	8
What rate should you withhold at? .....	8
<b>“No notification” rate .....</b>	<b>9</b>
Standard rate .....	9
Elected rates .....	9
What if the person you are paying has a certificate from the Commissioner? .....	9
Special Tax Rate Certificates .....	9
Exemption certificates .....	10
Prescribed rates/additional deduction rates.....	10
Once you have decided the rate, what amount do you apply it to? .....	10
References.....	12
Related rulings/statements .....	12
Subject references.....	12
Legislative references.....	12
Case references.....	12
Appendix 1: Flow chart* .....	13
Appendix 2: Legislation.....	14
Income Tax Act 2007 .....	14
Tax Administration Act 1994 .....	20
Companies Act 1993 .....	22

### **Summary**

1. This Interpretation Statement discusses:
  - the situations when you must withhold tax from the payment of directors’ fees; and
  - when and how much you must withhold, if you are required to do so.

2. Generally, if you pay a director's fee you are making a "schedular payment" and you are required to withhold tax from that payment and pay the tax you withhold to Inland Revenue. However, not all payments of directors' fees are schedular payments. Whether a payment of a director's fee is a schedular payment largely depends on who has contracted to provide the directorship services you are paying the director's fee for. If a director's fee is not a schedular payment then there is no requirement to withhold tax from the payment.
3. If you are paying a director's fee that is a schedular payment, the rate of tax at which you must withhold will depend on who you are paying, and the information they give you.
4. The flow chart at Appendix 1 will help you determine whether you are required to withhold tax from a payment of a director's fee, and if so, at what rate you must withhold.
5. This Interpretation Statement does not discuss the withholding treatment for directors' fees paid to non-resident taxpayers. Non-resident tax issues turn on the facts of the particular case, and the outcomes may vary depending on whether a Double Tax Agreement applies to the particular non-resident taxpayer.
6. This Interpretation Statement updates and replaces *Interpretation Statement – Tax deductions from directors' fees paid to GST registered person – Tax Information Bulletin* (TIB) Vol 8, No 4 (September 1996).

## **Paying a director's fee – what do you need to know?**

7. Generally, a director's fee is a "schedular payment". When you make a schedular payment you are required to withhold tax from that payment and pay the tax you withhold to Inland Revenue. However, there are exceptions to this general rule. Whether any of these exceptions will apply largely depends on who has contracted to provide the directorship services you are paying the director's fee for. If a director's fee is not a schedular payment then there is no requirement to withhold tax from the payment.
8. While the Companies Act 1993 requires the person holding the office of director to be a natural person, this does not mean contracts for directorship services must be with an individual director. Other entities can contract to provide the services of an individual as a director, for example, an employee of a company or a partner in a law firm. As such, an individual holding the office of director will not necessarily be the person (or entity) that has contracted with you to provide the directorship services.

## **Who have you contracted with to provide directorship services?**

9. Directorship services will either be provided by an individual, or a non-individual entity, such as a company, partnership, or authority.
10. The following paragraphs discuss:
  - what to do when you pay an individual a fee for being a director;
  - what to do when you pay a non-individual entity a fee for providing directorship services; and
  - your administrative obligations regarding withholding tax from payments of directors' fees.

11. This statement is intended to complement *Public Ruling BR Pub 15/10: Goods and services tax – Directors’ fees* TIB Vol 27, No 7 (August 2015) by using some of the same fact scenarios and examples.

### Payments of directors’ fees to individuals

12. Individuals providing directorship services commonly do so as independent contractors. In most cases, when you pay directors’ fees to an individual who is providing directorship services to you as an independent contractor, these **directors’ fees** will be schedular payments from which you must withhold tax, and pay the tax withheld to Inland Revenue.

#### **Example 1: Directors’ fees paid to contractor**

(See Example 1 in BR Pub 15/10.)

Ophelia is a human resources consultant in business on her own. Reynaldo Ltd approaches Ophelia to be a director. Ophelia contracts (as an independent contractor) to provide her services as a director of Reynaldo Ltd and in return she receives **directors’ fees**.

When Reynaldo Ltd pays **directors’ fees to Ophelia, it must withhold tax from those payments** (as schedular payments) and pay that tax to Inland Revenue.

13. It is possible, although less common, that an individual will provide directorship services as an employee. An individual will provide directorship services as an employee if directorship duties are included in the terms of their employment, usually recorded **in the employee’s employment agreement**. These duties may be in addition to other non-directorship duties. For example, a person employed as a managing director may have both management duties and directorship duties.
14. If you employ someone as a director, amounts you pay them for performing their directorship duties will be either “salary or wages” (**regular payments**), or an “extra pay” (**a lump sum payment**), not schedular payments. You will need to deduct PAYE from these payments, as you would for any other payments of “salary or wages” or “extra pay” made to an employee.

#### **Example 2: Directors’ fees paid to an employee**

Voltimand is the managing director of Royal Norway Ltd. His employment agreement with Royal Norway Ltd states that his duties include managing the day-to-day operations of the company, as well as acting as a director.

Any payment Voltimand receives for performing the duties set out in his employment agreement will be “salary or wages” or an “extra pay” because it is paid to him **in connection with his employment**. “Salary or wages” or an “extra pay” cannot, by definition, be a schedular payment. Royal Norway Ltd will **therefore need to deduct PAYE from Voltimand’s “salary or wages” or “extra pay”** as it would for any other employee.

15. In some cases, you may have both employees and independent contractors acting for you as directors. If so, you will need to treat the payments differently depending on whether you are paying an employee or an independent contractor.

### **Example 3: Directors' fees paid to employees and independent contractors**

In addition to employing Voltimand as the managing director of Royal Norway Ltd, the company also contracts Francisco to be a director. Francisco is an independent contractor and has directorships with a number of other companies.

As discussed above, when Royal Norway Ltd pays Voltimand for acting as a **director these payments are "salary or wages"**. Royal Norway Ltd must therefore deduct PAYE as it would for any other employee.

However, because Francisco is an independent contractor, the payments he receives from Royal Norway Ltd for acting as a director are schedular payments, **not "salary or wages"**. Therefore, when Royal Norway Ltd pays Francisco his **directors' fees'**, Royal Norway Ltd must withhold tax from those payments and pay the tax to Inland Revenue.

### ***GST registration does not affect the requirement to withhold***

16. In the past, some taxpayers believed they were not required to withhold any tax from directors' fees they paid to a GST-registered director. This is not the case. Whether a person is registered for GST is irrelevant when determining if you are required to withhold tax from directors' fees you are paying to that person.

### ***The "shareholder-employee" exception***

17. **If you are paying directors' fees** to a shareholder-employee, you may not be required to withhold tax from those payments. There is a shareholder-employee exception that will apply if you are not a look-through company and:
  - you are a close company; or
  - you are a company with 25 or fewer shareholders; and
  - the **directors' fees** are paid to the shareholder-employee in the circumstances set out in s RD 3B.
18. The circumstances set out in s RD 3B include the situation where the shareholder-employee is not paid regular salary or wages, or they are not paid for regular periods. In that situation, all amounts paid by the company to the shareholder-employee in their capacity as an employee, can be treated as other than a PAYE income payment. **If you pay directors' fees to a shareholder-employee** in these circumstances, you are not required to withhold tax from those payments.

### **Payments of directors' fees to non-individuals**

19. The most common non-individuals you are likely to contract with for the provision of directorship services include:
  - companies;
  - partnerships; or
  - public, local, or Māori authorities.

## Companies

20. As a general rule, if you are paying directors' fees for directorship services provided by a company, these payments will not be schedular payments and you are not required to withhold tax from them. However, there are exceptions in the Act to this general rule. **If you are paying directors' fees** for directorship services provided by an agricultural, horticultural, viticultural company, or a company that is a non-resident contractor or non-resident entertainer, these **directors' fees** will be schedular payments. If you are a labour-hire business, and you make payments to a company, which you have contracted with to provide directorship services to one of your clients under a labour-hire arrangement, those payments will also be schedular payments. These exceptions are discussed below at [24]-[28].
21. Companies are the most common non-individual provider of directorship services. In many cases, these companies are "personal services companies" owned and operated by a professional director. The professional director is employed by their personal services company and you contract with the company to provide the directorship services, not the director personally.
22. **The definition of "company" under the Act is broad and includes entities** you may not ordinarily think of as companies. For example, the **definition of "company"** includes:
- listed limited partnerships;
  - incorporated societies; and
  - other body corporates.
23. If you make payment of directors' fees for directorship services provided by such entities, these payments will not be schedular payments and you are not required to withhold tax from them.

### **Example 4: Directors' fees paid for services provided by a company**

(See Example 3 in BR Pub 15/10.)

Polonius Ltd, a financial management company, contracts to provide directorship services to Osric Ltd. It is agreed that Marcellus, one of Polonius Ltd's specialist employees, will act as a director for Osric Ltd. Osric Ltd pays directors' fees to Polonius Ltd for the directorship services it has provided.

Because **the directors' fees Osric Ltd pays are for services** provided by a company, those fees are not schedular payments and Osric Ltd is not required to withhold tax from them.

## Exceptions

24. As noted at [20], under the Act, you may need to withhold tax from **directors' fees** paid for directorship services provided by:
- an agricultural, horticultural, or viticultural company;
  - a company that is a non-resident contractor; or
  - a company that is a non-resident entertainer.

25. For the reasons noted at [5], **the treatment of directors' fees paid to non-residents** is not covered in this statement.
26. **A payment of a director's fee for directorship services provided by an "agricultural, horticultural, or viticultural company"** is a schedular payment and you will need to withhold tax from it and pay that tax to Inland Revenue.
27. The term **"agricultural, horticultural, or viticultural company"** is defined in the Act. Essentially, it means a company that supplies labour for the cultivation of fruit crops, vegetables, orchards, or vineyards. This exception to the general rule only applies to companies that supply labour to one of those industries. It does not apply to other companies in those industries.
28. As also noted at [20], if you are a labour-hire business, and you make payments to a company, which you have contracted with to provide directorship services to one of your clients under a labour-hire arrangement, those payments will be schedular payments. You must therefore withhold tax from those payments and pay the tax withheld to Inland Revenue. It may appear unusual that the labour-hire exception potentially applies to the provision of directorship services. However, a labour-hire arrangement is framed broadly under the Act, and involves the performance of both **"work or services"**. It therefore follows that should a labour-hire arrangement involve the performance of directorship services this exception will apply.

### *Partnerships*

29. If you pay directors' fees for directorship services provided by a partnership, these will generally be schedular payments. Unless the partnership has an exemption certificate, you will need to withhold tax from those payments.
30. It is not uncommon for companies to appoint a professional director from a legal, accounting or other professional firm. These professional firms are usually set up as partnerships. Because of the arrangements partners have with their professional partnerships, you might contract with the partnership to provide the directorship services rather than with the individual partner you wish to appoint. Commonly, these types of professional partnerships hold exemption certificates, in which case, you will not need to withhold tax from the directors' fees you pay to them. Exemption certificates are discussed further below at [48]-[51].

**Example 5: Directors' fees paid for services provided by a partnership with an exemption certificate**

(See Example 6 in BR Pub 15/10.)

Dane & Co, a legal partnership, provides legal advice to Rosencrantz Ltd. A partner in the partnership, Gertrude, is approached by Rosencrantz Ltd to be a director on their board.

Gertrude discusses the opportunity with her fellow partners and they all agree it is a good idea. Dane & Co draws up a one-year contract between the partnership and Rosencrantz Ltd for the provision of directorship services. After signing the contract, Dane & Co provides Rosencrantz Ltd with a copy of an exemption certificate issued by the Commissioner. When Rosencrantz Ltd pays **directors' fees to Dane & Co, it will not be required to withhold** from those payments.

If Dane & Co did not have an exemption certificate, Rosencrantz Ltd would have **been required to withhold tax from the directors' fees.**

**Public, local, and Māori authorities**

31. If you pay directors' fees for directorship services provided by a public, local, or Māori authority, these payments will not be schedular payments and you will not need to withhold tax from them.
32. The terms "public authority", "local authority", and "Māori authority" are defined in s YA 1 of the Act.
33. Public authorities include government departments, the Public Trust and the Māori Trustee. Local authorities include regional councils, airport authorities, Auckland Transport and various museum trust boards. Māori authorities are defined as those entities that have elected to be Māori authorities.
34. Situations in which an authority might provide directorship services include where a regional council holds shares in a company and those shares carry a right to appoint a director to the board of that company. The regional council may decide to appoint one of its own employees as a director of the company. The regional council is likely to contract with the company so that it is the entity providing the directorship services (by supplying the employee) to the company. Any directors' fees paid to the regional council would be for directorship services provided by a local authority. Therefore, the company paying directors' fees would not be required to withhold.

### **Example 6: Directors' fees paid for services provided by an authority**

A regional council has a 50% shareholding in a tourism promotion company. The tourism promotion company produces marketing material on the region's natural tourist attractions. Under the company's constitution, the regional council has the right to appoint a director to the tourism promotion company's board.

The regional council decides to appoint Daniel, a tourism expert employed in the council's tourism team. Because Daniel is an employee and will perform his director duties on the council's time, the regional council contracts to provide Daniel as a director of the tourism promotion company. The tourism promotion company will pay directors' fees to the regional council. Because those directors' fees are for directorship services provided by the regional council (a local authority) the tourism promotion company is not required to withhold tax from the directors' fees.

## **Voluntary schedular payments**

35. If you are going to be paying directors' fees that are not schedular payments, the person or entity you are paying may nonetheless want you to withhold tax from those payments. **If you agree to this, those directors' fees may be treated as "voluntary schedular payments"**. An agreement to treat non-schedular payments as voluntary schedular payments must be recorded in writing. If you have agreed in writing to treat certain payments of directors' fees as voluntary schedular payments, you must withhold tax from those payments and pay the tax withheld to Inland Revenue, as you would for any other schedular payments.

## **Your obligations when you are required to withhold from directors' fees**

### **Withhold at the time of payment**

36. If the directors' fees you are paying are schedular payments, and you are required to withhold tax from them, you must withhold at the time you make the payment. You are then required to pay the tax withheld to Inland Revenue. You will also need to record details of the person or entity you are paying, the payment, and the tax withheld in your employer monthly schedule.

### **What rate should you withhold at?**

37. Depending on who you are paying, and the information they give you, the withholding rate you should use may vary. It is therefore important you determine the appropriate rate for each person or entity you pay.
38. Before you pay a schedular payment to someone, they should give you a Tax Rate Notification for Contractors (IR330C) form. The IR330C will record both the **person's** name and tax number. If the person you are paying wants to elect their own withholding rate, they also need to record this in the IR330C. Elected rates are discussed below. If a person has been given a prescribed rate/additional deduction rate by the Commissioner, they are required to notify you of this in their IR330C form. Prescribed rates/additional deduction rates are also discussed below.



39. If you are making schedular payments to a person, and before 1 April 2017, that person provided you with a Tax Code Declaration (IR330) form recording their name and tax number, they do not need to provide you with an IR330C as well. However, if that person wants to elect their own withholding rate for schedular payments you make to them on or after 1 April 2017, they will need to notify you of their elected rate using an IR330C.

### **"No notification" rate**

40. If the person you are about to pay has not provided you with an IR330C (or, prior to 1 April 2017, an IR330) recording both their name and tax number, you should withhold at a rate of 45%. This is called the "no notification" rate.

### **Standard rate**

41. If the person you are about to pay provides you with an IR330C recording their name and tax number with no elected rate, and they are not subject to a prescribed rate/additional deduction rate, you should withhold tax at a rate of 33%. This is the standard withholding rate for directors' fees.

### **Elected rates**

42. A person entitled to receive a schedular payment is allowed to elect their own withholding rate. However, this elected rate cannot be less than 10% (or 15% for non-residents and temporary visa holders). For the purposes of this statement, we will only be referring to the 10% minimum rate, which will apply to most New Zealand residents.
43. A person who wants to elect their own withholding rate must do so in their IR330C. As long as the elected rate is not less than 10%, you should withhold at that rate.
44. A person can subsequently change their elected rate. However, if that person has already elected to change the withholding rate twice in the last 12-month period, you are not required to withhold at the newly elected rate unless you agree to.

### **What if the person you are paying has a certificate from the Commissioner?**

45. You may be obliged to withhold tax at a different rate if the person you are paying holds a certificate from the Commissioner. Taxpayers can apply to the Commissioner for a special tax rate certificate or for an exemption certificate.

### **Special Tax Rate Certificates**

46. A person can only elect a withholding rate below the minimum rate of 10% if the Commissioner has issued them with a special tax rate certificate for that rate. If the person you are paying directors' fees to has elected a rate less than 10%, you should only deduct at that rate if they have provided you with a corresponding special tax rate certificate.
47. Where a person has a 0% special tax rate certificate, the directors' fees you pay to them will still be schedular payments even though you will not need to withhold any tax. Because they are schedular payments, you must still record the payments and details of the person you are paying in your employer monthly schedule.

### **Exemption certificates**

48. Generally, if the person you are paying a schedular payment to holds an exemption certificate, you will not need to withhold tax from that payment. However, exemption certificates have no effect on payments made under labour-hire arrangements. Therefore, if you are a labour-hire business making payments to a person under a labour-hire arrangement, you are still required to withhold tax even if they hold an exemption certificate.
49. There is an exception to this. If you are a labour-hire business making payments to a person under a labour-hire arrangement, and that person holds an unexpired exemption certificate issued before 1 April 2017, you will not need to withhold tax from such payments you make to them between 31 March 2017, and the earlier of:
- 1 April 2018; or
  - the expiry date of the exemption certificate.
50. This is because, in those particular circumstances, an unexpired exemption certificate issued before 1 April 2017 is treated as a 0% special tax rate certificate.
51. As noted at [47], if the person you are paying holds a 0% special rate certificate you do not need to withhold tax from the payments you make to them. However, you will still need to record the details of those payments in your employer monthly schedule, together with the details of the certificate holder. If the person you are paying holds an exemption certificate, you do not need to withhold any tax, or enter details about the payments you make to them in your employer monthly schedule.

### **Prescribed rates/additional deduction rates**

52. Occasionally, the person you are paying will have outstanding tax liabilities with Inland Revenue. In this situation, the Commissioner may have prescribed a specific withholding rate for that person, and may have also prescribed an additional deduction rate for you to withhold and pay to Inland Revenue. Inland Revenue applies the additional deduction rate amounts to reduce a **person's outstanding tax liabilities**.
53. You will be notified of this type of prescribed rate/additional deduction rate either by the person you are paying or Inland Revenue directly. If you are notified of a prescribed rate/additional deduction rate, you must withhold at those rates even if the person you are paying has elected a different rate.

### **Once you have decided the rate, what amount do you apply it to?**

54. Once you have determined the appropriate withholding rate for a payment, you must then apply that rate to the total amount of the schedular payment, exclusive of any GST charged.
55. If you reimburse a director for an amount they have incurred as a necessary part of performing their role as director, for example, the cost of flights to attend a board meeting, that payment is not considered to be a director's fee. Accordingly, the reimbursement payment will not be a schedular payment and you will not need to withhold tax from it.

### Example 7: Directors' fees paid to an individual together with a reimbursement of expenses

(See Example 2 in BR Pub 15/10.)

Ophelia who contracted to act as a director of Reynaldo Ltd is also GST registered.

#### *Withholding rate*

Reynaldo Ltd provides Ophelia with a "Tax Rate Notification for Contractors" form to complete. Ophelia fills out the form, providing her name, tax number and elects to use a 20% withholding rate.

#### *Calculating the amount to withhold*

Ophelia issues the following tax invoice to Reynaldo Ltd for her first month's attendances as a director of Reynaldo Ltd:

<b>TAX INVOICE</b>		[5 March 20XX]
From: Ophelia Smith [Ophelia's address]		GST number: XXX-XXX-XXX
To: Reynaldo Ltd [Reynaldo's address]		
Fee for Feb 20XX attendances as director of Reynaldo Ltd		\$1,000.00
GST on Feb 20XX director's fee		\$150.00
Reimbursement for cost of taxi fares to and from board meeting		\$83.60
<b>Total amount due</b>		<b>\$1,233.60</b>

Reynaldo Ltd needs to withhold tax from the payment it makes for Ophelia's director's fee. Reynaldo Ltd applies Ophelia's elected withholding rate of 20% to \$1,000, being the gross amount of Ophelia's director's fee (excluding GST). Accordingly, Reynaldo Ltd needs to deduct \$200 of withholding tax and pay this to Inland Revenue. However, Reynaldo Ltd does not need to withhold tax from the payment it makes reimbursing Ophelia for the cost of her taxi fares to attend the board meeting. Reynaldo Ltd will therefore pay Ophelia \$1,033.60 (being \$1,000 - \$200 tax + \$150 GST + \$83.60 reimbursement).

## References

### Related rulings/statements

*Interpretation Statement – Tax deductions from directors’ fees paid to GST registered person* TIB Vol 8, No 4 (September 1996)

*Public Ruling BR Pub 15/10: Goods and services tax – Directors’ fees* TIB Vol 27, No 7 (August 2015)

### Subject references

Directors’ fees

Schedular payments

### Legislative references

Companies Act 1993 – s 151(3)

Income Tax Act 2007 – ss BE 1, RA 5, RD 3, RD 4, RD 8, RD 10, RD 10B, YA 1 (definitions of “agricultural, horticultural, or viticultural company”, “company”, “cultivation contract work”, “local authority”, “Maori authority”, and “public authority”), and Parts B, C, J and W of schedule 4

Tax Administration Act 1994 – ss 24L, 24LB, 24LC, 24M, 24N

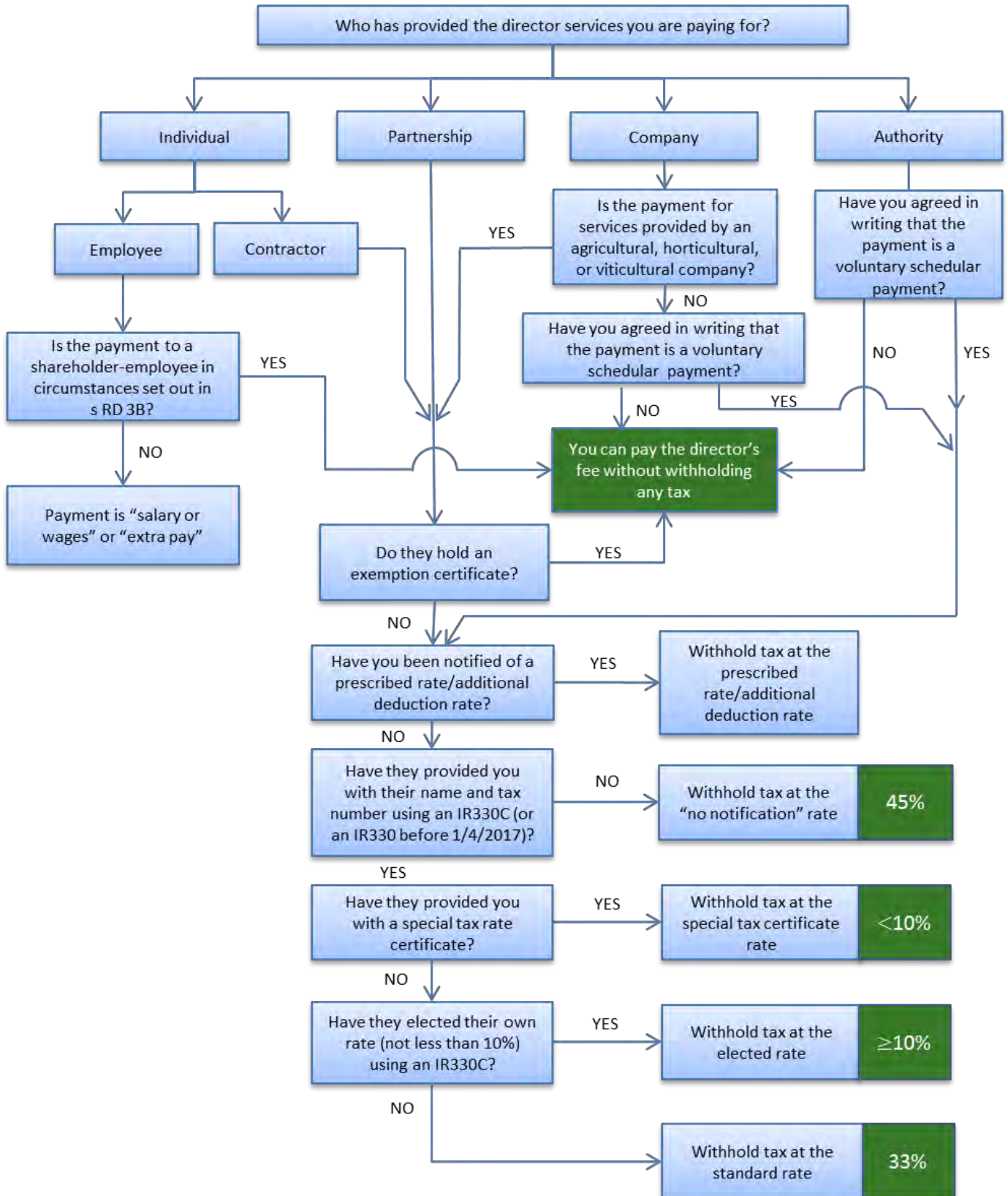
### Case references

*Buckley & Young Ltd v C of IR* (1978) 3 NZTC 61,271

*Case K10* (1988) 10 NZTC 163

*Case S53* (1996) 17 NZTC 7,347)

## Appendix 1: Flow chart\*



\* If you are a labour-hire business making a payment under a labour-hire arrangement then this flow chart does not apply. In such cases, the standard withholding rate is 20%.

## Appendix 2: Legislation

### Income Tax Act 2007

1. Section BE 1 provides:

#### **BE 1 Withholding liabilities**

##### *PAYE income payments*

- (1) A person who makes a PAYE income payment must withhold an amount from the payment under the PAYE rules.

2. Section RA 5 provides:

#### **RA 5 Tax obligations for employment-related taxes**

##### *Withholding and payment obligations*

- (1) A person who makes a payment or provides a benefit of 1 of the following kinds must either withhold and pay, or pay, the amount of tax for the payment or benefit to the Commissioner under subpart RD (Employment-related taxes) by the due dates:
  - (a) a PAYE income payment;
  - (b) a fringe benefit;
  - (c) an employer's superannuation cash contribution.

##### *Timing for PAYE income payments*

- (2) An amount of tax withheld from a PAYE income payment must be withheld at the time the person makes the payment.

3. Section RD 3 provides:

#### **RD 3 PAYE income payments**

##### *Meaning generally*

- (1) The PAYE rules apply to a PAYE income payment which—
  - (a) means—
    - (i) a payment of salary or wages, see section RD 5; or
    - (ii) extra pay, see section RD 7; or
    - (iii) a schedular payment, see section RD 8;
  - (b) does not include—
    - (i) an amount attributed under section GB 29 (Attribution rule: calculation);
    - (ii) an amount paid to a shareholder-employee in the circumstances set out in section RD 3B or RD 3C;
    - (iii) an amount paid or benefit provided, by a person (the claimant), who receives a personal service rehabilitation payment from which an amount of tax has been withheld at a rate specified in section RD 10B.

##### *If questions arise*

- (5) If a question arises whether the PAYE rules apply to all or part of a PAYE income payment, other than an amount referred to in section RD 3B or RD 3C, the Commissioner must determine the matter.

4. Section RD 3B provides:

**RD 3B Shareholders who are employees, for some companies: income other than PAYE***When this section applies*

- (1) This section applies for an income year for a person who is a shareholder and an employee of a company that is not a look-through company and is a close company or has 25 or fewer shareholders if—
  - (a) the person does not derive as an employee payments of salary or wages—
    - (i) of a regular amount for regular pay periods of 1 month or less throughout the income year; or
    - (ii) that total 66% or more of the annual gross income of the person in the corresponding tax year as an employee; or
  - (b) an amount is paid as income that may later be allocated to the person as an employee for the income year.

*When this section does not apply*

- (2) This section does not apply for an income year if it or section RD 3C did previously apply but then, for 1 of the last 3 income years, ceased to apply for the person.

*Income other than PAYE*

- (3) All amounts paid to the person in the income year and in later income years in their capacity as employee of the company are treated as income other than from a PAYE income payment.

## 5. Section RD 4 provides:

**RD 4 Payment of amounts of tax to Commissioner***Payments monthly or fortnightly*

- (1) An employer or PAYE intermediary who withholds an amount of tax for a PAYE income payment must pay the amount to the Commissioner as follows
  - (a) on a monthly basis, if they are an employer to whom section RD 22(3) or (4) applies;
  - (b) for 2 payment periods in a month, if paragraph (a) does not apply.

*Liability when amount not withheld*

- (2) If some or all of the amount of tax for a PAYE income payment is not withheld under subsection (1), the employee in relation to whom the payment is made must—
  - (a) pay an amount equal to the amount of tax to the Commissioner by the 20th day of the month following that in which the PAYE income payment was made; and
  - (b) provide an employer monthly schedule to the Commissioner by the date described in paragraph (a).

## 6. Section RD 8 provides:

**RD 8 Schedular payments***Meaning*

- (1) A schedular payment—
  - (a) means—
    - (i) a payment of a class set out in schedule 4 (Standard rates of tax for schedular payments); and
    - ...
  - (b) does not include—
    - (i) salary or wages; or

- (ii) an extra pay; or
- (iii) a payment for services provided by a public authority, a local authority, a Maori authority, or a company, other than a non-resident contractor, a non-resident entertainer, a company in relation to a payment described in schedule 4, part J or part W, or an agricultural, horticultural, or viticultural company; or
- (iv) a payment covered by an exemption certificate provided under section 24M of the Tax Administration Act 1994; or
- (v) a payment for services provided by a non-resident contractor who has full relief from tax under a double tax agreement, and is present in New Zealand for 92 or fewer days in a 12-month period; or
- (vi) a contract payment for a contract activity or service of a non-resident contractor when the total amount paid for those activities to the contractor or another person on their behalf is \$15,000 or less in a 12-month period.

7. Section RD 10 provides:

**RD 10 Amounts of tax for PAYE income payments**

...

*Schedular payments*

- (3) The amount of tax for a schedular payment is determined—
  - (a) under section RD 10B; and
  - (b) on the basis of the gross amount of the payment, other than GST, whether—
    - (i) some or all of the payment is income; and
    - (ii) the full income tax liability lies with the person receiving the payment, or lies partly with an employee or subcontractor of the person.

8. Section RD 10B provides:

**RD 10B Amounts of tax for schedular payments**

*When this section applies*

- (1) This section applies to determine the amount of tax for a schedular payment for the purposes of section RD 10(3)(a).

*Rate when no notification*

- (2) The person making the schedular payment must withhold, as tax,—
  - (a) 45% of the schedular payment, if the person has not been notified of the **payee's name and tax file number under section 24L of the Tax Administration Act 1994** and paragraph (b) does not apply;
  - (b) 20% of the schedular payment, if the person has not been notified of the **payee's name and tax file number under section 24L of the Tax Administration Act 1994** and the payee is a company that is a non-resident contractor.

*Basic rates*

- (3) **If the person making the schedular payment has been notified of the payee's name and tax file number under section 24L of the Tax Administration Act 1994**, the tax rate that applies to a schedular payment is—
  - (a) the **payee's elected rate under section 24LB of the Tax Administration Act 1994**, if the payee chooses an elected rate under that section and paragraph (c) of this subsection does not apply;
  - (b) the relevant rate set out in schedule 4 (Standard rates of tax for schedular payments), if the payee does not choose an elected rate under section 24LB of the Tax Administration Act 1994 and paragraph (c) of this subsection does not apply;



- (c) if the Commissioner has provided the payee with a special tax rate certificate under section 24N of the Tax Administration Act 1994, the tax rate set out in the certificate.

***Commissioner prescribed tax rate and deduction amount***

- (4) Despite subsection (3), if the person making the schedular payment has been notified of an applicable tax rate prescribed by the Commissioner under section 24LC(1) of the Tax Administration Act 1994, the person must use that prescribed and notified tax rate for the payment. The person must also deduct or extract from schedular payments payable to the payee, the amount prescribed under section 24LC(3) of that Act and pay it to the Commissioner.

***Non-resident entertainer rate***

- (5) Despite subsections (2), (3), and (4), the tax rate, if the payee is a non-resident entertainer, is 0.20.

9. Section YA 1 provides the following definitions:

Agricultural, horticultural, or viticultural company means a company that carries on a business that comprises or includes performing any work or rendering a service set out in schedule 4, part C, clause 1(b) (Rates of tax for schedular payments)

...

**company—**

- (a) means a body corporate or other entity that has a legal existence separate from that of its members, whether it is incorporated or created in New Zealand or elsewhere:
- (ab) does not include a partnership:
- (abb) does not include a look-through company, except in the PAYE rules, the FBT rules, the NRWT rules, the RWT rules, the ESCT rules, the RSCT rules, and for the purposes of subpart FO (Amalgamation of companies):
- (ac) includes a listed limited partnership:
- (ad) includes a foreign corporate limited partnership:
- (b) includes a unit trust:
- (c) includes a group investment fund that is not a designated group investment fund, but only to the extent to which the fund results from investments made into it that are—
  - (i) not from a designated source, as defined in section HR 3(5) (Definitions for section HR 2: group investment funds); and
  - (ii) not made before 23 June 1983, including an amount treated as invested at that date under the definition of pre-1983 investment in section HR 3(8):
- (d) includes an airport operator:
- (e) includes a statutory producer board:
- (f) includes a society registered under the Incorporated Societies Act 1908:
- (g) includes a society registered under the Industrial and Provident Societies Act 1908:
- (h) includes a friendly society:
- (i) includes a building society:
- (j) is further defined in section EX 30(7) (Direct income interests in FIFs) for the purposes of that section

...

**cultivation contract work—**

- (a) means work or services provided under a contract or arrangement—
  - (i) for the supply of labour, or substantially for the supply of labour; and

- (ii) on or in connection with land that is used or intended to be used for the cultivation of fruit crops, vegetables, orchards, or vineyards:
- (b) excludes work or services provided by—
  - (i) a post-harvest facility:
  - (ii) a management entity under a formal management agreement under which the entity is responsible for payment for the work or services provided

...

**local authority—**

- (a) means a local authority as defined in the Local Government Act 2002:
- (b) includes—
  - (i) the administering body, as defined in the Reserves Act 1977, of any reserve classified under the Act as a recreation reserve or a scenic reserve:
  - (ii) an airport authority, other than an airport company, as defined in the Airport Authorities Act 1966:
  - (iii) the Aotea Centre Board of Management established by the Auckland Aotea Centre Empowering Act 1985:
  - (iv) the council of the Auckland Institute and Museum constituted under the Charitable Trusts Act 1957:
  - (v) the Canterbury Museum Trust Board continued in existence by section 5(1) of the Canterbury Museum Trust Board Act 1993:
  - (vi) the Otago Museum Trust Board continued in existence by section 5(1) of the Otago Museum Trust Board Act 1996:
  - (vii) Auckland Transport (as established by section 38 of the Local Government (Auckland Council) Act 2009):
  - (viii) other than for the purposes of section CW 39(4) (Local authorities), Auckland Regional Holdings as established by section 18 of the Local Government (Auckland) Amendment Act 2004:
  - (ix) the New Zealand Local Government Funding Agency Limited while it is a council-controlled organisation within the meaning of section 6(1) of the Local Government Act 2002:
  - (x) the Auckland Council Independent Maori Statutory Board established by section 81 of the Local Government (Auckland Council) Act 2009

...

**Maori authority** means a person who has made an election under section HF 11 (Choosing to become Maori authority)

...

**public authority—**

- (a) means every department or instrument of the Executive Government of New Zealand; and
- (b) includes the Public Trust and the Maori Trustee; and
- (c) includes the Christmas Island Phosphate Commission, incorporated in Australia by the Christmas Island Agreement Act 1949 of the Parliament of Australia and continued under the Christmas Island Agreement Act 1958; and
- (d) is further defined in section CW 38(6) (Public authorities) for the purposes of that section; and
- (e) does not include a mixed-ownership enterprise

10. Schedule 4 of the Income Tax Act 2007 provides:

## Part B

### Payments of company directors' fees, examiners' fees, honoraria, and other payments

- 1 A payment of a company director's fee, or an examiner's fee, or an honorarium, has a standard rate of tax of 0.33 for each dollar of the payment.

...

## Part C

### Payments for work or services relating to primary production

- 1 A payment for work or services referred to in the following paragraphs has a 0.15 rate of tax for each dollar of the payment:
- (a) farming contract work:
  - (b) cultivation contract work:
  - (c) shearing:
  - (d) droving:
  - (e) [Repealed]
  - (f) forestry or bush work (including bush felling, road and tramway work, removal of timber, undergrowth cutting, burning, or clearing):
  - (g) planting or cutting flax:
  - (h) work described in section DO 1 or DO 2 that is related to land that is used or intended to be used for farming or agriculture.

- 2 In this part,—

#### **cultivation contract work—**

- (a) means work or services provided under a contract or arrangement—
  - (i) for the supply of labour, or substantially for the supply of labour; and
  - (ii) on or in connection with land that is used or intended to be used for the cultivation of fruit crops, vegetables, orchards, or vineyards:
- (b) excludes work or services provided by—
  - (i) a post-harvest facility;
  - (ii) a management entity under a formal management agreement under which the entity is responsible for payment for the work or services provided

...

## Part J

### Payments under labour-hire arrangements

- 1 A payment by a person (the **payer**) to another person (the **payee**) has a standard rate of tax of 0.20 for each dollar of the payment if—
- (a) **1 of the payer's main activities is the business of arranging for a person or persons to perform work or services directly for clients of the payer; and**
  - (b) the payment is made under an arrangement the performance of which, in whole or in part, involves the performance of work or services by the payee directly for a client of the payer, or directly for a client of another person; and
  - (c) in the case of the payer and the payee being associated persons described in section YB 2 or YB 3, the payer has chosen to apply this part to the payment.

...

## Part W Voluntary schedular payments

- 1 A payment to a person is treated as a schedular payment (a **voluntary schedular payment**) and has a standard rate of tax of 0.20 for each dollar of the payment if—
  - (a) there is no obligation to withhold an amount from the payment under this Act or under the Tax Administration Act 1994; and
  - (b) the payer and the payee have agreed that the payment is a voluntary schedular payment, and have recorded their agreement in a document.

### Tax Administration Act 1994

11. Section 24L provides:

#### 24L Schedular notification

- (1) This section applies to a person who is entitled to receive a schedular payment described in section RD 8 of the Income Tax Act 2007.
- (2) Before the person (the **payee**) receives the schedular payment, the payee must give the person making the payment a notice that states—
  - (a) if the payee has elected a tax rate to be applied to the schedular payment, as provided by section 24LB, that elected tax rate;
  - (b) if the Commissioner has notified the payee that a different tax rate applies to the schedular payment, as provided by section 24LC, that different tax rate;
  - (c) the **payee's name and tax file number**.
- (3) The notification referred to in subsection (2) must be in a form authorised by the Commissioner.

12. Section 24LB provides:

#### 24LB Schedular tax rate elected by payee

- (1) A person who is entitled to receive a schedular payment (the **payee**) may choose the tax rate, to 1 decimal place, to be applied to the payment for the purposes of section RD 10B(3)(a) of the Income Tax Act 2007 (the **elected rate**).
- (2) The elected rate must be a minimum of—
  - (a) 15% if the payee is—
    - (i) a non-resident;
    - (ii) a holder of a temporary entry class visa as defined in section 4 of the Immigration Act 2009; or
  - (b) 10% for all other payees.
- (3) Despite subsection (1), if the payee has notified a person making a schedular payment (the **payer**) of 2 different elected rates within 12 months of each other, then the last notified rate is the elected rate, and the payee may not choose another elected rate in relation to the payer within a 12 month period of the first notified rate.
- (4) Despite subsection (3), the payee may choose another elected rate under subsection (1) in relation to the payer in the 12 month period and notify it to the payer, if the payer and the payee agree that the payee may choose and notify that other rate.

13. Section 24LC provides:

#### 24LC Schedular tax rate prescribed by Commissioner

- (1) Where a person who is entitled to receive a schedular payment (a **payee**) has not met a liability under the Inland Revenue Acts, the Commissioner may prescribe the **tax rate to be applied to the payee's schedular payments by notifying the rate to—**

- (a) the payee; or
  - (b) the payee and a person (a **payer**) making a schedular payment to the payee.
- (2) Upon the request of the payee, the Commissioner must rescind a rate prescribed and notified under subsection (1), by notifying the relevant persons described in subsection (1), if the Commissioner is satisfied that all liabilities under the Inland Revenue Acts have been met, and is reasonably satisfied that all liabilities under the Inland Revenue Acts will be met in the future.
- (3) The Commissioner may also prescribe and notify, at the same time as prescribing **and notifying a tax rate under subsection (1), a percentage of the payee's schedular payments that payers must—**
- (a) deduct or extract from schedular payments payable to the payee; and
  - (b) pay to the Commissioner.
- (4) Upon the request of the payee, the Commissioner must rescind a percentage prescribed and notified under subsection (3), by notifying the payer, if the Commissioner is satisfied that the payee has paid all tax due and payable.
- (5) The tax rate prescribed under subsection (1) and the percentage prescribed under subsection (3) must not total more than 50%.
- (6) An amount received by the Commissioner under subsection (3) is to the credit of the **payee's liabilities under the Inland Revenue Acts and is not a tax credit under part L** of the Income Tax Act 2007.
- (7) The Commissioner may revoke or prescribe and notify a new tax rate under subsection (1) and percentage under subsection (3) from time to time.
- (8) The Commissioner does not have to notify the payee under subsection (1)(b), if, after making reasonable inquiries, the Commissioner does not have a valid address for the payee.

14. Section 24M provides:

**24M Exemption certificates for schedular payments**

- (1) The Commissioner may provide a person who is entitled to receive a schedular payment with an exemption certificate setting out the payments for a period for which no amount of tax is to be withheld.
- (2) Subsection (1) does not apply to a payment—
- (a) to a non-resident entertainer;
  - (b) that is a payment, described in schedule 4, part J of the Income Tax Act 2007, to a New Zealand resident.
- ...
- (7) A person who is provided with an exemption certificate before 1 April 2017 for a period ending on or after 1 April 2017 is treated as having a special rate certificate under section 24N with a 0% rate for schedular payments the person is entitled to receive, to the extent to which—
- (a) the schedular payments—
    - (i) are received between 31 March 2017 and 1 April 2018; or
    - (ii) if the period set out in the certificate of exemption ends before 31 March 2018, are received before the end of that period; and
  - (b) the certificate of exemption is not in force on or after 1 April 2017 because of amendments made to this Act by the Taxation (Business Tax, Exchange of Information, and Remedial Matters) Act 2017.

15. Section 24N provides:

**24N Special tax rate certificates for schedular payments**

- (1) The Commissioner may provide a person who is entitled to receive a schedular payment with a special tax rate certificate setting out the amount of tax for the payment, or the rate applying to the payment or a part of each payment as if it were the whole payment.

...

**Companies Act 1993**

16. Section 151(3) provides:

**151 Qualifications of directors**

...

- (3) A person that is not a natural person cannot be a director of a company.