Inland Revenue
Te Tari Taake

STANDARD PRACTICE STATEMENT > Processing

Deduction notices

Issued: 12 April 2021

SPS 21/01

Standard practice statements describe how the Commissioner of Inland Revenue (the Commissioner) will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.

This Standard Practice Statement (Statement) sets out Inland Revenue's power to issue a deduction notice to recover outstanding amounts of tax from a third-party and to provide guidance on how the Commissioner will use such notices. The Statement updates and replaces SPS 11/04 Compulsory deductions from bank accounts, which was published in Tax Information Bulletin, Vol 23, No 5 (June 2011).

All references are to the Tax Administration Act 1994 (the "TAA"), unless otherwise stated.

START DATE
12 April 2021

REPLACES

- **SPS 11/04**: Compulsory deductions from bank accounts

Application

The Statement applies from the date of signing. It replaces SPS 11/04 Compulsory deductions from bank accounts, which was published in Tax Information Bulletin, Vol 23, No 5 (June 2011).

The Statement outlines the Commissioner's powers to require deductions from amounts that are payable, or will be payable to, a taxpayer who has arrears. It applies to deduction notices issued under the following enactments:

- The Tax Administration Act 1994 ("the TAA")
- Child Support Act 1991 ("the CSA")
- Gaming Duties Act 1971("the GDA")
- Goods and Services Tax Act 1985 ("the GSTA")
- Student Loan Scheme Act 2011 ("the SLSA")

Standard practice

Summary

1. A deduction notice is an important debt collection tool for the Commissioner. The relevant legislative provisions grant the Commissioner the power to require a third party to make deductions from amounts that are payable, or will become payable by that third party, to a taxpayer who has a tax liability.[1]

2. A deduction notice may require deductions to be made by the way of lump sum or by instalments. A deduction notice will continue to apply until a deduction is made in respect of a notice requiring deduction by lump sum, or in respect to an on-going notice, until the amount required pursuant to the notice has been deducted or the notice is either revoked or withdrawn by the Commissioner.

3. Deductions made by the person are held in trust for the Crown until they are forwarded to the Commissioner. If the deduction is not made by the person, the amount required to be deducted may be recoverable by the Commissioner from the person as if it were tax payable by that person (in respect of deduction notices issued for child support banks are excluded from being liable if they fail to deduct, all other

[1] Tax Liability here includes core tax, late filing penalties, late payment penalties, use of money interest, shortfall penalties and amounts under the Child Support Act 2011.

persons will be liable). The Commissioner also has the power to prosecute a person for not complying with the terms of a deduction notice under s 157A.

Detailed discussion

4. Taxpayers who are liable to pay an amount of tax to the Commissioner will have due dates for payment of those amounts. Where a due date for payment is not met, a taxpayer will have an amount that is due and payable to the Commissioner. Where there is an amount owing to the Commissioner by a taxpayer, she may take action to recover that outstanding amount. One action available to her is to require an employer, bank or other third party who is liable to pay an amount to the taxpayer to pay that amount to the Commissioner instead. This is done by sending a deduction notice to the third party requiring the third party to pay all or some of the amount due to the Commissioner instead of to the taxpayer.

5. The decision to take any debt collection action, including the use of a deduction notice, is made only after consideration of all relevant information, including any previous communication between the IR and the taxpayer, the amount and the age of the arrears and any known hardship or hardship likely to be experienced by the taxpayer.[2]

6. Prior to issuing a deduction notice, the Commissioner will typically, notify the taxpayer of an upcoming tax liability, advise that the amount is past due and issue a final warning letter. In many cases we will attempt to telephone the taxpayer before a final warning letter will be issued. The Commissioner views the issuing of a deduction notice as a last resort in most cases.

7. As a result of a major upgrade made to Inland Revenues systems over the past few years, the Commissioner has more information, from a wider variety of sources often in real time. This will allow the Commissioner to be more proactive to prevent many more taxpayers falling into situations where they will have tax to pay. This allows for an increased accuracy in the information held and for more effective communications with taxpayers.

[2] See standard practice statements SPS 18/04 *Options for relief from tax debt*; SPS 11/02 *Child support debt – Requesting an instalment arrangement*; and SPS 11/03 *Student loans – Relief from repayment obligations*.

8. A compulsory deduction notice cannot be disputed by either the taxpayer or the third party through the disputes process under Part 4A of the TAA. Further, a compulsory deduction notice cannot be challenged under Part 8 of the TAA.[3]

Situations where a deduction notice will not be issued

9. A compulsory deduction notice will not be issued in the following circumstances:

   9.1 Where a taxpayer has a tax liability and is keeping to an instalment arrangement.

   9.2 Where the taxpayer or the Commissioner has initiated the disputes process under Part 4A of the TAA for period(s) under dispute.

   9.3 Where a taxpayer is challenging an assessment through the Courts and the tax is deferred. Tax is deferred after the taxpayer files a Statement of Claim / Notice of Claim with the Court.

Tax liability

10. A deduction notice can be issued when the taxpayer has an overdue tax liability. The Commissioner will not issue a deduction notice for tax arrears that are subject to an instalment arrangement between the taxpayer and the Commissioner, so long as the arrangement is being adhered to by the taxpayer.

11. Where the tax liability is in the name of the taxpayer, then an amount payable to that taxpayer which they are entitled to receive in their personal capacity may be subject to a deduction notice.

12. In some cases, a taxpayer may be liable for a tax liability that is recorded in the name of another taxpayer. For example, trustees of a trust are jointly and severally liable for the income tax liabilities of the trust.[4] This means that the Commissioner can recover an income tax liability of the trust from a trustee and may issue a deduction notice against amounts payable to the trustee in their personal capacity.

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[3] Section 138E(1)(e)(iv) of the TAA.

[4] Section HC 2 of the ITA'07. See also *C of IR v Newmarket Trustees Ltd* [2012] NZCA 351; (2012) 25 NZTC 20-139; and *Dorchester Finance Ltd v Ngahuia Ltd* (2010) 3 NZTR 20-001.

13. Similarly, an agent may be liable for the tax liability or arrears of another taxpayer[5] so that a deduction notice may be placed on an amount payable to the agent in order to satisfy the liability of the principal taxpayer.

14. In respect of a Working for Families tax credit debt, s MF 5(2) of the Income Tax Act 2007 ("ITA'07") provides that both the primary caregiver and their partner or spouse throughout the income year to which the overpayment relates, are jointly and severally liable for any overpayment of Working for Families tax credits. The Commissioner may place a deduction notice on the bank accounts of the primary caregiver and/or their spouse for the income year, and any joint account held in the names of the parties.

15. In respect of GST it is noted that s 43 of the GSTA only applies to amounts payable to the "registered person" and will not apply to amounts payable to a person who is jointly liable for (e.g. a partner in a partnership or trustee in respect of a trust)[6], or is an agent in respect of (e.g. an agent carrying on the taxable activity of an absentee)[7], the registered person's GST liability.

Daily interest

16. A deduction notice may require deductions to be made to cover daily interest accruing on the tax liability. The interest starts on the date of the deduction notice and ends on the day on which the amount is required to be deducted, has been deducted. If interest is to be calculated, the rate of interest will be advised in the deduction notice.

Amount payable

17. A deduction notice requires a third party to pay an amount to the Commissioner rather than to the person to whom the amount is payable. What is an amount payable to the person is discussed below.

To the person

18. A deduction notice may be issued to a third party and applied against any money payable by that third party to the taxpayer. It does not matter whether the third party is paying the money to the taxpayer on their own account or as an agent for somebody else. It also does not matter if the taxpayer has appointed an agent as the

[5] See ss HD 2 and HD 3 of the ITA'07.

[6] Section 27(3) of the GSTA.

[7] Section 59(2) of the GSTA.

recipient of the amount.[8] Accordingly, any amount payable by a third party (or their agent) to a taxpayer (or their agent) will be subject to a deduction notice issued by the Commissioner.

Amounts payable by a person on a joint account

19. A deduction notice may be placed on joint accounts when the money is able to be withdrawn from that account by the defaulting person without the signature or other authorisation of the other joint account holder(s). Note that a deduction notice can only be placed on a partnership account in respect of the partnership's liability as a taxpayer under the relevant act. A deduction notice cannot be placed on a partnership bank account to satisfy a partner's personal tax liability.

20. A deduction notice will apply to money that is held in a term investment, whether or not that investment is due to mature.

Foreign currency

21. The balance of an account denominated in a foreign currency may be the subject of a deduction notice despite the currency of the account. The balance of the account would represent an amount payable to the taxpayer in question even though not payable in New Zealand dollars.

One-off and on-going deductions

22. A deduction notice may require deductions to be made either in a lump sum (one-off notice) or by instalments (on-going notice). The manner of the deduction will be specified in the notice.

23. A deduction notice will continue to apply until a deduction is made by the third party in respect of a one-off notice requiring deduction by lump sum, or in respect to an on-going notice, until the amount required pursuant to the notice has been deducted or the notice is either revoked or withdrawn by the Commissioner.

24. If a deduction notice requires multiple deductions over a period of time, then the amounts due do not need to be adjusted each pay period, unless there is a low pay period and the limitation in s 157(3) applies as set out below at [26] to [27].

25. Note that an attachment order issued by the Court is not covered by this Statement.

[8] *Gennaker Holdings v IRD* (1991) 13 NZTC 8,154; (1991) 16 TRNZ 193.

Limits that can be deducted from salary and wages

26. Deduction notices issued against a taxpayer's salary and wages have limits as to the amount that may be deducted. In respect of deduction notices for all but liabilities due under the CSA, the amount the Commissioner may require an employer to deduct is limited to the greater of:

- The lesser of 10 percent of the tax liability per week; or
- 20 percent of the gross salary or wages payable to the taxpayer on each pay day; or
- $10 per week.

27. Please also take note of the following:

27.1 If the taxpayer is not paid weekly, multiply the instalment amounts to suit the pay period.

27.2 If the deduction amount is less than $10 per week, the amount to deduct is $10 per week.

27.3 If the taxpayer earns less than $10 per week, the third party is not required to make an extra deduction.

27.4 If the taxpayer asks the third party to deduct an extra amount, then the third party must do this.

28. These limits ensure a taxpayer does not have their entire salary or wage taken by the Commissioner (unless they receive a payment of $10 or less as a salary or wage).

Example 1
Kerry has an outstanding tax liability and has refused to make an arrangement with the Commissioner for the payment of that debt. Kerry's debt is $3,000 and the Commissioner's records show that Kerry has commenced receiving a weekly wage from an employer. A deduction notice is issued to Kerry's employer requiring a deduction of the lesser of $300 (being 10% of the tax debt) or 20% of Kerry's wage. Kerry is paid $900 on each pay day and their employer withholds $180 (being 20% of the wage paid to Kerry). Note – the same amount would be required to be deducted if the tax liability was for eitherof GST, gaming duty or student loan payments.

29. The CSA has priority over any attachment order issued by the Courts or deduction notice issued under any other Act (including the other Inland Revenue Acts).[9] Furthermore, a deduction for financial support due under the CSA may require an employer to deduct up to 40% of the net payment under the PAYE rules of the ITA'07.[10]

30. A s 154 (CSA) deduction notice for a child support debt will always take priority over a s 157 (TAA) notice for other tax types. This ensures that the taxpayer will always receive at least 60% of the net payment (i.e. payment due after PAYE is withheld) due from their employer. The debt for other tax types will be dealt with separately.

Example 2

Deduction notice for financial support

Michael has an outstanding financial support liability and has refused to make an arrangement with the Commissioner for the payment of the debt. The outstanding financial support is $3,000 when the Commissioner's records show Michael has commenced receiving a wage from an employer. A deduction notice is issued to Michael's employer requiring a deduction of the lesser of $3,000 or 40% of Michael's wage after PAYE is deducted.

Michael is paid $800 (net of PAYE) and his employer withholds $320 (being 40% of Michael's wage (net of PAYE)).

Copy of deduction notice to be sent to the taxpayer

31. The Commissioner will send a copy of the deduction notice to the taxpayer. Where the taxpayer does not have a valid address, a deduction notice may be sent to the taxpayer's last known address, unless the third party to whom the deduction notice is sent is the current employer of the taxpayer. In that case no copy of the notice needs to be sent.

32. Alternatively, the Commissioner may dispense with the requirement to send a copy of a deduction notice to a taxpayer altogether where the Commissioner has, or can find, no valid address for the taxpayer or their employer.

[9] Section 154 of the CSA.

[10] Refer to the IR335 *Employer's Guide: Information to help you with your responsibilities as an employer*. Also refer to s 165 of the CSA.

Revoking a deduction notice

33. The Commissioner may cancel a deduction notice by notifying the third party to not make the deduction or to make a deduction for a different amount. If the taxpayer has paid their tax liability or has agreed to an arrangement with the Commissioner for the payment of their tax liability, the Commissioner will notify the third party in writing that the deduction notice is cancelled.

Withheld amounts

34. Once the third party has withheld an amount pursuant to a deduction notice they hold that amount on trust for the Crown and must make payment of the amount to the Commissioner in the time provided for in the deduction notice. If the third party fails to pay the withheld amount, then they will be liable to pay use of money interest on this amount.

35. If a third party fails to pay the Commissioner an amount they have deducted, the third party will be liable for that amount plus use of money interest. Further, the Commissioner may take action to recover that amount from that third party. The third party may also be liable for criminal penalties for failing to account for the withheld amount.

36. On making a deduction the third party must notify the taxpayer of the fact of the deduction or extraction and of the purpose for which it was made.

37. A person who makes a deduction required under a deduction notice is deemed to be acting under the authority of the taxpayer to whom the notice relates and is indemnified in respect of the deduction made.

Failure to comply with a deduction notice

38. If a third party fails to make a deduction as required, the Commissioner may take recovery action against that third party for failing to deduct and pay the Commissioner in accordance with the deduction notice.

39. This ability to recover amounts not withheld applies to all tax liabilities except deductions of financial support required to made by a bank under s 154 of the CSA, in which case the bank will not be liable for financial support it fails to deduct.[11]

[11] Section 168(2) of the CSA.

40. Where the Commissioner recovers an amount from a third party who had failed to make a deduction required by a deduction notice issued to them, that third party may, in turn, seek to recover that amount from the taxpayer.

41. As well as being liable for the amounts that were not deducted, a third party may also be prosecuted for failing to deduct an amount and may be fined or imprisoned.

This Standard Practice Statement is signed on 12 April 2021.

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Technical Standards, Legal Services

Legislative references

The relevant sections which grant the Commissioner the power to issue a deduction notice are as follows:

- Section 157 of the TAA
- Section 151(2) of the CSA
- Section 154 of the CSA
- Section 12L of the GDA
- Section 43 of the GSTA
- Section 193 of the SLSA.