Inland Revenue
Te Tari Taake

TECHNICAL DECISION SUMMARY > ADJUDICATION

WHAKARĀPOPOTOTANGA WHAKATAU Ā-TURE> WHAKAWĀ

Income tax: Is the Taxpayer entitled to a partial write-off of their final tax liability?

Decision date | Te Rā o te Whakatau: 21 July 2022

Issue date | Te Rā Tuku: 6 December 2022

TDS 22/22

Subjects | Ngā kaupapa

Is the Taxpayer entitled to a partial write-off of their final tax liability?

Abbreviations | Whakapotonga kupu

The abbreviations used in this document include:

CCS	Customer & Compliance Services, Inland Revenue
Commissioner	Commissioner of Inland Revenue
RIT	Residual income tax
SOP	Statement of Position
TAA	Tax Administration Act 1994

Taxation laws | Ngā ture tāke

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

Facts | Ngā meka

1. The Taxpayer was an individual and was paid fortnightly. During the year in dispute there were 27 fortnightly paydays.
2. The PAYE tables for fortnightly pay periods calculate PAYE on the basis that there are 26 paydays during a tax year. On the odd occasion when there are 27 fortnightly paydays during a tax year, the (correct) use of the PAYE tables causes insufficient PAYE to be deducted for that year. In this summary the Taxpayer's 27th fortnightly pay is referred to as the extra pay or the extra pay period, as the context requires.
3. Section 22J provides for a write-off of the tax that relates to an extra pay under certain circumstances. The requirements for an amount of tax arising from an extra pay period to be written off under s 22J are contained in cl 1(c) of schedule 8, part B.[1]

[1] See [12] below.

4. The Taxpayer was assessed with residual income tax (**RIT**) of $450 for the year in dispute. The parties agreed that, of the RIT amount:
   - $350 was attributable to the extra pay, and
   - $100 related to a lump sum received by the Taxpayer during the year.
5. In addition, the Taxpayer:
   - was not entitled to working for families tax credits during the year in dispute, and
   - did not change tax code during the year or use a tailored tax code.
6. The Taxpayer claimed that $350 of the income tax assessment should be written off under s 22J because it solely related to the extra pay. CCS argued that the Taxpayer was not entitled to a write-off at all because:
   - s 22J only applies to a person's entire final tax liability, not a part of their final tax liability, and
   - the parties agreed that the Taxpayer's final tax liability was a composite amount caused by the extra pay and the lump sum.
7. In addition, the Commissioner has adopted a write-off threshold amount for fortnightly extra pays. If the final tax liability amount is more than the threshold then CCS will not write the tax off. The Taxpayer's RIT was more than the threshold amount. The Taxpayer argued that this was an extra-statutory threshold which was not stipulated in s 22J (or schedule 8).

Issues | Ngā take

8. In deciding whether the Taxpayer was entitled to a partial write-off of their final tax liability, the Tax Counsel Office considered the following issues:
   - Interpretation of the words "amount of tax":
     - How should the words "amount of tax" in clause 1(c) of schedule 8, part B, be interpreted?
     - If the "amount of tax" referred to in clause 1(c) is the taxpayer's final tax, is it correct to write off the part of the "amount of tax" that arises solely because of an extra pay period, even though part of the "amount of tax" arises for some other reason?
   - Is the Commissioner's use of a monetary threshold permissible in the circumstances?

Decisions | Ngā whakatau

9. The Tax Counsel Office decided that none of the Taxpayer's final tax liability could be written off under s 22J and clause 1(c) of schedule 8, part B.

Reasons for decisions | Ngā take mō ngā whakatau

Issue 1 | Take tuatahi: Interpretation of the words "amount of tax"

10. The TAA makes provision for an "amount of tax" that arises solely because of an extra pay period to be written off. The relevant provisions are s 22J(1) and clause 1(c) of schedule 8, part B.

11. Section 22J(1) provides as follows:

> *When amounts written off*
>
> (1) For the purposes of this subpart, the Commissioner may write off **an amount of tax payable by a qualifying individual** for a tax year if the requirements of schedule 8, part B are met. [Emphasis added]

12. Clause 1(c) of schedule 8, part B sets out the requirements for an amount of tax arising from an extra pay period to be written off under s 22J:

> *Writing off certain amounts of tax payable*
>
> Subject to clause 2, the Commissioner must write off the following amounts under section 22J:
>
> ....
>
> (c) an **amount of tax relating to the income of an individual for a tax year that arises solely because the individual has an extra pay period** in the corresponding income year, ... [Emphasis added]

13. The parties accepted that the provisions were ambiguous and that it was possible to interpret the "amount of tax" as meaning either:

- Taxpayer argument: An *identifiable portion* of an overall final tax liability where that portion arises solely because of an extra pay period (ie, a partial write-off was permissible).
- CCS argument: The *full amount* of an overall final tax liability where the full amount arises solely because of the extra pay period (ie, a partial write-off was not possible).

14. To establish the correct interpretation the Tax Counsel Office analysed (among other things) the following subjects:

- Principles of statutory interpretation.
- Plain and ordinary meaning of "amount of tax" in s 22J and clause 1(c) of schedule 8, part B.
- Purpose of s 22J and clause 1(c) of schedule 8, part B.

Principles of statutory interpretation

15. Section 10 of the Legislation Act 2019 (previously s 5 of the Interpretation Act 1999) is the starting point for all statutory interpretation.[2] The requirements of s 5(1) of the Interpretation Act 1999 were examined by the Supreme Court in *Fonterra*.[3]

16. The Tax Counsel Office noted that *Fonterra* makes it clear that legislation is to be interpreted in the following way:

- the statutory text be considered in isolation of purpose to determine its plain and ordinary meaning or meanings
- the meaning, or possible meanings, of the text must then be crossed-checked against the purpose of the legislation
- in determining purpose, regard must be had to both the immediate and general legislative context; it may also be relevant to consider the social, commercial or other objectives of the legislation.

17. The Tax Counsel Office also noted that s 10(4) of the Legislation Act 2019 states that the text of the legislation includes preambles, a table of contents, headings, diagrams, graphics, examples and explanatory material, and the organisation and format of the legislation.

Plain and ordinary meaning of "amount of tax" in s 22J and clause 1(c) of schedule 8, part B

18. The first step taken by the Tax Counsel Office was to consider the statutory text in isolation of purpose to determine its plain and ordinary meaning or meanings.

19. Following analysis of *Fonterra*, s 22J and clause 1(c), the Tax Counsel Office considered the plain and ordinary meaning was unclear. This was because:

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[2] It was noted that s 10 of the Legislation Act 2019 is substantially the same as s 5 of the Interpretation Act 1999.

[3] *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36; [2007] 3 NZLR 767 (SC).

- the word "an" amount of tax was used instead of "the" amount of tax
- as accepted by the parties, it was possible to interpret the "amount of tax" as meaning either:
    - any part of the individual's final tax that arises solely because of the extra pay, or
    - the individual's final tax, where the full amount of the final tax arises solely because of the extra pay period, and
- the wording of s 22J and clause 1(c) did not mirror each other.

Purpose of s 22J and clause 1(c) of schedule 8, part B

20. The next step was for the meaning, or possible meanings, of the text to be crossed-checked in the light of any discernible purpose of the legislation.

21. The Tax Counsel Office considers the following factors inform the purpose of s 22J:

- The Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019 contains a statement to the effect that most people would pay what they needed to and get what they are entitled to during the year without having to do anything.
- Subpart 3B provides the administrative settings that underpin an individual's obligations to calculate and satisfy their income tax liability for a tax year.
- The purpose of s 22J is to mandate the write-off of an amount of tax payable by a qualifying individual for a tax year. In the context of automatically finalising a taxpayer's account after the end of an income year without the taxpayer having to do anything, the Tax Counsel Office considers the amount of tax in question must be the whole of a person's final tax liability.
- Further, viewing s 22J in its context, the following matters were relevant:
    - *The timing of when s 22J applies* – The write-off provisions apply when an amount is owing after the Commissioner has finalised a person's account and an assessment has been made. The Commissioner finalises an account and makes an assessment on the basis of the information in the Commissioner's possession.
    - *Consistency with s 22I* - Section 22I provides that when the Commissioner finalises a person's account they are treated as having filed a tax return and having made a self-assessment. The flowchart for s 22I indicates that the person would either have tax to pay or a write-off. There is no middle

ground (ie, the flowchart does not indicate that a write-off of part of the tax to pay could occur, and a remainder still be payable).

- *Section 22J does not contemplate a refund* - The write-off provisions do not contemplate that a person who qualifies for a write-off will become entitled to a refund as a result of the write-off being made. The flowchart for s 22J does not contemplate that any taxpayer will be entitled to a refund after a write-off has occurred. There are only two possible outcomes that can arise as a result of working through the flowchart. That is, there is either a write-off of the individual's balance, or the individual has tax to pay.
- *Tax payable for a tax year* - Section 22J gives the Commissioner a mandate to write off "tax payable by a qualifying individual for a tax year". The Tax Counsel Office considers that the words "tax payable … for a tax year", more correctly refer to a taxpayer's final tax for a tax year rather than tax that relates to a portion of the income that the taxpayer earned during the tax year.
- *No clear language of apportionment* - Clause 1(c) does not contain any clear language of apportionment. For instance, clause 1(c) does not say that an amount of tax must be written off "to the extent" it arises solely because of an extra pay period. If the legislature intended to make provision for partial write-offs, clear language to that effect could have been used.

22. In the context of automatically finalising a taxpayer's account after the end of an income year without the taxpayer having to do anything, the Tax Counsel Office concluded that the amount of tax in dispute must be the whole of a person's final tax liability and not a part of the liability. Accordingly, in order to qualify for a write-off under s 22J and clause 1(c), the full amount of a person's final tax liability must arise solely because of an extra pay period.

Conclusion

23. In accordance with the decision in *Fonterra*, it was considered by the Tax Counsel Office that the correct interpretation of the words "amount of tax" in s 22J and clause 1(c) was that they described the full amount of a person's final tax liability for a tax year and not a part of the liability. Therefore, since the Taxpayer's final tax liability for the year was a composite amount (ie, not all of the Taxpayer's final tax liability arose solely because of an extra pay period), the Tax Counsel Office concluded that none of the

Taxpayer's final tax liability for the year could be automatically written off under s 22J and clause 1(c).[4]

Issue 2 | Take tuarua: The Commissioner's use of a monetary threshold

24. The issue was whether the Commissioner's use of monetary thresholds was permissible in the circumstances.

25. CCS raised the application of ss 6 and 6A in support of its view that the extra pay period thresholds were administrative in nature and were adopted to assist the Commissioner in administering s 22J.

Section 6

26. Section 6(1) obliges the Commissioner, along with all other officers of Inland Revenue, to use "best endeavours" to protect the "integrity of the tax system". This obligation must be discharged "at all times". The words "in relation to the collection of the taxes and other functions under the Inland Revenue Acts" indicate that this obligation must be discharged by the Commissioner in all aspects of the operation of the tax system.

27. Section 6(2) lists the factors that comprise the term "integrity of the tax system". The factors listed in s 6(2) are fundamental principles in tax law.[5] In providing that it applies "without limiting its meaning", s 6(2) indicates that the list of factors is not exhaustive. The listed factors indicate that the term "integrity of the tax system" is a multifaceted concept. Some factors may be more important or relevant than others, whether generally or in particular circumstances. There may be potential for conflict between particular factors (see *Westpac & ANZ National Bank*).

28. The Tax Counsel Office noted that s 6 refers to the rights of taxpayers to have their liability determined fairly, impartially and according to law. It also refers to the responsibilities of those administering the law to do so fairly, impartially and according to law.

[4] While not authoritive in relation to the interpretation of the relevant legislation, the Tax Counsel Office noted the analysis and overall conclusions were consistent with the commentary and guidance published by the Commissioner shortly after the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Act 2019 was enacted - see *Tax Information Bulletin* Vol 31 No 4 May 2019.

[5] *Westpac Banking Corporation Limited v CIR & Ors*; *ANZ National Bank Limited & Ors v CIR* (2008) 23 NZTC 21.

Section 6A

29. Section 6A was enacted to provide legislative recognition of the Commissioner's need to manage and allocate resources according to their best use. Section 6A provides the framework within which the Commissioner administers the tax system, by providing guidance on how to manage and allocate resources while ensuring that the integrity of the tax system is protected.

30. The Commissioner is responsible for the "care and management of the taxes covered by the Inland Revenue Acts". The phrase "care and management" is not defined in the TAA and has not been given any detailed consideration by the courts.

31. The Tax Counsel Office considered that the words "care and management of the taxes covered by the Inland Revenue Acts" meant that the Commissioner was responsible for administering the tax system by carrying out the functions with which they were charged. The phrase "care and management" indicated that the Commissioner was to carry out those functions in a manner that fostered the integrity and effective functioning of the tax system.

32. The practical implications of the Commissioner's "care and management" responsibility were discussed in *Fairbrother v CIR*.[6] In *Fairbrother*, the Commissioner submitted that outside the relief and remission provisions, they could not agree to accept less tax from taxpayers than they considered due. Justice Young noted the similarity between s 6A(3) and the obligation imposed by the United Kingdom's "care and management" provision. Justice Young considered that s 6A amounted to "statutory ratification" of the House of Lords' approach in the *Fleet Street Casuals* case.[7] Justice Young stated that s 6A authorised the Commissioner to act outside the "four corners" of the relief and remission provisions. Justice Young held that the Commissioner was not under "an absolute obligation to collect the right amount of tax" in the absence of explicit contrary statutory direction. Consequently, the Commissioner can lawfully decide to collect *less tax* than otherwise required by the Inland Revenue Acts.

33. The Tax Counsel Office concluded that the courts have interpreted ss 6 and 6A as meaning the Commissioner is not under "an absolute obligation to collect the right amount of tax" in the absence of explicit contrary statutory direction. The

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6 *Fairbrother v CIR* (2000) 19 NZTC 15,548.

7 *IRC v National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 (also known as the *Fleet Street Casuals* case). The Tax Counsel Office noted that in *Fleet Street Casuals*, the House of Lords held that the United Kingdom "care and management" provision authorised the Revenue to agree not to investigate past years' tax of Fleet Street casual workers in return for those workers registering with the Revenue and complying with their future obligations.

Commissioner can lawfully decide to collect *less tax* than otherwise required by the Inland Revenue Acts (*Fairbrother v CIR*, *Fleet Street Casuals*).

Summary of ss 6 and 6A

34. The main principles from ss 6 and 6A are:

- Section 6(1) obliges the Commissioner to use "best endeavours" to protect the "integrity of the tax system". The words "in relation to the collection of the taxes and other functions under the Inland Revenue Acts" indicate that this obligation must be discharged by the Commissioner in all aspects of the operation of the tax system.
- The Commissioner is responsible for the "care and management of the taxes covered by the Inland Revenue Acts" under s 6A. The phrase "care and management" recognises that the Commissioner must operate the tax system within the limited resources provided by Parliament.

35. The courts have interpreted ss 6 and 6A as meaning the Commissioner is not under "an absolute obligation to collect the right amount of tax" in the absence of explicit contrary statutory direction. The Commissioner can lawfully decide to collect *less tax* than otherwise required by the Inland Revenue Acts (*Fairbrother v CIR*, *Fleet Street Casuals*).

Application to the facts

36. The issue was whether the Commissioner's use of monetary thresholds was permissible in the circumstances.

37. The Tax Counsel Office noted that the parties were in general agreement about how the thresholds had been calculated. That is, the thresholds represented the maximum amount that could be attributable to having an extra pay period during the relevant tax year plus a small margin "to account for rounding errors".

38. The purpose of subpart 3B as it relates to individuals is to ensure that most people pay what they need to and get what they are entitled to during the year without having to do anything. Consistent with that purpose, the Commissioner has:

- Automated the end of year process for the vast majority of individual taxpayers (ie, administrative actions take place without human interaction).
- Removed the need for individual consideration of any particular taxpayer's circumstances in most cases, and dramatically reduced that need overall.

- This includes write-off of the following under schedule 8 of part B:
  - final tax amounts of $50 or less in certain circumstances for qualifying individuals under cls 1(a), (ab) and (ac)
  - final tax amounts relating to reportable income that is derived for a tax year by an individual solely from certain benefits under cl 1(b), and
  - relevantly, in this case, final tax amounts relating to the income of an individual for a tax year where that final tax amount arises solely because the individual has an extra pay period in the corresponding income year under cl 1(c).

39. In the case of thresholds and extra pay periods, and in keeping with the purposes of subpart 3B (ie, automation):

- the Commissioner adopts administrative thresholds for taxpayers who have an extra pay period,
- the Commissioner is aware that some taxpayers who have a composite amount would benefit because their tax would be written off when they would not be entitled to a write off under the correct statutory interpretation of s 22J and cl 1(c),[8] but
- only a relatively small number of such taxpayers are likely to be affected, and
- importantly, all taxpayers who only have an extra pay period (and nothing else that causes the PAYE tables to deduct too little tax) will have their tax written off automatically as part of the "end-of-year refunds or bills to pay" process.

40. In accordance with *Fairbrother* and *Fleet Street Casuals*, the Commissioner can lawfully decide to adopt an administrative threshold so long as it results in the Commissioner collecting *less tax* than would otherwise be required under the correct statutory interpretation. For completeness, the Tax Counsel Office noted that writing off too much tax is collecting *less tax* than would otherwise be required.

41. The Tax Counsel Office considered that having a threshold (which incorporates a small margin) to facilitate:

- the automation of the process, and
- the efficient management of the tax assessment and collection process

was permissible. But it was an administrative action and did not alter the correct interpretation of the provisions (as concluded in issue 1 above).

[8] See the conclusion to Issue 1 above.

42. Individuals, like the Taxpayer, who had two or more amounts of income that cause the PAYE tables to deduct too little tax (ie, extra pay and lump sum), would not get an automatic write off if their final tax amount was more than the threshold. This was an example of the lawful inconsistency that was permitted under ss 6 and 6A. In other words, it was not that the law was being incorrectly applied to the Taxpayer, rather it was that the Commissioner could lawfully choose not to enforce the law against the concessionary class of taxpayers:

- whose final tax liability for a tax year was less than the threshold
- who had an extra pay period, and
- who also received another source of income tax that caused the PAYE tables to deduct too little tax.

Conclusion

43. The Tax Counsel Office concluded that none of the Taxpayer's final tax liability could be written off under s 22J and cl 1(c) for the year in dispute.