Inland Revenue
Te Tari Taake

TECHNICAL DECISION SUMMARY > ADJUDICATION

WHAKARĀPOPOTO WHAKATAU HANGARAU > WHAKAWĀ

Derivation of holiday pay remedial payments and calculation of terminal tax

Decision date | Rā o te Whakatau: 26 February 2026

Issue date | Rā Tuku: 10 September 2026

TDS YY/13

Subjects | Kaupapa

This item summarises an adjudication that considered the validity of a taxpayer's Notice of Proposed Adjustment (NOPA), a PAYE deduction from a remedial payment of holiday pay and the allocation of income and terminal tax for the remedial payment.

Taxation laws | Ture tāke

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

Summary of facts | Whakarāpopoto o Meka

1. The Taxpayer was a salary/wage earner employed by a company (the Employer).
2. The Taxpayer received a remedial payment of holiday pay from the Employer some years after their employment with the Employer had ended. The Employer treated this payment as an extra pay, deducting PAYE and the ACC earner's levy.
3. The Taxpayer's automatic assessment for the relevant year, in which they received the remedial payment, resulted in tax to pay. They issued a NOPA seeking to reduce the amount of tax to pay to nil.
4. Inland Revenue's Customer and Compliance Services (CCS) rejected the adjustment that the Taxpayer proposed. The matter was referred to the Tax Counsel Office (TCO) for adjudication.

Issues | Take

5. The main issues considered in this dispute were:
   - Whether the correct amount of PAYE was deducted from the remedial payment;
   - Whether the remedial payment was correctly allocated to the tax year; and
   - Whether the terminal tax calculation for the allocated tax year was correct.
6. In addition, two preliminary issues were:
   - The onus and standard of proof; and
   - The validity of the Taxpayer's NOPA.

Decisions | Whakatau

7. TCO reached the following conclusions:

- Only the Taxation and Charities Review Authority (TCRA) or the High Court can decide on the validity of the Taxpayer's NOPA.
- The PAYE that the Employer deducted from the remedial payment was correct.
- The Employer allocated the remedial payment to the correct tax year.
- The terminal tax calculation for the allocated tax year was correct.

Reasons for decisions | Pūnga o ngā whakatau

Preliminary Issue 1 | Take tōmua tuatahi: Onus of proof

8. Except for proceedings relating to evasion or a similar act or obstruction, the onus of proof is on a taxpayer to show that an assessment is wrong, why it is wrong and by how much it is wrong.[1] However, if the taxpayer proves, on the balance of probabilities, that the amount of an assessment is excessive by a specific amount, the taxpayer's assessment must be reduced by the specific amount.[2]

9. The standard of proof is the balance of probabilities.[3]

10. It is appropriate that the same onus and standard of proof be applied in the disputes process as in challenge proceedings. TCO considered whether the Taxpayer has discharged the onus of proof in the context of the issues raised by the parties in the dispute, based on the documentary evidence put before it.

[1] Section 149A(2) of the Tax Administration Act 1994. See also *Case V17* (2002) 20 NZTC 10,192; *Accent Management Ltd v CIR* (2005) 22 NZTC 19,027 (HC); *Vinelight Nominees Ltd v CIR (No 2)* (2005) 22 NZTC 19,519 (HC).

[2] Section 138P(1B) of the Tax Administration Act 1994.

[3] *Yew v CIR* (1984) 6 NZTC 61,710 (CA); *Case Y3* (2007) 23 NZTC 13,028; *Case X16* (2005) 22 NZTC 12,216.

Preliminary Issue 2 | Take tōmua tuarua: Validity of the Taxpayer's NOPA

11. The Taxpayer's NOPA sought to reduce the assessment to nil on the basis that the tax was unfair because the Taxpayer was no longer employed by the Employer and had not caused the amount owing.

12. The NOPA did not cite relevant law or explain how the law applied to the facts to substantiate the Taxpayer's proposed adjustment. A NOPA must include both of these elements under s 89F(3)(b) and (c) of the Tax Administration Act 1994 (TAA).

13. TCO noted, however, that authority for making a final decision on whether the NOPA has met the requirements of s 89F of the TAA lies with the TCRA or the High Court.[4]

14. TCO considered that, although the NOPA was likely invalid, it was appropriate that CCS continued the dispute. TCO noted that Inland Revenue may contest the NOPA's validity if the matter proceeds to challenge.

Issue 1 | Take tuatahi: Was the correct amount of PAYE deducted from the remedial payment?

15. The issue was whether the Employer correctly calculated the amount of PAYE payable on the remedial payment that the Taxpayer received.

16. TCO's analysis was as follows:

- PAYE applies to "extra pay" under s RD 3.
- Remedial payments that correct employment-related underpayments are treated as extra pay under the Income Tax (Employment-related Remedial Payments) Regulations 2017.
- PAYE on extra pay is calculated under s RD 17.

Application

17. The remedial payment related to a shortfall in an entitlement under the Holidays Act 2003 and would otherwise have been wages. It therefore met the requirements for payments that are to be treated as extra pay. As the Employer paid no other PAYE

[4] *CIR v Alam and* Begum (2009) 24 NZTC 23,564; *Riccarton Construction Ltd v CIR* (2010) 24 NZTC 24,191 (HC).

income to the Taxpayer in the relevant period, it correctly calculated PAYE under s RD 17 using the applicable rate.

18. A former employer is not legally required to contact the former employee or their current employer about the tax rate for extra pay. However, if the Employer had contacted the Taxpayer before making the deduction, the Taxpayer may have had the opportunity to choose a higher rate.

Conclusion

19. TCO concluded the Employer made the correct deductions from the remedial payment.

Issue 2 | Take tuarua: Was the remedial payment correctly allocated to the income year?

20. The issue was whether the remedial payment was allocated to the correct year.

21. TCO analysed the law as follows:

- Section BD 3 sets the general rule that income is allocated to the income year in which it is derived, unless another provision states otherwise (s BD 3(2)).
- Generally, for individuals, the cash or receipts basis applies. That means a taxpayer derives income in the year that they receive it rather than in the year when the entitlement arose.[5]
- *Hollis* and *Case 2/2021* considered ACC payments, which are treated as PAYE-type payments under s RD 5(1)(b)(iii).[6] While this dispute concerned holiday payments, these cases are relevant as they considered PAYE-type payments. These cases reinforce the legislation in that they establish that backdated PAYE-type payments are taxable in the year they are received, and not spread back unless legislation provides a spreading rule.
- Inland Revenue has no general discretion to ignore legislation or reallocate income on the grounds of fairness.

Application

22. TCO considered the case law on this issue and found the allocation to be correct.

[5] *Whitworth Park Coal Co Ltd v IR Commrs* [1959] 3 All ER 703.
[6] *Hollis v CIR* (2010) 24 NZTC 23,967 (HC); *Case 2/2021* (2021) 30 NZTC 6,001.

23. TCO's analysis was as follows:

- The remedial payment that the Taxpayer received was employment income under s CE 1(1)(a).
- Although the payment related to employment in an earlier year, the Taxpayer derived it when they received it. It was therefore taxable in the year of receipt and not spread back to earlier years.
- Applying the case law confirms that Inland Revenue has no general discretion to depart from the legislation on fairness grounds, contrary to the Taxpayer's argument.[7]

Conclusion

24. TCO concluded that the remedial payment was allocated to the correct tax year.

Issue 3 | Take tuatoru: Was the terminal tax for the tax year correct?

25. The issue was whether the terminal tax for the relevant tax year was correct.

26. Analysing the legislation, TCO found that, under ss BC 2 and BD 1, a person's annual gross income is the assessable income allocated to that tax year, including employment income under s CE 1(1)(a). Income tax is then calculated under s BC 6(1) by applying the basic tax rates in sch 1, as defined in s YA 1. If tax credits are less than the resulting liability, the difference is terminal tax under s BC 8(3).

Application

27. TCO considered the relevant legislation and found the terminal tax calculation for the relevant tax year to be correct.

28. TCO's analysis was as follows:

- Because the Taxpayer had no deductions or available losses, their annual gross income was also their taxable income.
- Applying s BC 6 and the relevant progressive tax rates produced the same income tax liability as the automatic assessment.

[7] *Case 2/2021* (2021) 30 NZTC 6,001 from [30]; s 6 of the Tax Administration Act 1994.

- As the PAYE credits were insufficient, the unpaid balance was terminal tax.

Conclusion

29. TCO concluded that the terminal tax for the relevant tax year was correct.