Vol 31 No 5 June 2019

TAX INFORMATION

Bulletin

CONTENTS

Inland Revenue
Te Tari Taake

ISSN 1177-620X (Online)

YOUR OPPORTUNITY TO COMMENT

Inland Revenue regularly produces a number of statements and rulings aimed at explaining how taxation law affects taxpayers and their agents. Because we are keen to produce items that accurately and fairly reflect taxation legislation and are useful in practical situations, your input into the process, as a user of that legislation, is highly valued.

You can find a list of the items we are currently inviting submissions on as well as a list of expired items at **www.ird.govt.nz/public-consultation**

Email your submissions to us at **public.consultation@ird.govt.nz** or post them to:

Public Consultation
Office of the Chief Tax Counsel
Inland Revenue
PO Box 2198
Wellington 6140

You can also subscribe at **www.ird.govt.nz/public-consultation** to receive regular email updates when we publish new draft items for comment.

Ref	Draft type	Title	Comment deadline
PUB00316	Question We've Been Asked	Income tax – when does the business premises exclusion under s CB 19 apply?	7 June 2019
PUB00316	Question We've Been Asked	Income tax – when does the business premises exclusion to the bright-line test apply?	7 June 2019

IN SUMMARY

IN SUMMARY (continued)

General articles

NEW LEGISLATION

This section of the *TIB* covers new legislation, changes to legislation including general and remedial amendments, and Orders in Council.

Orders in Council

THE SOCIAL SECURITY (CASH ASSETS AND INCOME EXEMPTIONS — CHRISTCHURCH MOSQUES ATTACK SUPPORT PAYMENTS) AMENDMENT REGULATIONS 2019

An Order in Council has been made to ensure that donations to support those affected by the Christchurch mosque attacks of 15 March 2019 do not negatively impact recipients' entitlement to government assistance through the tax credit and transfers system.

The Social Security (Cash Assets and Income Exemptions — Christchurch Mosques Attack Support Payments) Amendment Regulations 2019 exempts support payments and any related income received by the victims of the Christchurch mosque attacks and their families when assessing a client's income and cash assets under the regulations.[1] Any amount specified in this Schedule, or any amount distributed by a charitable entity registered under the Charities Act 2005, is exempt for the calculation of family scheme income by section MB 13 (2) (e) and (o) of the Income Tax Act 2007. Accordingly, the Working for Families entitlements of those receiving donations will be unaffected.

The Order in Council came into force from 2 April 2019 and will apply retrospectively to payments received on or after 15 March 2019, except for the purposes of the temporary additional support chargeable income exemption. The exemption will apply for 12 months after the payment is made to recognise that recipients may require time to decide what to do with any amounts received.

Background

Following the Christchurch mosque attacks, individuals, communities and businesses have been donating funds to support victims of the attack and their families through charitable organisations and platforms such as Givealittle and LaunchGood. Some of those receiving donations also receive various forms of tax credit and transfer assistance from the Government.

The Ministry of Social Development and Inland Revenue consider a client's income and cash assets when assessing what financial support a client is entitled to. It is possible, therefore, that the receipt of financial donations and gifts would affect the assessment of a client's entitlement. These regulations amend the Social Security Act 2018 so that payments and any related income received by those affected by the attack are not included when making this assessment. Victims and their families who receive assistance administered by IRD will therefore experience no changes to the monetary support they receive as a consequence of the donations provided to them.

[1] Schedule 8 of the Social Security Regulations 2018, under sections 418 to 451 of the Social Security Act 2018

BINDING RULINGS

This section of the *TIB* contains binding rulings that the Commissioner of Inland Revenue has issued recently. The Commissioner can issue binding rulings in certain situations. Inland Revenue is bound to follow such a ruling if a taxpayer to whom the ruling applies calculates their tax liability based on it.

For full details of how binding rulings work, see *Binding rulings: How to get certainty on the tax position of your transaction (IR715)*. You can download this publication free from our website at **www.ird.govt.nz**

BR Prd 19/02 - Electricity Ashburton Limited trading as EA Networks

This is a product ruling made under s 91F of the Tax Administration Act 1994.

Name of the person who applied for the Ruling

This Ruling has been applied for by Electricity Ashburton Limited trading as EA Networks.

Taxation Laws

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

This Ruling applies in respect of s CD 1.

The Arrangement to which this Ruling applies

The Arrangement is:

- the payment of Consumer Discounts under the Consumer Discount Policy by Electricity Ashburton Limited (EA Networks) to electricity supply retailers (Retailers) that contract with EA Networks to use its electricity distribution network to supply electricity to consumers (Users); and
- the passing on of these Consumer Discounts by Retailers to all eligible Users.

Further details of the Arrangement are set out in the numbered paragraphs below.

EA Networks' structure and shareholding arrangements

1. EA Networks owns and operates an electricity distribution network (Distribution Network) in mid Canterbury. EA Networks contracts to provide line function services to Retailers that wish to use the Distribution Network to supply electricity to Users.
2. EA Networks operates as a stand-alone co-operative company (Electricity Ashburton Limited, trading as EA Networks). EA Networks has two types of shares: rebate shares and deferred shares (non-rebate shares). Over 30,000,000 shares are issued.
3. The deferred shares (totalling 28,750,000) are owned solely by the Ashburton District Council and have no rights to dividends, rebates or discount payments.
4. EA Networks' website contains the following relevant information about the ownership and structure of EA Networks (**www.eanetworks.co.nz/about-us/ownership/** accessed 8 January 2019):

> **Ownership and Structure**
>
> EA Networks is the trading name of Electricity Ashburton Limited, a co-operative network business based in Mid Canterbury. The business incorporates an asset management function (the Network Division) and a contracting function (the Field Services Division).
>
> There are 30,069,100 shares issued in Electricity Ashburton Limited. The Ashburton District Council holds 28,750,000 of these shares in a non-rebate/non-voting form. The consumers/shareholders connected to the local electricity distribution system hold 1,278,200 rebate shares at 100 shares per consumer. All consumers/shareholders obtain a discount based on the line charges paid to the company.
>
> **Consumers/Shareholders**
>
> All new electricity consumers are initially a shareholder in the co-operative company. Almost every new consumer chooses to retain their shareholding and only a handful of existing consumers are not shareholders. Each shareholder (consumer) has one vote to elect a shareholder committee member, irrespective of the size/scale of their electrical connection(s).
>
> ...

Rebate shares

5. Rebate shares are offered to anyone connected to EA Networks' electricity lines network and who directly or indirectly pays for the use of the network (the User). Each User is entitled to hold 100 rebate shares, having a nominal value of $1.00 each. A User is entitled to hold only one parcel of rebate shares per connection. All rebate shares rank equally for voting.

6. The Constitution of EA Networks dated 2012 (Constitution) contains the following relevant definitions:

> "*Holder*", "*Shareholder*" and "*Member*" means a holder of Rebate Shares or any other class of Equity Securities issued by the Company.
>
> "*Minimum Holding*" means a Minimum Holding of Rebate Shares to be held by a Shareholder to give an entitlement to Rebates such Minimum Holding being determined from time to time by the Board pursuant to clause 7.2.
>
> "*Rebate*" means a distribution by the Company by way of cash, assets or other consideration to a User.
>
> "*Rebate Shares*" means shares issued to a User which entitles that User (but not an Energy Trader) to a rebate in respect of Services.
>
> "*Services*" means the direct or indirect provision of the right to use lines and equipment associated with lines owned by the Company for the conveyance of electricity.
>
> "*User*" means a person who is connected to the electricity lines owned and operated within the District by the Company and who directly, or indirectly through an electricity supply business, pays the charges for the use of those lines by being:
>
> (a) an end-customer who is liable for the payment of electricity conveyed to that customer over those lines or for services in relation to those lines; or
>
> (b) an end-customer of any electricity supply business that is liable for payment for services in relation to those lines;
>
> AND EXCLUDES
>
> (c) an Energy Trader; and
>
> (d) A person who is connected to such lines for a short or temporary period

7. The Constitution defines "rebate" to mean a distribution by EA Networks by way of cash, assets or other consideration to a "User". A "User" is defined as a person who is connected to the electricity lines owned and operated by EA Networks and who directly, or indirectly through a Retailer, pays the charges for the use of those lines by being:

   (a) an end-customer who is liable for the payment of electricity conveyed to that customer over those lines or for services in relation to those lines; or

   (b) an end-customer of any Retailer that is liable for payment for services in relation to those lines.

8. Clause 7 of the Constitution refers to rebates and minimum holdings. Clause 7.1 of the Constitution restricts the Board to only be able to issue Rebates to "Holders of Rebate Shares", being a subset of "Users", as explained below. Clause 7.1 relevantly states:

> **7 REBATE AND MINIMUM HOLDINGS**
>
> **7.1** The Board shall determine from time to time the Rebates payable (if any) to Holders of Rebate Shares. The Board may also establish differential Rebates so that different levels of rebate are paid in accordance with any one or more of the following criteria:-
>
> 7.1.1 According to various numbers of units of energy consumed; or
>
> 7.1.2 Based on different levels of usage of the network of the Company; or
>
> 7.1.3 Based on different tariff classifications and pricing structures; or
>
> 7.1.4 Different levels of Services provided; or
>
> 7.1.5 Different capacity ratings; or
>
> On such other basis as is determined from time to time by the Board.
>
> ...

9. Clause 5.1 of the Constitution refers to rebate shares and states:

> **5.1 Rebate Shares.** The Board shall give to every User the right to apply for and hold such number of Rebate Shares as shall be a Minimum Holding PROVIDED THAT no Energy Trader shall be entitled to apply for or be issued any Rebate Shares. To give effect to such provision the Board may:-
>
> 5.1.1 Provide that the amount payable for the said Rebate Shares shall be either paid in cash or deducted from Rebates payable to that User; or
>
> 5.1.2 Permit that User to pay the amount payable in respect of those Rebate Shares over such period or period as the Board considers appropriate.
>
> No User shall be required to hold any more Rebate Shares than any other User. The Company shall not issue and/or shall not approve the transfer of Rebate Shares which would result in any User holding less than a Minimum Holding. The Council shall be entitled to hold a Minimum Holding notwithstanding it holds the Deferred Shares.

10. The "Disclosure Document for Public Offering of Rebate Shares in Electricity Ashburton Limited (trading as EA Networks)" (dated 29 March 2017) (the Offer) sets out, in cl 4, the key terms of the offer:

Issuer	Electricity Ashburton Limited [EAL]
Description of Rebate Shares being offered	The Rebates Shares are only available to persons who become connected to a network owned by EAL or obtain services from EAL. 100 Rebate Shares is the number of shares issued to each shareholder. All of those shares rank equally for voting.
Consideration/Price for Shares	Each Rebate Share is offered for $1.00 each. 100 Rebate Shares must be applied for. No moneys are payable on application and the shares are paid up from moneys or payments which shareholders receive arising from the shares held in EAL. Until fully paid up there is a liability for the $100. Those distributions can be a dividend, rebate or discount declared by EAL.
Opening Date	The offer opens on 29 March 2017. There is no closing date for this offer as it remains open to all persons who become connected to the EAL network.
Number of Shares Offered	The total number of shares offered cannot be determined as this depends on the number of persons connecting to the network. All shareholders holding rebate shares are restricted to 100 Rebate Shares. The Ashburton District Council holds shares so the Rebate Shares represented approximately 5% of the total shares on issue. Each person (which includes individuals, companies and other legal entities) connected to the EAL network can apply for 100 Rebate Shares which are issued for $1.00 each.
Distributions	EAL makes distributions from time to time to shareholders. These may be paid in cash or in the form of a rebate or other payment for the benefit of shareholders. Surplus cashflow may also be credited to all persons connected to the network including shareholders. EAL determines the method by which it makes distributions of any type to shareholders and how it pays or credits that distribution.
Surrender/Transfer of Shares	Shares are not transferrable except with Board approval. This only occurs in limited circumstances. On a shareholder ceasing to enter into direct or indirect (through an energy retailer) transactions with EAL the Rebate Shares held are surrendered by EAL at the lesser of $1.00 per share or the amount paid up on those shares.
Fees or charges payable	There is no liability to pay further charges or make additional payments on the shares being offered.

11. Users are entitled to purchase rebate shares (based on the existence of their connection) should they choose to exercise this right. There is no obligation on a User to purchase rebate shares. A small proportion (less than 1%) of EA Networks' Users are not shareholders as they have not exercised their right to purchase rebate shares.

12. Clause 10 of the Constitution refers to payment of dividends and rebates and relevantly states:

> **10 PAYMENT OF DIVIDENDS AND REBATES**
>
> **10.1 Power to Pay a Dividend and Rebate:** The Board may pay a Rebate or Dividend to any shareholder or other persons entitled thereto. Rebates and Dividends shall be paid in accordance with the provisions of this Constitution or the terms of issue of the Securities then on issue. Rebates shall be given as discounts to holders of Rebate Shares (on the same basis as set out in clause 7.1) and may be paid in such manner as the Directors shall determine.
>
> **10.2 Persons to whom Dividend/Rebate payable:** A Dividend or Rebate shall be paid to the person or persons who are the registered holder or holders of the Shares in respect of which the Dividend or Rebate is authorised at the time of the authorisation of the Dividend and Rebate (or at the time when the Dividend and Rebate is authorised to be made).
>
> **10.3 Dividend and Rebates to joint holders:** If several persons are registered as joint holders of any Shares, and such persons are entitled to receive distributions in respect of the Shares, any one of them may give effectual receipts for any Dividend and Rebate in respect of the Share.

10.4 Manner of payment: A Dividend and a Rebate payable in cash may be paid in any manner (whether by direct credit or otherwise) directed by the person entitled to it. A Rebate may also be satisfied by crediting the account with the Company of the User entitled to that Rebate. Payment may be made by cheque sent by post:

10.4.1 to the registered address of the Shareholder or person entitled thereto; or

10.4.2 In the case joint holders to any one of the joint holders at his or her registered address; or

10.4.3 To such persons and to such address as the Shareholder or person entitled or such joint holder as the case may be, may direct;

And the Company shall not be responsible for any loss arising from such mode of transmission.

10.6 Deductions from distribution: The Directors may deduct from any Dividend and Rebate payable to any Shareholder entitled to receive Dividends or Rebates all such sums of money as may be due from him or her to the Company on account of any or all of the following:

10.6.1 Calls, instalments, any debt, or liability to the Company or any Related Company; and

10.6.2 Debts, liabilities or obligations in respect of which the Company has a lien over specific Shares in respect of which the distribution is made; and

10.6.3 Such amounts as the Company may be called upon to pay under any legislative enactment in respect of the Shares of a deceased or other Shareholder;

10.6.4 Any payment required to increase the Rebate Shares held by that Holder to a Minimum Holding.

13. Clause 10 of the Constitution provides that EA Networks may make payments of rebates (as defined in the Constitution) to a User.

Pricing and payment of discounts

14. Each month EA Networks charges a distribution fee to the Retailers for using the Distribution Network. The Retailers then recover this fee from the Users through separate contractual arrangements. A User is defined to mean a person who is connected to the electricity lines owned and operated by EA Networks and may include non-holders of rebate shares.

15. EA Networks' document "Pricing Methodology Electricity Distribution Network" (effective from 1 April 2018), states (at p 29):

> ***Non-standard contracts***
>
> EA Networks does not have any customer or group of customers on non-standard contracts. All end users are contracted (ultimately) to the network via our standard UoSA [Use of System Agreement] that we have with each Retailer operating on our network.

16. EA Networks has advised that, as a commercially-driven arrangement, EA Networks pays a differential consumer discount to all Users under its policy relating to the payment of discounts related to its electricity distribution business, based on certain eligibility criteria (Consumer Discount).

17. The "Statement of Corporate Intent 2018-19" for EA Networks states (on p 22) that, traditionally, EA Networks has made an annual deferred discount to all consumers (being the commercially-driven Consumer Discount as opposed to the term "Deferred Discount" as defined in the Constitution). The total amount of discounts EA Networks paid to Users in the past five financial years is shown in Table 1.

Table 1: Discounts EA Networks paid to Users, 2014–2018

Year ended	Amount excluding GST
31 March 2014	$4,198,280.97
31 March 2015	$4,497,785.34
31 March 2016	$3,473,247.30
31 March 2017	$2,782,033.11
31 March 2018	$2,858,083.39

Consumer Discount Policy

18. On 4 September 2018, EA Networks decided in principle to adopt the revised and updated version of its policy relating to the payment of discounts related to its electricity distribution business (the Consumer Discount Policy). A copy of the Consumer Discount Policy was provided to Inland Revenue as part of the ruling application on 15 November 2018. EA Networks will formally approve the Consumer Discount Policy before 1 April 2019. The Consumer Discount Policy will apply from the 1 April 2019 financial year.

19. The Consumer Discount Policy will not be amended during the period of the Ruling and will be adhered to for the period of the Ruling.

20. Under the Consumer Discount Policy, as part of the annual budgeting process, directors of EA Networks will decide the pool (if any) to be paid as a discount (Consumer Discount Pool) and the associated payment date. The directors' decision will be made before the start of the financial year to which the budget relates, which, for the avoidance of doubt, will be before 1 April each year. The payment date will be within the last quarter of the financial year to which the budget relates.
21. Under the Consumer Discount Policy, the principles that directors will consider when setting the size of the Consumer Discount Pool will include:
    - current and ongoing capital investment requirements;
    - operational requirements; and
    - borrowing/debt repayments, taking into account intergenerational fairness.
22. Under the Consumer Discount Policy, when setting the size of the Consumer Discount Pool, directors will decide on the allocation methodology to determine how much each User will be entitled to (Allocation Methodology). The Allocation Methodology will apply a fixed allocation formula and will be able to demonstrate a relationship between electricity distribution charges revenue received in the relevant budgeted year and the discount allocated to Users.
23. The Allocation Methodology will provide that a User's entitlement to be paid a discount from the Consumer Discount Pool will be in relation to their actual network usage or share of distribution charges paid during the measurement period stipulated in the Allocation Methodology. The entire amount of the Consumer Discount Pool will be allocated back to Users each year.
24. EA Networks will publicly announce the Consumer Discount Pool and the Allocation Methodology in advance of the commencement of the financial year to which it relates, by publishing all relevant information on its corporate website before 1 April each year.
25. The following is a draft of the announcement of the Consumer Discount Pool that will be published on EA Networks' website for the financial year ended 31 March 2020 (supplied to Inland Revenue on 18 January 2019):

    > EA Networks annual consumer discount pool has been set at $XXX. It is EA Networks intention to pay and allocate the consumer discount pool in accordance with the "Consumer Discount Methodology for the financial year ended 31 March 2020". The methodology is available on EA network website **www.eanetworks.co.nz**

26. The following is a draft of the Allocation Methodology for the financial year ended 31 March 2020 (supplied to Inland Revenue on 19 February 2019):

    > **EA Networks Consumer Discount Methodology**
    >
    > For the financial year ended 31 March 2020
    >
    > **Introduction**
    >
    > EA Networks (the trading name of Electricity Ashburton Limited) is a consumer cooperative which has a policy of allocating a consumer discount to consumers connected to its network. This document describes the methodology used to make that allocation.
    >
    > To qualify for the consumer discount, consumers must be connected to the network at 5.00 pm on the last working day of February 2020.
    >
    > The first $100 of consumer discount ever paid to a consumer who is a shareholder of EA Networks will be used to purchase shares in EA Networks after which the consumer discount generally appears as a credit on consumers' April or May monthly accounts from their electricity retailer(s).
    >
    > For any questions on the consumer discount please contact EA Networks (03) 3079800 or email **inquiry@eanetworks.co.nz**
    >
    > The consumer discount will be paid in accordance with the requirements of the Inland Revenue Department Building Ruling XXXX.
    >
    > For completeness we note that the consumer discount calculated and paid under this methodology is separate to any form of payment provided for in EA Networks' constitution. Payments made under this methodology are not made in relation to any shareholding relationship and are made only due to the relationship between EA Networks' and its' end electricity consumers.
    >
    > **Paid to all consumers**
    >
    > The consumer discount will be paid to all qualifying consumers regardless if the[y] own or do not own shares in the company.
    >
    > **Allocation of consumer discount to consumers**
    >
    > Each consumer's share of the consumer discount pool is calculated:
    >
    > A ÷ B × C.
    >
    > Where:
    >
    > A: EA Networks charges to qualifying consumer for the measurement period.
    >
    > B: The sum of all qualifying consumer charges for the measurement period.
    >
    > C: The value of the consumer discount pool, set at XXX for XXXX.
    >
    > The measurement period runs from 1 March 2019 to 29 February 2020.

27. The announcement of the Consumer Discount Pool and the Allocation Methodology will be made before EA Networks issues invoices to Retailers for any distribution charges in respect of the financial year to which the Consumer Discount relates.
28. The Consumer Discount Pool and Allocation Methodology will also be notified in the Statement of Corporate Intent and the Distribution Pricing for the financial year to which it relates.
29. The value of the Consumer Discount Pool announced by EA Networks will not be altered during the applicable income year.
30. To be eligible to receive payment of the Consumer Discount under the Consumer Discount Policy a User must remain a User (as defined in the Constitution) connected to the Distribution Network at 5 pm on the last working day of February of the financial year to which the discount relates. The amount of the discount paid to an eligible User under the Consumer Discount Policy will be based on the User's network usage or share of distribution charges paid within that financial year for electricity supplied to them through EA Networks' Distribution Network in accordance with the Allocation Methodology.
31. Historically, EA Networks has paid out Consumer Discounts to all eligible Users connected to its network (whether they are rebate shareholders or not). Under the Consumer Discount Policy there is no requirement that Users are holders of rebate shares in order to receive the discount. For the avoidance of doubt, under the Consumer Discount Policy, EA Networks will pay discounts to all eligible Users whether they are holders of rebate shares or not, and Retailers will pass on these discounts to all eligible Users whether they are holders of rebate shares or not.
32. The Consumer Discount that is paid under the Consumer Discount Policy is a discount provided to Users based on their electricity consumption. The discount is a commercial discount based on transactions with Users (regardless of their shareholding status) and is entirely separate from any deferred discounts and rebates to shareholders as provided for in the Constitution. For the avoidance of doubt, this Ruling does not consider or rule on the application of the taxation laws to any payments by EA Networks of any deferred discounts, rebates or dividends other than the Consumer Discount paid under the Consumer Discount Policy.
33. At the end of each financial year, EA Networks will contract with Retailers to receive payment of, and pass on to the eligible Users as instructed, the discount calculated in accordance with the Allocation Methodology that EA Networks announced at the beginning of the related income year under the Consumer Discount Policy.
34. The Allocation Methodology provides that the first $100 of the Consumer Discount ever paid to a User who is a shareholder of EA Networks will be used to purchase rebate shares in EA Networks (as provided for in the Offer) after which the discount will generally appear as a credit on Users' April or May monthly accounts from their Retailer. For practical administrative purposes, EA Networks calls for the share cost at the same time it makes payment of the discount amount owing to the User under the Consumer Discount Policy to reduce the volume of transactions occurring. To keep the transaction volume at a minimum, EA Networks calls for payment of shares only to the extent that the User has a discount owing to them, to a maximum of $100 (that is, the shares' total value). The User's lines usage has to have been high enough to produce a discount in excess of the $100 and, if not, EA Networks will only call annually for payment that matches the discount, until the full $100 has been called.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The Consumer Discount Pool and the Allocation Methodology are communicated publicly on EA Networks' website before 1 April of the financial year in which the Consumer Discount will be given.

b) The Consumer Discount is allocated to Users based on a pre-determined Allocation Methodology based on their usage or share of distribution charges in the financial year in which the discount will be given.

How the Taxation Law applies to the Applicant and the Arrangement

Subject in all respects to any condition stated above, the Taxation Law applies to the Applicant and the Arrangement as follows:

a) A Consumer Discount paid under the Consumer Discount Policy by EA Networks to a User will not amount to a taxable dividend in the hands of the User under s CD 1.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 1 April 2019 and ending on 31 March 2024.

This Ruling is signed by me on the 26th day of March 2019.

Howard Davis
Director (Taxpayer Rulings)

QUESTIONS WE'VE BEEN ASKED

This section of the *TIB* sets out the answers to some day-to-day questions people have asked. They are published here as they may be of general interest to readers.

QB 19/03: Provisional tax – impact on employees who receive one-off amounts of income without tax deducted

This Question We've Been Asked (QWBA) considers the impact of the provisional tax rules on employees who receive one-off amounts of income not taxed at source.

Question

What are the provisional tax implications when a person earning salary or wages subject to PAYE receives a one-off amount of income without any tax withheld and their residual income tax exceeds $2,500?

Answer

An employee who receives an amount of income without tax withheld and whose residual income tax exceeds $2,500 is a provisional taxpayer even if their prior year's residual income tax was $2,500 or less.

If the residual income tax is $60,000 or more, the person will be exposed to use-of-money interest if they do not pay provisional tax instalments.

If their residual income tax is less than $60,000, the person will not have exposure to use-of-money interest provided they pay the residual income tax on or before the terminal tax date.

If they file a tax return they will need to indicate in that return what provisional tax method they will use for the following year and make the instalments accordingly.

If their tax position is automatically calculated, they will be treated as required to pay provisional tax in the following year under the standard method and notified accordingly before each instalment date, unless they elect to use the estimation method.

If their residual income tax in the following year is $2,500 or less, they will not be a provisional taxpayer, but will still have an obligation to pay instalments under either the standard or estimation methods.

Key Terms

Provisional Tax: income tax paid as instalments

Residual income tax: Income tax liability minus tax credits

Terminal tax date: Generally, 7 February of the following tax year

Use-of-money interest: money charged on late or underpaid tax or paid on overpaid tax

Explanation

1. This Question We've Been Asked has arisen because salary and wage earners can sometimes receive significant one-off lump sum amounts of income without tax deducted at source, such as:
   - an amount of recovered depreciation on the sale of a rental property;
   - the receipt of beneficiary income from a trust where s HD 4(b) of the Income Tax Act 2007 (ITA) applies;
   - the transfer of shares to an employee under an employee share scheme where the employer has chosen not to deduct PAYE; and
   - gains made on the redemption of a bond that has been acquired at a discount to face value.
2. Because such people have PAYE deducted at source on their normal income, and do not usually have residual income tax exceeding $2,500, they may not have previously been a provisional taxpayer.
3. If they continue as employees in the tax year in which they receive the one-off amount of income, they will not be classed as a "new provisional taxpayer" under the Tax Administration Act 1994 (TAA) (identified as a "person who has an initial provisional tax liability" under the ITA). However, if the one-off income amount without tax deducted results in residual income tax that is over $2,500 the person will become a provisional taxpayer (as defined in the TAA) because they are a person who is liable to pay provisional tax under s RC 3(1) of the ITA.

4. It is common for people in this situation (who have filed their return by 7 July) to have had residual income tax of $2,500 or less in the year before they receive the one-off amount of income. This means that s RC 3(3) of the ITA applies, so they have "no obligation to pay provisional tax" in the income year in which they derive the one-off amount of income.
5. This Question We've Been Asked explores what having "no obligation to pay provisional tax" means in a practical sense and what the consequences are in terms of interest exposure if provisional tax is not paid or is voluntarily paid when residual income tax is $60,000 or more. It also examines the implications for a person if their residual income tax is less than $60,000. Finally, it discusses the following tax year provisional tax consequences in both instances.

Application of provisional tax rules to one-off amounts of income where no tax has been deducted

6. A salary and wage earner with PAYE deducted at source will become subject to the provisional tax rules if they have residual income tax that exceeds $2,500 in any tax year. Section RC 3(1) of the ITA makes such a person liable to pay provisional tax for that tax year, so they are a "provisional taxpayer" as defined in s 3(1) of the TAA. A person who is liable to pay provisional tax then has a choice of methods to calculate the tax payable under s RC 5 of the ITA. For an employee receiving a one-off income amount the choice is practically limited to the standard method or the estimation method or a combination of the two methods.
7. If that person has had residual income tax of $2,500 or less in the prior tax year, s RC 3(3) of the ITA applies, and they will have "no obligation to pay provisional tax" in the relevant tax year. The intention behind this provision is to provide flexibility for taxpayers who will often have difficulty predicting receipt of income that has had no or insufficient tax deducted. It does not, however, remove them from the provisional tax rules as they continue to retain their status as a provisional taxpayer under the TAA by being "liable to pay provisional tax" under s RC 3(1) of the ITA, despite having no obligation to pay provisional tax under s RC 3(3) of the ITA.
8. A person who chooses to pay provisional tax under s RC 4 of the ITA is also treated under s RC 3(1)(b) of the ITA as a person liable to pay provisional tax. Section RC 2(2) of the ITA re-emphasises that "the provisional tax rules apply to a person who is required or who chooses to pay provisional tax". Choosing to pay can assist with mitigating exposure to use-of-money interest when residual income tax is $60,000 or more.

Application of provisional tax rules when residual income tax on income without tax deducted is $60,000 or more

9. Because the prior year residual income tax was $2,500 or less, an employee who has residual income tax of $60,000 or more arising from receipt of income without tax deducted at source has no obligation to pay provisional tax on instalment dates. However, such a person may choose to pay provisional tax using a method prescribed by s 120KBB of the TAA to limit exposure to use-of-money interest. Voluntary payments of the expected residual income tax amount by the last instalment date will mitigate exposure to use-of-money interest.
10. To be eligible for use-of-money interest relief, the person must be an "interest concession provisional taxpayer." This expression is defined in s 120KBB(4)(a) of the TAA:

> **interest concession provisional taxpayer** means a person that is liable to pay provisional tax for an income year if—
>
> (i) the person uses 1 of the standard methods described in section RC 5(2) or (3) of the Income Tax Act 2007 for the tax year:
>
> (ii) the person uses the estimation method described in section RC 5(5) of that Act but their payments of provisional tax on or before the instalment dates for the tax year, other than the last 1, are not under the estimation method and are equal to the amounts given by section RC 10 of that Act, using section RC 10(3)(a)(i) or (ii) as applicable, for those relevant instalments:

11. Under s 120KBB of the TAA, if the person adopts the standard method and they top up their last instalment payment to pay any difference between the residual income tax and the three instalment payments made, they will not have any exposure to use-of-money interest. For taxpayers with a standard 31 March balance date, these provisional tax instalments are on 28 August (P1), 15 January (P2) and 7 May (P3).
12. If the person had no residual income tax assessed the previous year or their residual income tax was $2,500 or less in that year, their instalment payments using the standard method at P1–P3 will be zero on each occasion. The standard method is the default option, so if the person does not advise Inland Revenue of the option selected this is what they will be treated as having adopted. They can then top up the instalment made on P3 to ensure they pay the entire residual income tax for the current year on that date. If this course is followed, the person will be exposed to use-of-money interest from P3 if they underpay, or entitled to credit interest if they overpay, the RIT on or before P3. If they did have residual income tax exceeding $2,500 in the prior year, then they must pay the amounts identified in [11] above at each of P1–P3 plus top up to the full residual income tax amount at P3, to not be exposed to use-of-money interest.

13. A further option to obtain the interest concession is to use the standard method for the P1 and P2 instalments and on or before P3 switch to the estimation method. There is still a requirement to top up the P3 payment by the balance required to pay the residual income tax less the value of instalments paid at P1–P3 to manage the use-of-money interest exposure. However, this option will provide more flexibility for a person who expects their residual income tax to be lower than the prior year or who does not know what their residual income tax is by P3 (usually on 7 May) even though this is some time after the standard balance date of 31 March.

Application of provisional tax rules when residual income tax on income without tax deducted is under $60,000

14. Employees whose income without a tax deduction results in residual income tax of less than $60,000 may avail themselves of the use-of-money interest safe harbour under s 120KE of the TAA by making payment of all the residual income tax in one instalment on the terminal tax date. For most taxpayers with a standard 31 March balance date this is 7 February the following year. This can be extended if their tax account is linked to a tax agent with an extension of time.
15. A person who meets this criterion will qualify for this safe harbour if they have no obligation to pay provisional tax under s RC 3(3) of the ITA because their residual income tax for the prior year was $2,500 or less.
16. They will also qualify where they did have residual income tax over $2,500 in the prior year but paid all amounts due on or before P1–P3 using the standard method set out in ss RC 5(2) and (3) of the ITA and calculated under the formula in s RC 10(2) of the ITA. Refer to Inland Revenue Department NZ, Provisional tax, *Paying your income tax in instalments (IR289)* for more detail on the standard method (the standard option).
17. This terminal tax safe harbour is not available if the person has adopted the estimation method to pay their provisional tax under s RC 7 of the ITA.

Provisional tax consequences in the following tax year

18. As a result of having residual income tax that is over $2,500 in a tax year, a person has an obligation to pay provisional tax the following year. If their tax position has been automatically calculated, they will be advised in that following tax year to pay provisional tax on instalment dates based on the standard method unless they elect to use the estimation method. Such an election can be made using secure email via myIR or by phone or letter. If they file a tax return in the year when they derived the one-off income and their residual income tax exceeded $2,500, they must in that return indicate what provisional tax method they will adopt for making payments in the following tax year.
19. Often an employee in receipt of a one-off amount of income without tax deducted will not be expecting to derive any further income of this nature in the following year. If they elect to use, or by default use, the standard method this will result in payments being made in the following year of at least 105% of the prior year's residual income tax. As a result, they may choose to adopt the estimation method and estimate their provisional tax at nil and then make no payments at each instalment in that subsequent year.
20. When a person chooses the estimation method, they are exposed to use-of-money interest on any shortfall at each instalment date if their residual income tax for that year exceeds $2,500. They are also obliged to revise their estimate during the year to ensure its accuracy if their residual income tax exceeds $2,500. Consequently, if the employee adopts the estimation method for the succeeding year, they need to understand these risks when making that choice should it turn out that their residual income tax is more than $2,500.

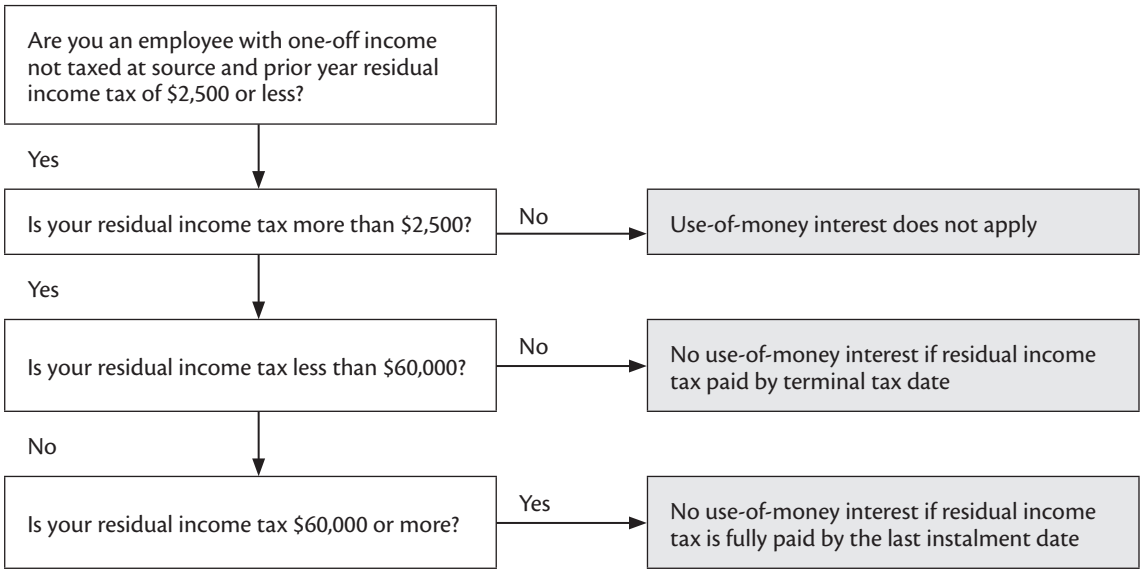
Summary

21. A salary and wage earner who receives income without tax deducted at source resulting in residual income tax of $60,000 or more in a tax year and who did not have residual income tax over $2,500 in the prior year, will have exposure to use-of-money interest if they do not pay all the residual income tax by P3. P3 is 7 May for taxpayers with a standard 31 March balance date.
22. A salary and wage earner who receives income without tax deducted resulting in residual income tax of less than $60,000, and who did not have residual income tax over $2,500 in the prior year, will not be exposed to use-of-money interest if they pay the residual income tax on or before the terminal tax date.
23. In both situations, the person will be obliged to pay provisional tax in the income year following receipt of the amount if the residual income tax in the year of receipt exceeded $2,500. If their tax position has been automatically calculated, they will be advised to pay provisional tax on instalment dates based on the standard method, unless they elect to use the estimation method. Alternatively, if they file a tax return they must elect to pay provisional tax under the standard method or the estimation method when they file their return, and by P1 of the following year at the latest. If no election is made, the person is treated by default as adopting the standard method.

24. If they do not expect to derive any further income without tax deducted, they may choose to adopt the estimation method, but this will expose them to use-of-money interest on any shortfalls at each of P1–P3 if they do in fact have residual income tax that exceeds $2,500. Adopting the standard method is likely to result in over payment but their use-of-money interest exposure at each of P1–P3 will be limited to the lesser of one-third of the residual income tax where it exceeds $2,500 or the amount payable under the standard method. This might be more suitable if there is uncertainty about the income without tax deducted they will derive in that subsequent year.

25. The following flowchart and examples illustrate these points:

Provisional Tax / Use-Of-Money Interest Exposure



Examples

Example 1 – One-off income amount derived by salary and wage earner resulting in residual income tax of $60,000 or more

Facts: Jackie is the chief executive of Goboy Ltd with a salary of $150,000 per year and no residual income tax in the 2017 tax year. She is advised in December 2017 that she is immediately entitled under the executive share scheme to shares in Goboy with a market value of $200,000. Goboy elects not to treat this benefit as subject to PAYE but it is still reported to Inland Revenue as a benefit under the PAYE rules. Jackie derives the benefit as income not taxed at source in the 2018 tax year.

Question: What is Jackie's liability to pay provisional tax in the 2018 and 2019 tax years and her exposure to use-of-money interest due to receipt of that benefit when she continues throughout this time as a salaried chief executive?

Answer – 2018 tax year: As Jackie never ceases being an employee, she will not have an "initial provisional tax liability" under s RC 9(9) of the ITA in the 2018 tax year. She will have a residual income tax liability on the share benefit of $66,000. Since her residual income tax is more than $2,500, she is "liable to pay provisional tax" under s RC 3(1) of the ITA, so is a "provisional taxpayer" under s 3(1) of the TAA. This is despite Jackie having no residual income tax in the 2017 income year, so having "no obligation to pay provisional tax" for the 2018 income year under s RC 3(3).

Jackie can qualify as an "interest concession provisional taxpayer" under s 120KBB of the TAA if she voluntarily uses the standard or estimation methods in the prescribed manner. Because her residual income tax is $60,000 or more, the terminal tax payment concession under s 120KE does not apply.

Jackie is not exposed to use-of-money interest until P3 but can make voluntary payments at any time between P1 and P3. While Jackie could also file an estimate for P3 this is not necessary as her use-of-money interest liability will be determined by her actual residual income tax either way. Jackie would be best to make voluntary payments of the amount she expects to be her 2018 residual income tax by P3 (7 May 2018) as she will have exposure to use-of-money interest from that date on any payments (or over payments) of her actual 2018 residual income tax.

Answer – 2019 tax year: Jackie is likely to have her tax position automatically calculated in the 2019 tax year and will be advised to pay provisional tax before each instalment date under the standard method unless she elects to use the estimation method. If Jackie did file a 2018 income tax return, Jackie must make an election as to the method she wants to adopt for paying provisional tax in the 2019 tax year because her residual income tax exceeds $2,500. She is not expecting any further benefits under the Goboy executive share scheme, nor any other income receipts without tax deducted at source, so is reluctant to adopt the standard method, which would demand three payments of $23,100. So, she considers adopting the estimation method and then making payments of zero on the assumption she will not have any residual income tax exceeding $2,500 in 2019. If Jackie adopts the estimation method, it must be a fair and reasonable estimate of her residual income tax and she must inform Inland Revenue of the estimate on or before P1.

Jackie's tax agent advises that if Jackie does use the estimation method, she needs to consider the risks. If Jackie does have residual income tax over $2,500 in the 2019 tax year, including from untaxed income that unexpectedly arises, she must re-estimate her 2019 provisional tax when she becomes aware of this income. The revised estimate will apply to the remaining 2019 provisional tax payments.

Jackie will have an exposure to use-of-money interest where her 2019 residual income tax exceeds $2,500 equal to that residual income tax amount divided by three at each instalment date, less any amounts paid. Jackie can make voluntary payments at the time of revising her estimates to help mitigate use-of-money interest for instalments already paid or use tax pooling funds at backdated effective dates within the applicable time frames.

Jackie should file her nil estimate on or before P1, otherwise if she does not pay $23,100 by P1 she risks late payment penalties if her 2019 residual income tax is more than $2,500. Even if Jackie's 2019 residual income tax is not more than $2,500, by not paying P1 Jackie also risks late payment penalties if her 2019 residual income tax is later reassessed to more than $2,500.

Alternatively, Jackie could use the standard method for her 2019 tax return. The required payments will be 105% of $66,000 divided by three at each of P1–P3. If she has not filed her 2018 return because of an extension of time she can use 110% of her 2017 residual income tax of $0 divided by 3 (ie pay nothing) for P1, but must then use 105% of 2018 residual income tax × 2/3rds (ie $46,200) for her P2 payment if the 2018 return is filed by then, which would usually be the case. If she pays nothing at P1–P3, she will have an exposure to use-of-money interest on the lesser of the actual residual income tax (if it exceeds $2,500) and the amounts payable under the standard method. Jackie can make voluntary top-up payments to mitigate her use-of-money interest risk or use tax pooling funds at backdated effective dates within the applicable timeframes if her untaxed income unexpectedly arises.

Jackie faces the same late payment penalty risks as she would for estimating if she is required to make any payments under the standard option and fails to make these if her 2019 residual income tax turns out to be more than $2,500.

Given these risks, the agent advises Jackie that she should adopt the estimation method and make no payments only if she is certain about not having any residual income tax that exceeds $2,500 in 2019. If Jackie is less certain about her untaxed income position for 2019, she could choose the standard method and pay all amounts required. If this results in an overpayment Jackie will receive a refund once her 2019 residual income tax has been assessed.

Example 2 – One-off income amount derived by salary and wage earner resulting in residual income tax of less than $60,000

Facts: The facts are the same as in Example 1 except Jackie's share entitlement is worth only $100,000 so her residual income tax is $33,000.

Question: What are the provisional tax and use-of-money interest implications for the 2018 and 2019 tax years?

Answer – 2018 tax year: Jackie has residual income tax of $33,000 so she is a provisional taxpayer under s RC 3(1) of the ITA despite her having no obligation to pay provisional tax under s RC 3(3) of the ITA due to having residual income tax of $2,500 or less in the 2017 tax year. Jackie qualifies under s 120KE of the TAA for payment of the RIT on the terminal tax date for the 2018 tax year because her residual income tax in 2018 was under $60,000. Jackie's only exposure to use-of-money interest will occur if she does not pay the residual income tax amount on the terminal tax date.

Answer – 2019 tax year: Jackie is most likely to have her tax position automatically calculated in the 2019 year and will be treated as liable to pay provisional tax based on the standard method unless she elects to use the estimation method. If Jackie files her 2018 tax return she will need to identify in that return what option she is going to use for paying provisional tax in 2019. As she is not expecting another share scheme benefit or any other income untaxed at source, Jackie notifies Inland Revenue that she is adopting the estimation option of nil and then pays zero at each instalment date for the 2019 tax year.

The same risks and options when selecting the estimation method as are discussed in Example 1 above are brought to her attention by the tax agent. If Jackie has residual income tax of more than $2,500 in the 2019 tax year, she will be exposed to use-of-money interest from P1 on shortfalls over the actual residual income tax divided by three at each payment date.

References

Subject references

Credit interest
Initial provisional tax liability
Interest concession provisional taxpayer
Late payment penalties
New provisional taxpayer
No obligation to pay provisional tax
Provisional tax rules
Provisional taxpayer
Residual income tax
Tax pooling funds
Use-of-money interest

Legislative references

Income Tax Act 2007, ss RC 2(2), RC 3, RC 4, RC 5, RC 7, RC 9(9), RC 12

Tax Administration Act 1994, ss 3(1), 120KB, 120KBB, 120KE

Other references

Inland Revenue Department NZ, *Provisional tax, Paying your income tax in instalments (IR289)*

QB 19/04: Income tax – provisional tax and use of money interest implications for a person in their first year of business

This Question We've Been Asked (QWBA) has arisen because the provisional tax rules in the Income Tax Act 2007 apply to a "taxable activity". Taxable activity is a term borrowed from the Goods and Services Tax Act 1985.

Question

When should a person pay tax in their first year of business to prevent use-of-money interest charges?

Answer

A person who starts a business and has residual income tax of $60,000 or more should pay provisional tax in one to three equal instalments (dependent on the start date) to prevent use-of-money interest charges.

A person who starts a business and has residual income tax of less than $60,000 must pay the residual income tax for their first year of business by the terminal tax date to prevent use-of-money interest charges.

Key Terms

Provisional tax: income tax paid as instalments

Residual income tax: income tax liability minus tax credits

Terminal tax date: the date terminal tax is due

Use-of-money interest: money charged on late or underpaid tax or paid for overpaid tax

Explanation

1. The provisional tax rules apply to a person who is required or chooses to pay provisional tax. A person has no obligation to pay provisional tax for a tax year, if their residual income tax for the preceding tax year is $2,500 or less. But when a person starts a taxable activity that results in residual income tax of $60,000 or more in their first year they become a new provisional taxpayer and need to pay provisional tax instalments, or they will be exposed to use-of-money interest. The number of instalments required depends on when the business commenced. Use-of-money interest under s 120KC of the Tax Administration Act 1994 (TAA), is charged on any instalment shortfalls or paid on any instalment overpayments.
2. Originally, a "new provisional taxpayer" was a person who was GST registered and starting a taxable activity. However, this first requirement was removed in 2007 to ensure that someone who was not GST registered could also be treated as a new provisional taxpayer. But the requirement to "start a taxable activity" was left in.
3. The same term is also used in the resident withholding tax rules where it was thought necessary to use the GST definition of "taxable activity" with its inclusion of the phrase "whether or not for pecuniary profit" to capture the activity of the not-for-profit sector that is liable for income tax when income exceeds $1,000. The same approach applies to the provisional tax rules.

4. The GST concept of "taxable activity" is used for determining liability to pay provisional tax when starting a business. It includes anything done in connection with the beginning or ending of a taxable activity as well as any activity carried on continuously or regularly, irrespective of profit, involving or intended to involve the supply of goods and services.
5. However, unlike for GST, taxable activity also applies to the making of exempt GST supplies, such as financial services or providing residential accommodation. This is because income tax is payable on income arising from such activities but not GST.
6. The sort of questions that can arise include the following:
   - What sort of preliminary activities might, or might not, be treated as taxable activities?
   - What happens if an intention exists to carry on a business that then comes to a premature end?
   - If a start-up business has been running at a loss for several years and finally comes into profit will they be treated as starting a taxable activity in that profit year?
7. Numerous court decisions have explored what is meant by "taxable activity" in the GST context. These decisions can be equally applied to determine whether a person is starting a taxable activity for the purposes of s RC 9(9) of the Income Tax Act 2007 (ITA). That section applies to a person with an "initial provisional tax liability", an expression defined in s YA 1 of the ITA that also means a "new provisional taxpayer" in the TAA.

Meaning of initial provisional tax liability

8. A person with an "initial provisional tax liability" under s RC 9(9) of the ITA is also described as a "new provisional taxpayer" in s 3(1) of the TAA. Section YA 1 defines the term:

   initial provisional tax liability, means—

   (a) for a person who is not a natural person, a provisional tax liability for a tax year in which the person starts to derive income from a taxable activity when—

   (i) they did not derive income from a taxable activity in any of the 4 previous tax years; and

   (ii) they have residual income tax of $60,000 or more in the tax year; and

   (b) for a person who is a natural person, a provisional tax liability for a tax year when—

   (i) they did not have residual income tax of more than $2,500 in any of the 4 previous tax years; and

   (ii) they have residual income tax of $60,000 or more in the tax year; and

   (iii) in the tax year, they stopped deriving income from employment and then started to derive income from a taxable activity
9. This Question We've Been Asked focuses on the meaning of taxable activity and the residual income tax threshold for exposure to use-of-money interest. It, therefore, assumes the remaining requirements for having an initial provisional tax liability, as defined above, have been met. For example, it only applies to an individual who has stopped deriving income from employment and to taxpayers with residual income tax of $60,000 or more.
10. Section RC 9(9) of the ITA exposes new provisional taxpayers to use-of-money interest if they do not pay provisional tax on the number of provisional tax instalment dates determined by the start date of the taxable activity:

    Persons with initial provisional tax liability

    (9) **A person with a new provisional tax liability** who starts a taxable activity in a tax year is liable to pay interest calculated under section 120KC of the Tax Administration Act 1994 as if they were liable to pay provisional tax for the tax year—

    (a) in 3 instalments under subsection (3) if they start a taxable activity at some time in the period that starts at the beginning of the corresponding income year and ends 30 days before the date of instalment B:

    (b) in 2 instalments—

    (i) in a case to which section RC 13 applies; or

    (ii) if they pay GST on a 6-monthly basis and start a taxable activity at some time in the period that starts at the beginning of the corresponding income year and ends 30 days before the date of instalment C:

    (c) in 1 instalment in a case to which section RC 14 applies. [Emphasis added]
11. For taxpayers with a standard 31 March balance date, provisional tax instalments are on 28 August (P1), 15 January (P2) and 7 May (P3). The instalments referred to in s RC 9(9)(a) will be on these dates for such a taxpayer.
12. The expression "[a] person with a new provisional tax liability" is not defined in the ITA. However, the heading of s RC 9(9), "*Person with initial provisional tax liability*", is an aide to the interpretation of this phrase. Section 5 of the Interpretation Act 1999 indicates that the meaning of an enactment must be ascertained from its text and in the light of its purpose. Headings may be considered as an indicator to the meaning of the provision.

13. The TAA defines a "new provisional taxpayer" in s 3(1) as a person who has an initial provisional tax liability as described in s YA 1 of the ITA. A person with an initial provisional tax liability is identified in s RC 9(9) as a person with a new provisional tax liability. Consequently, all three terms have the same meaning.
14. Section RC 9(9), from the 2018 tax year, treats both individuals and non-natural persons (such as companies) as new provisional taxpayers when they start a new taxable activity and have residual income tax of $60,000 or more. They usually will have no obligation to pay provisional tax under s RC 3(3), because their prior year's residual income tax was $2,500 or less. But if they do not make one to three equal instalments of provisional tax (depending on the start date of the taxable activity) as set out in s 120KC of the TAA, they will be exposed to use-of-money interest on any shortfall. Overpayments at these instalment dates will entitle new provisional taxpayers to receive interest.

Meaning of taxable activity

15. In the provisional tax rules, "taxable activity" is defined as having the same meaning as it has in s 6 of the Goods and Services Tax Act 1985 (GSTA) except that the exclusion in s 6(3)(d) (the making of exempt supplies) does not apply. GST exempt supplies such as financial services are subject to income tax, so the GST exclusion for these supplies is not relevant for provisional tax purposes.
16. Section 6(1)–(3)(d) of the GSTA defines "taxable activity":

> (1) For the purposes of this Act, the term taxable activity means—
>
> (a) **any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services** to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club:
>
> (b) without limiting the generality of paragraph (a), the activities of any public authority or any local authority.
>
> (2) **Anything done in connection with the beginning or ending, including a premature ending, of a taxable activity is treated as being carried out in the course or furtherance of the taxable activity.**
>
> (3) Notwithstanding anything in subsections (1) and (2), for the purposes of this Act the term taxable activity shall not include, in relation to any person, —
>
> (a) being a natural person, any activity carried on essentially as a private recreational pursuit or hobby; or
>
> (aa) not being a natural person, any activity which, if it were carried on by a natural person, would be carried on essentially as a private recreational pursuit or hobby; or
>
> (b) any engagement, occupation, or employment under any contract of service or as a director of a company, subject to subsection (4); or
>
> (c) any engagement, occupation, or employment—
>
> (i) pursuant to the Members of Parliament (Remuneration and Services) Act 2013 or the Governor-General Act 2010:
>
> (ii) as a Judge, Solicitor-General, Controller and Auditor-General, or Ombudsman:
>
> (iia) pursuant to an appointment made by the Governor-General or the Governor-General in Council and evidenced by a warrant or by an Order in Council or by a notice published in the Gazette in accordance with section 2(2) of the Official Appointments and Documents Act 1919:
>
> (iii) as a Chairman or member of any local authority or any statutory board, council, committee, or other body, subject to subsection (4); or
>
> (d) any activity to the extent to which the activity involves the making of exempt supplies.
>
> [Emphasis added]

17. The words in bold text are particularly relevant to the question asked. To be a "taxable activity", the activity is described as:
    - being carried on continuously or regularly;
    - whether or not for pecuniary profit;
    - involving or intended to involve, in whole or part, the supply of goods and services; and
    - includes anything done in connection with the beginning or ending (including a premature ending) of the taxable activity.
18. The courts have clarified the meaning of "activity" and what is meant by the phrase "carried on continuously or regularly", and these are now well understood. Activity is a broad concept involving a combination of tasks undertaken, or a course of conduct pursued by, the taxpayer: *CIR v Newman* (1995) 17 NZTC 12,097 (CA), per Gault J at [32] and *CIR v Bayly* (1998) 18 NZTC 14,073 (CA), per Richardson P at [23].

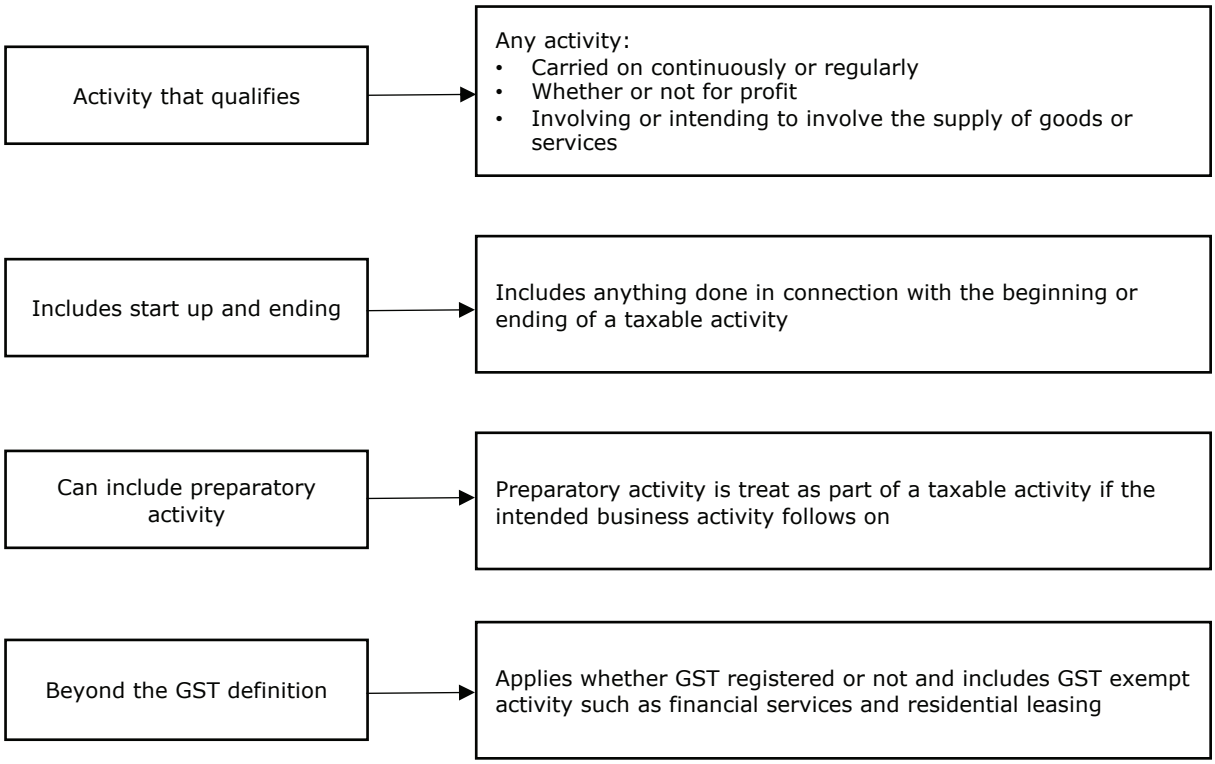
19. To be carried on "continuously or regularly", the activity must not have ceased in a permanent sense or have been interrupted in a significant way. It must be carried on at reasonably short intervals with a steadiness or uniformity of action so that it recurs or is repeated at fairly fixed times or at generally uniform intervals to be of a habitual nature and character: *Newman* per Richardson J at [20]; *Case N27* (1991) 13 NZTC 3,229 (TRA), Judge Bathgate at [26] and [27]; *Allen Yacht Charters Ltd v CIR* (1994) 16 NZTC 11,270 (HC).
20. The activity must involve, or be intended to involve, the supply of goods or services for consideration.
21. Judge Bathgate in *Case N27* at [28] noted the actual supply of goods and services is not necessary so long as there is an intention to be involved in that supply. He considered this introduced a subjective element to an otherwise objective provision. It would then be "a matter of fact and degree to be ascertained from all the evidence in a particular case". If no actual supplies are made, there may still be a taxable activity if there is an intention that the activity will involve the making of supplies.
22. Judge Barber considered the application of s 6(2) of the GSTA in *Case P73* (1992) 14 NZTC 4,489 (TRA), concluding that commencement work can be only added under that provision to the establishment of a taxable activity. Commencement work cannot by itself amount to a taxable activity. Therefore, if something is done in connection with the beginning of a taxable activity, that beginning activity is treated as part of that taxable activity. However, if no taxable activity is subsequently commenced, the commencement actions are not sufficient on their own to be treated as a taxable activity.

Summary

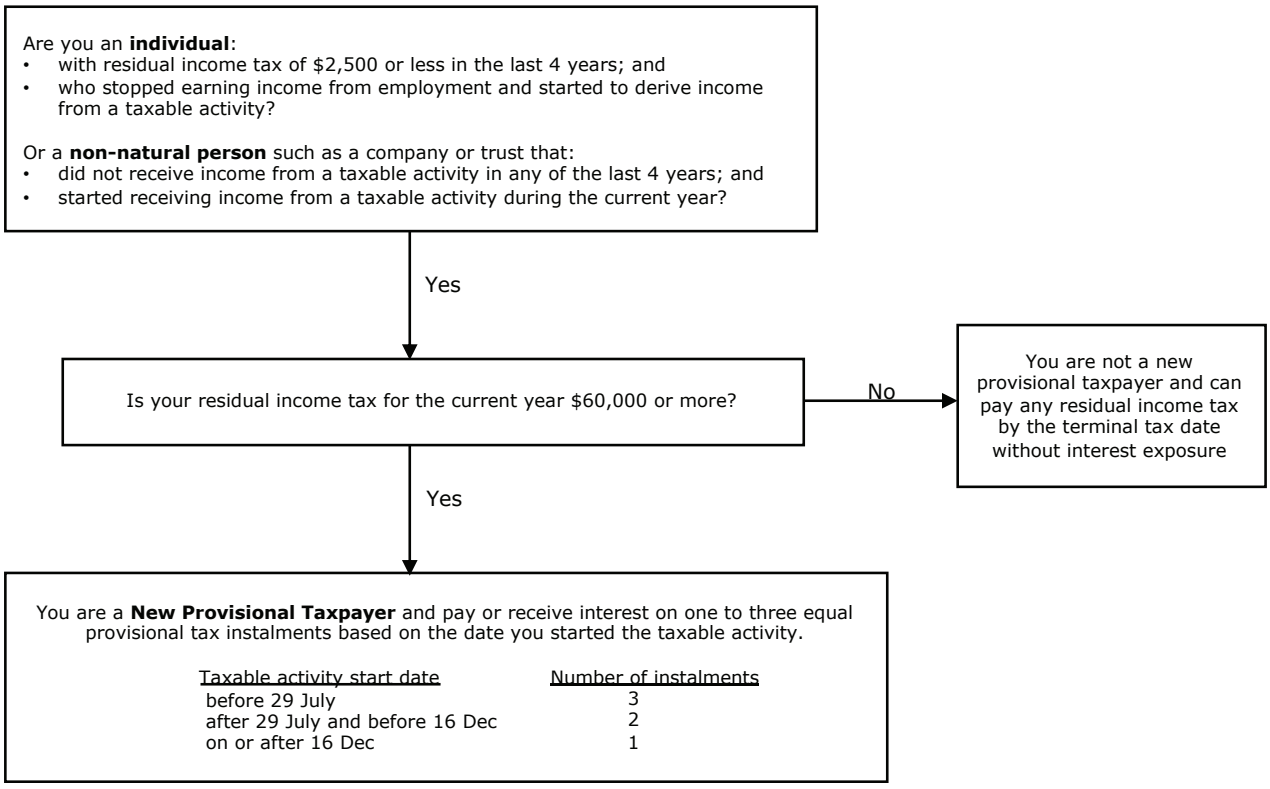
23. The start of a taxable activity is a concept well understood in the GST context and it also applies to the provisional tax rules. It includes anything done in connection with the beginning or ending of a taxable activity as well as any activity carried on continuously or regularly, irrespective of profit, involving or intended to involve the supply of goods and services. Under the provisional tax rules, a taxable activity includes GST-exempt supplies and applies to persons who are not GST registered.
24. When a new provisional taxpayer starts a taxable activity, they will have an exposure to use-of-money interest where their residual income tax in that year is $60,000 or more if they do not pay one to three instalments on the provisional tax instalment dates as set out in s RC 9(9) of the ITA in conjunction with s 120KC of the TAA. Where two or three instalments are required, each payment must be of equal amounts. Where only one payment is required, it must be a lump sum payment on or before the third instalment date. This is despite a new provisional taxpayer not having an obligation to pay provisional tax under s RC 3(3) where their prior year's residual income tax was $2,500 or less.
25. A new provisional taxpayer starting a taxable activity with residual income tax in that first year below $60,000 will, because of s 120KE of the TAA, be exposed to use-of-money interest only if they do not pay the residual income tax by the terminal tax date. The terminal tax date is on 7 February of the following year for taxpayers with a 31 March balance date whose tax account is not linked to an agent with an extension of time arrangement.

26. The following flowcharts and examples illustrate these points:

What is a taxable activity for provisional tax purposes?



Exposure to use-of-money interest when starting a new business?



Examples

Example 1 – New business deriving only passive income with residual income tax of $60,000 or more

Facts: Marnie Oil Ltd is established on 1 April 2018 and crowd-funds to grow plantation mānuka on the East Cape for mānuka oil production. It raises capital of $6 million that it invests at 4%, resulting in income of $240,000 and $67,200 residual income tax by 31 March 2019 (it holds a resident withholding tax exemption certificate). In the next tax year, it secures a forestry right over a block of land and begins planting with a view to harvesting and pressing leaves in years 4–10. It will also earn a share of income from bee-hives placed on the property by a mānuka honey producer.

Question: Did Marnie Oil have an "initial provisional tax liability" for the 2019 tax year?

Answer: Yes. Marnie Oil has residual income tax exceeding $60,000 at 31 March 2019. It has not at that date commenced a taxable activity, but it has raised capital and earned passive income on that capital while preparing to commence the mānuka plantation. This preparatory work in year 1 is treated as being the start of the taxable activity subsequently commenced in year 2, and Marnie Oil also had a firm intention in year 1 to be involved in the mānuka oil business when it sought and raised capital for this purpose.

This is the impact of the meaning of "taxable activity" for the provisional tax rules in the ITA that references to s 6 of the GSTA. Section 6(2) of the GSTA states, "[a]nything done in connection with the beginning or ending of a taxable activity is treated as being carried out in the furtherance of the taxable activity". This approach was confirmed in Case P73.

Furthermore, s 6(1)(a) of the GSTA states that a taxable activity can be an activity that "involves or is intended to involve" the making of taxable supplies. The plain meaning of the provision is that a taxpayer may have a taxable activity before any supplies are ever made. Consistent with this, Judge Bathgate in Case N27 held that the supply of goods and services is not necessary, provided an intention exists to be involved in that supply. Numerous examples of this occur in primary products industries such as establishing kiwifruit orchards, vineyards and forestry ventures where expenses are incurred for long periods before income is derived.

Marnie Oil will have an initial provisional tax liability as it did not have residual income tax of more than $2,500 in any of the four prior years and it will have residual income tax of $60,000 or more in the 2019 tax year. Consequently, if it does not voluntarily pay provisional tax in three equal instalments (that is, on P1, P2 and P3) of $22,400 under s RC 9(9)(a) of the ITA and s 120KC of the TAA, use-of-money interest will be charged on any shortfall from the date of the shortfall until the amount is paid.

Example 2 – New business deriving only passive income with residual income tax less than $60,000

Facts: The same facts as in example 1 apply but the income is invested at 3% so residual income tax is only $50,400 for the 2019 tax year.

Question: Did Marnie Oil have an initial provisional tax liability for the 2019 tax year?

Answer: No. Marnie Oil has residual income tax that is under $60,000 for the 2019 tax year and no residual income tax in the four prior tax years. Consequently, it does not have an "initial provisional tax liability" in that tax year and is not exposed to use of money interest. It will have an obligation to pay the residual income tax on the terminal tax date of 7 February 2020.

Example 3 – New business with residual income tax of $60,000 or more ends prematurely

Facts: An Australian tea tree oil producer, TTO Pty decides to expand into New Zealand mānuka oil production as it has greater therapeutic benefits than tea tree oil against certain types of bacteria and only small quantities are being produced. It makes an application for Overseas Investment Office approval on 30 September 2018 to buy a large block of land covered in mānuka on the East Cape and has plans to augment this with additional planting of mānuka seedlings. While the application is being processed, TTO hires staff, incurs legal fees and receives a $2.4 million capital contribution from a mānuka honey producer who wants to have an exclusive right to place hives on the property. The capital contribution is taxable under s CG 8 of the ITA and must be spread equally over 10 years. Consequently, $240,000 is allocated to the 2019 tax year, and residual income tax exceeds $60,000.

On 1 October 2019, the Overseas Investment Office turns down the application because all the mānuka leaf is going to be processed in Australia at the company's existing tea tree facilities and there is not enough benefit flowing to New Zealand. TTO is forced to repay the $2.4 million and abandon its business plans.

Question: What are TTO's provisional tax obligations and use-of-money interest exposure for the 2019 and 2020 tax years?

Answer: TTO has carried on an activity in the 2019 tax year that is intended to involve the supply of goods. The work undertaken is beyond mere preparation as it has received a significant contractual payment, incurred expenditure and followed up on a detailed land acquisition and harvesting plan. TTO, therefore, had a "taxable activity" in the 2019 tax year in terms of s 6(1)(a) of the GSTA despite the land purchase being subsequently thwarted on 1 October 2019 and the business being terminated in the 2020 tax year. Consequently, TTO has an initial provisional tax liability in the 2019 tax year and is exposed to use-of-money interest if it does not voluntarily make the payments determined under s 120KC of the TAA.

As a new provisional taxpayer commencing a taxable activity on 30 September 2018 (being after 29 July but before 16 December) the number of provisional tax instalments required under s 120KC of the TAA is two in the 2019 tax year, assuming a balance date of 31 March. Anything done in connection with the premature ending of a taxable activity is expressly treated as being carried out in the course of the taxable activity under s 6(2) of the GSTA.

In the 2020 tax year, TTO has only expenditure and deductions to claim and no income, as it has repaid the entire capital contribution made by the honey producer. However, because its residual income tax exceeded $2,500 in the 2019 tax year it is a provisional taxpayer for the 2020 tax year and opts to use the standard option to pay provisional tax of 105% of 2019 residual income tax divided by three at P1 on 28 August 2019.

Having learnt of the Overseas Investment Office decision on 1 October 2019, TTO decides to swap to the estimation method. It sends a secure email to Inland Revenue advising of this using myIR and estimates zero for P2 on 15 January 2020. The nil estimate is still reasonable at P3 and no revised estimate is required to be filed. TTO also files an IR348 showing each employee's finish date, then it files a final tax return in July 2020 seeking a refund of tax paid on 28 August 2019 and includes a letter to Inland Revenue advising the date it ceased to carry on business and the reason why. TTO also confirms it no longer has any assets and encloses a balance sheet and profit and loss account up to the date it ceased to carry on business.

Example 4 – Start up business with losses comes into profit

Facts: Sateconnect Ltd is a start-up firm and has incurred tax losses for 5 years while it develops intellectual property that is based on the provision of satellite internet cover to support the Internet of Things connectivity. Following the successful launch of the first satellite it is able to quickly monetarise its IP and in year 6 the residual income tax is over $60,000 and all carried forward tax losses are used up.

Question: Is Sateconnect a new provisional taxpayer starting a taxable activity in year 6?

Answer: No. Sateconnect incurred tax losses testing and developing its IP with the full intention of monetarising this when satellite internet became a reality. As a result, it commenced a taxable activity when it was first set up in year 1. As the residual income tax in year 5 was less than $2,500, Sateconnect has no obligation to pay provisional tax in year 6 under s RC 3(3) of the ITA.

However, because the residual income tax in year 6 exceeds the use-of-money interest terminal tax safe harbour of less than $60,000, the residual income tax will need to be voluntarily paid by the last instalment date for provisional tax for year 6 if use-of-money interest is to be avoided. If Sateconnect makes no payments on the first and second instalment dates for provisional tax for year 6 this will correctly reflect its default status of adopting the standard method which requires 3 instalment payments of one third of the 5th year's residual income tax multiplied by 105% (or if that year has yet to be filed, the 4th year's residual income tax multiplied by 110%). Both those amounts are nil.

Sateconnect will be a provisional taxpayer in year 7 and needs to choose what method it wishes to adopt for that year or default to the standard method.

References

Subject references

Initial provisional tax liability
New provisional taxpayer
Provisional tax rules
Residual income tax
Starting a taxable activity
Taxable activity, meaning in the GST context
Use-of-money interest

Legislative references

Goods and Services Tax Act 1985, s 6
Income Tax Act 2007, ss CG 8, RC 3(3), RC 9(9), YA 1 ("initial provisional tax liability" and "taxable activity")
Interpretation Act 1999, s 5
Tax Administration Act 1994, ss 3(1) ("new provisional taxpayer"), 120KC

Case references

Allen Yacht Charters Ltd v CIR (1994) 16 NZTC 11,270 (HC)
Case N27 (1991) 13 NZTC 3,229 (TRA)
Case P73 (1992) 14 NZTC 4,489 (TRA)
CIR v Bayly (1998) 18 NZTC 14,073 (CA)
CIR v Newman (1995) 17 NZTC 12,097 (CA)

Other references

Inland Revenue Department NZ, *Provisional Tax (IR289)*

INTERPRETATION STATEMENTS

This section of the *TIB* contains interpretation statements issued by the Commissioner of Inland Revenue.

These statements set out the Commissioner's view on how the law applies to a particular set of circumstances when it is either not possible or not appropriate to issue a binding public ruling.

In most cases Inland Revenue will assess taxpayers in line with the following interpretation statements. However, our statutory duty is to make correct assessments, so we may not necessarily assess taxpayers on the basis of earlier advice if at the time of the assessment we consider that the earlier advice is not consistent with the law.

IS 19/02: Income tax – attribution rule for income from personal services

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

Summary

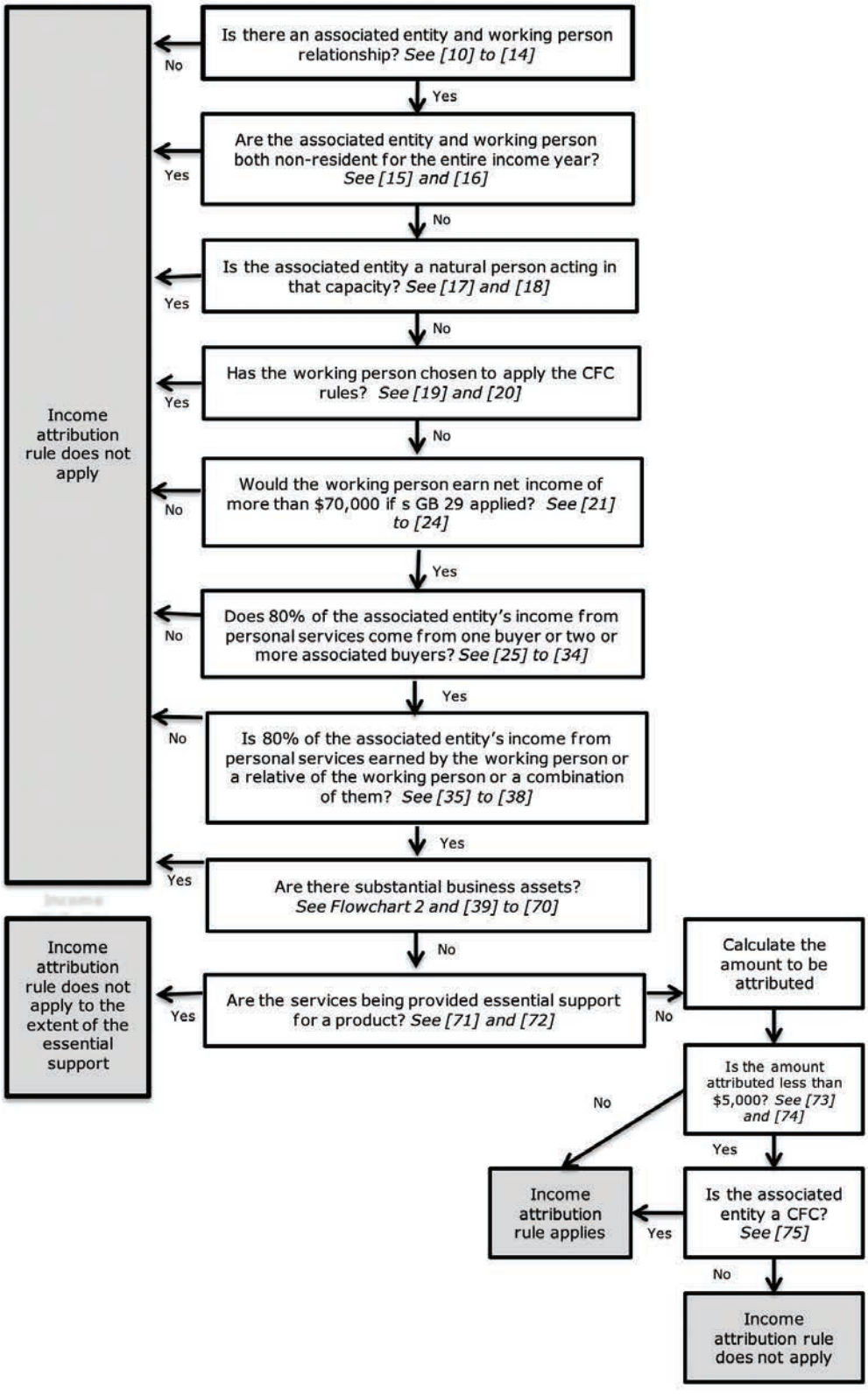
1. This Interpretation Statement provides guidance on when the attribution rule for income from personal services in ss GB 27 to GB 29 will apply. It expands on "Attribution of Income" *Tax Information Bulletin* Vol 12, No 12 (December 2000): 49. It does not discuss or explain the calculation rules contained in s GB 29.
2. The attribution rule for income from personal services in ss GB 27 to GB 29 is a specific anti-avoidance rule that prevents an individual avoiding the top personal tax rate by diverting income to an associated entity. Essentially, the income attribution rule applies when an individual (the working person), who performs personal services, is associated with an entity (the associated entity) that provides personal services to a third person (the buyer).
3. The income attribution rule only applies where various threshold tests are met and no exemptions apply. This Interpretation Statement provides guidance on the application of each of those threshold tests and exemptions, to assist readers in determining whether the income attribution rule applies to their situation.
4. This Interpretation Statement makes minor amendments to and replaces IS 18/03: Income Tax – attribution rule for income from personal services, published in *Tax Information Bulletin* Vol 30 No 9 (October 2018).

Introduction

5. The income attribution rule applies where (s GB 27(1)):
   - a person (the working person) provides personal services;
   - the working person is associated with an entity (the associated entity);
   - the associated entity is inserted between the working person and the party who acquires the services (the buyer);
   - the working person performs the services, but the associated entity derives the income;
   - various threshold tests in s GB 27(2) are satisfied; and
   - none of the exemptions in s GB 27(3) apply.
6. This Interpretation Statement focuses on the application of the threshold tests in s GB 27(2), and the exemptions in s GB 27(3).
7. The threshold tests that must be satisfied for the income attribution rule to apply are:
   - 80% or more of the associated entity's income from personal services during the income year is derived from the supply of services to the buyer or an associate of the buyer or a combination of them (s GB 27(2)(a)); and
   - 80% or more of the associated entity's income from personal services during the income year is derived from services that are performed by the working person or a relative of the working person or a combination of them (s GB 27(2)(b)); and
   - the working person's net income for the income year exceeds $70,000, including any amounts that would be attributed if the rule applied (s GB 27(2)(c)); and
   - substantial business assets are **not** a necessary part of the business structure used to derive the entity's assessable income (s GB 27(2)(d)).

8. However, even if the threshold tests are satisfied, a working person and an associated entity will be exempt from applying the income attribution rule where:
   - the associated entity and the working person are non-residents;
   - the associated entity is a natural person, and is neither a partner of a partnership nor a trustee of a trust;
   - the services performed by the working person are essential support for a product supplied by the associated entity;
   - the amount to be attributed to the working person is less than $5,000 (although there are exclusions to this); or
   - in various situations where the associated entity is a controlled foreign company (CFC).
9. A process for considering the application of the various thresholds and exemptions is illustrated in Flowchart 1 on the next page.
10. The analysis following the flowchart discusses each of the threshold tests and any exclusions in the order that they appear in the flowchart.

Flowchart 1: Does the income attribution rule apply?



Is there an associated entity and working person relationship?

11. The income attribution rule will only apply where the entity is associated with the working person.

12. The rules in subpart YB apply to determine whether a working person and an entity are associated persons. A company and a person (other than a company) will be associated if the person has a voting interest in the company of 25% or more (s YB 3).

13. If the entity and the working person are not associated, the income attribution rule will not apply.

Example 1. Identifying the parties

Paul employs Andrea. Andrea is paid a salary of $150,000.

Andrea incorporates a company called A&M Co Ltd which contracts her services to Paul. Andrea is the sole shareholder of A&M Co Ltd. Paul pays A&M Co Ltd $150,000 for the services provided. A&M Co Ltd pays Andrea a salary of $80,000 and retains the remaining $70,000.

Question

Who are the relevant parties under the income attribution rule?

Answer

Under the new arrangement, Paul is the buyer, A&M Co Ltd is the associated entity and Andrea is the working person for the purposes of the income attribution rule.

Who	Attribution party	Contractual party	Original party
Paul	Buyer	Buyer	Employer
A&M Co Ltd	Associated entity	Employer	None
Andrea	Working person	Employee	Employee

14. The income attribution rule is not restricted to reorganisations of existing situations. It also applies to new structures where the appropriate relationships are created. The income attribution rule is also not confined to a corporate structure. The associated entity could be, for example, a trust or a partnership, and the working person could be a partner, trustee or beneficiary of a trading trust. The rules in subpart YB will also apply to determine whether a working person is associated with a partnership or trust. In particular, a partner and a partnership will be associated persons (s YB 12), and a trustee of a trust will be associated with the beneficiaries (s YB 6) (and people related to the beneficiaries (s YB 5)) and settlors of the trust (s YB 8), and with a person with the power to appoint or remove the trustee (s YB 11).

15. Most of the examples given in this item are based on a corporate structure because that is likely to be the most common structure. However, the analysis is equally applicable to other less common business structures where the income attribution rule may apply such as a trading trust or partnership.

Example 2. Identifying the parties

Jane and Megan have just established the JM Partnership. Jane completes all the work for the partnership while Megan has contributed the capital. The JM Partnership has entered into a substantial contract with Bug Eliminators Ltd which will take almost all of Jane's time.

Question

Who are the relevant parties under the income attribution rule?

Answer

Under the arrangement Bug Eliminators Ltd is the buyer, JM Partnership is the associated entity and Jane is the working person for the purposes of the income attribution rule.

Are the associated entity and working person both non-resident for the entire income year?

16. Under s GB 27(3)(a), the income attribution rule will not apply if the associated person and the working person are **both** non-resident during the relevant income year under the tests in ss YD 1 (Residence of natural persons) and YD 2 (Residence of companies). For more guidance on the application of the residence tests see "IS 16/03: Tax Residence" *Tax Information Bulletin* Vol 28, No 10 (October 2016): 2.

17. The residence or non-residence of the working person is the first matter to address when considering this exemption. It will only be necessary to consider the residence of the associated entity if the working person is a non-resident.

Example 3. Non-resident working person and resident associated entity

John is a non-resident who owns all of the share capital of NZCO which is a New Zealand incorporated company. John is the working person and NZCO is the associated entity. NZCO provides consulting services to one buyer, which is an Australian company. The services are provided to the buyer in Australia and the work is done by John in Australia.

Question:

Does the income attribution rule apply?

Answer:

Yes, the income attribution rule applies. The exemption in s GB 27(3)(a) provides that **both** the associated entity (NZCO) and working person (John) must be non-residents at all times. While John is not a New Zealand tax resident, NZCO is incorporated in New Zealand so is a company that is a New Zealand resident for tax purposes. There may be some relief for a working person under the Australia/New Zealand double tax agreement, but this item does not consider the application of any relevant double tax agreements.

Example 4. Tax resident working person

Michelle is New Zealand tax resident who is living in France. She owns all of the share capital of NZCO which is a New Zealand incorporated company. Michelle is the working person and NZCO is the associated entity. NZCO provides consulting services to FRENCHCO, which is the sole buyer of the services that NZCO provides. Michelle provides the services in France.

Question:

Does the income attribution rule apply?

Answer:

Yes, the income attribution rule applies. The exemption in s GB 27(3)(a) provides that **both** the associated entity (NZCO) and the working person (Michelle) must be non-residents at all times. In this example Michelle (the working person) is a New Zealand tax resident. This means the requirements of s GB 27(3)(a) are not met.

Example 5. Non-resident associated entity

Bryan was a New Zealand tax resident but he currently lives in the United Kingdom and is a non-resident at all relevant times. He owns all of the share capital of BRITCO which is a UK company. Bryan is the working person and BRITCO is the associated entity. BRITCO provides consulting services to UKCO, which is the sole buyer of the services that BRITCO provides. Bryan provides the services in the United Kingdom.

Question:

Does the income attribution rule apply?

Answer:

No, the income attribution rule does not apply. The exemption in s GB 27(3)(a) provides that **both** the associated entity (BRITCO) and the working person (Bryan) must be non-residents during the relevant income year. In this example the associated entity (BRITCO) is not a New Zealand tax resident and neither is Bryan (for the time being). This means the requirements of s GB 27(3)(a) have been satisfied even though the working person (Bryan) is a New Zealander.

Is the associated entity a natural person acting in that capacity?

18. The income attribution rule will not apply if the associated entity is a natural person and is neither a partner of a partnership nor a trustee of a trust (s GB 27(3)(b)). The income attribution rule is designed to prevent higher income earners from diverting personal services income to associated people by using companies, trusts and look-through companies. Section GB 27(3)(b) was added after the income attribution rule was enacted so that if a sole trader employs relatives to carry out personal services of a type to which the income attribution rule would otherwise apply, all the income from those services is not directed to those relatives. If the income attribution rule did apply the sole trader would have no income from those services.
19. However, if the natural person is acting in their capacity as a partner of a partnership, or a trustee of a trust, opportunities may still exist for the natural person to divert personal services income. Accordingly, the exemption does not apply in these situations.

Has the working person chosen to apply the controlled foreign company rules?

20. The income attribution rule will not apply (s GB 27(3)(e)) if:
    - the associated entity is a CFC (that is, a foreign company that is controlled by five or fewer New Zealand residents); and
    - the amount that would be attributed to the working person under the income attribution rules would also be attributed CFC income under s CQ 2(2B) (When attributed CFC income arises) or an attributed CFC loss under s DN 2(2) (When attributed CFC loss arises); and
    - the working person files a return of income in which they return the amount as attributed CFC income.
21. This exemption prevents double taxation through the application of multiple regimes by allowing the working person to choose to apply the CFC rules or the income attribution rules.

Would the working person earn net income of more than $70,000 if s GB 29 applied?

22. The income attribution rule will only apply if the working person's net income for the income year is more than $70,000, assuming the income derived by the associated entity is attributed to the working person under the income attribution rule (s GB 27(2)(c)). The income attributed to the working person must be calculated by applying all of the calculation rules contained in s GB 29 including the loss restriction rules contained in s GB 29(1). The $70,000 threshold is based on the working person's net income which includes all income including from sources such as income from business, dividends, interest, rent, wages and salary, and attribution income.

23. This threshold is designed to ensure the income attribution rule does not apply if the working person's net income for the year, calculated in accordance with all of the rules contained in s GB 29, is less than $70,000 (which is the income level at which the 33% top marginal rate of tax commences). If the working person's net income from all sources including the amount of attribution income calculated in accordance with all of the rules contained in s GB 29, is less than $70,000, there are limited tax advantages from interposing the associated entity between the working person and the buyer.
24. The working person's income is calculated by reference to income that would have been earned if the income attribution rule applied. This is effectively the income that the working person would have had, if the associated entity had not been interposed.

Example 6. Income earned by working person

Lauraco (the associated entity) earns $100,000 this year and pays a salary of $60,000 to Laura (the working person).

Question

Has Laura earned more than $70,000 for the purposes of the attribution rule?

Answer

Yes, Laura has earned more than $70,000 if the income attribution rule applies. As the amount paid as a salary to Laura is under the $70,000 threshold Laura might argue that the income attribution rule does not apply. However, if the income attribution rule applied a further $40,000 would be attributed by the associated entity. Accordingly, Laura's net income for the purposes of this threshold requirement is $100,000, not just the $60,000 paid.

Example 7. $70,000 threshold for net income

Mattco (the associated entity) earns $50,000 this year and paid a salary of $30,000 to Matt (the working person). Matt also received $10,000 of rental income from a rental property he owns.

Question

Has Matt earned more than $70,000 for the purposes of the attribution rule?

Answer

No, Matt has only earned $60,000 net income if the income attribution rule applies. Matt's $60,000 net income consists of $10,000 rent, $30,000 salary and $20,000 of attribution income.

The answer would be yes if Matt received $26,000 of rental income. Matt would then earn $76,000 which would consist of $26,000 rent, $30,000 salary and $20,000 of attribution income.

25. When calculating the amount of income for the working person it is necessary to also consider the taxable value of any fringe benefit the working person receives (s GB 28(5)).

Does 80% of the associated entity's income from personal services come from one buyer or two or more associated buyers?

26. The income attribution rule will only apply where 80% of the associated entity's total income from personal services is from one buyer or from two or more buyers if those buyers are associated persons (s GB 27(2)(a)).
27. The inclusion of this requirement ensures that contracts are not divided between existing entities associated with the buyer, or that the buyer does not incorporate new companies to ensure the 80% threshold is not met.
28. To determine whether two buyers are associated, the general associated persons rules in subpart YB apply. In summary, the associated persons rules treat two people as being associated where they are:
    - two companies, if either a group of persons hold total voting interests in each company of 50% or more, or if the group of persons control both companies by any other means;
    - a company and a person (other than a company) if the person has a voting interest in the company of 25% or more;
    - relatives;
    - a trustee of a trust and:
        - a beneficiary of the trust;
        - the settlor of the trust;
        - a person who is related to a beneficiary;
        - a trustee of another trust with the same settlor; or
        - a person with the power to appoint or remove the trustee;

- a settlor of a trust and a beneficiary of the trust;
- a partnership and a partner (excluding limited partnerships, which are treated as companies);
- a look-through company and a look through owner who is a director or employee; or
- each associated with a third person.

29. This Interpretation Statement does not go into detail about the application of the associated persons provisions. For more information see "New Definitions of 'Associated Persons'" *Tax Information Bulletin* Vol 21, No 8 (October/November 2009): 75.

Example 8. Associated persons – two buyers

Bob owns all of the share capital of Bobco and is the sole employee of Bobco. Bob is the working person and Bobco is the associated entity. The buyers of Bobco's services are AUSCO and its wholly owned subsidiary NZCO. Both of the buyer companies have entered into **separate** contracts with Bobco which will each provide 40% of Bobco's total income. Bobco is aware that NZCO is a wholly owned subsidiary of AUSCO.

Question:

Does Bob earn 80% of his income from the buyer and a person associated with the buyer?

Answer:

Yes, Bob does earn 80% of his income from the buyer and a person associated with that buyer. AUSCO and NZCO are associated with each other, which means 80% of Bobco's total income is derived from the supply of services to a combination of the buyer and a person associated with the buyer (that is, AUSCO and NZCO).

Example 9. Associated persons – buyer with multiple customers

Ann owns all of the share capital of Service Ltd and is the sole employee of Service Ltd. The buyer of Service Ltd's services is Computersupport Ltd which provides a wide variety of computer services to 15 third party clients. Service Ltd has no clients apart from Computersupport Ltd. The contract between Service Ltd and Computersupport Ltd requires Service Ltd to provide direct "helpdesk" services as and when required to all of the 15 third party clients of Computersupport Ltd.

Question

Is Ann providing her services to one buyer?

Answer:

Yes, Ann is providing her services to one buyer. Ann is the working person and Service Ltd is the associated entity. The associated entity Service Ltd has only one client, Computersupport Ltd, which is the buyer. It is irrelevant that Service Ltd is providing computer helpdesk services to Computersupport Ltd's 15 clients. There are no contracts between Service Ltd and the 15 third party clients of Computersupport Ltd.

Example 10. Associated persons – buyer and associated entity associated

Alan owns all of the share capital of Parent Ltd, Manufacturing Ltd, Distribution Ltd and Retail Ltd. Alan is the sole employee of Parent Ltd and is the working person. Parent Ltd is the associated entity that provides services to the three sister companies Manufacturing Ltd, Distribution Ltd and Retail Ltd, which are the buyers. Parent Ltd does not provide services to any other taxpayers.

Question:

Is Alan providing all his services to one buyer?

Answer:

Yes, Alan is providing all his services to one buyer. Parent Ltd, Manufacturing Ltd, Distribution Ltd and Retail Ltd are associated with each other which means all of Parent Ltd's income is derived from the supply of services to a combination of the buyer and persons associated with the buyer (that is, Manufacturing Ltd, Distribution Ltd and Retail Ltd).

30. The income attribution rule may apply one year to an associated entity and cease to apply the next year. This could happen where an associated entity is working for one buyer but changes its contract midway through the year to a different, unassociated buyer.

31. This situation was considered when the income attribution rule was enacted and the decision was that although the rule may be arbitrary in this regard, the preference was to keep the rule simple to understand and apply.

Example 11. Change of buyers

Fiona (the working person) has been providing 100% management services, through her associated entity FJH Ltd, to a payroll company for years. Six months into the current income year, that contract ends and Fiona and the associated entity contracts for six months with a different, unassociated, independent payroll company. The new contract is on the same terms and for the same amount as the previous contract.

Question:

Will the income attribution rule apply to FJH Ltd for the current income year?

Answer:

No, the income attribution rule will not apply to FJH Ltd for the current income year. Because Fiona is earning the same amount in relation to each unassociated buyer, she can only be earning 50% from one buyer and the income attribution rule will not apply.

There was only one buyer in the year before the change, so the income attribution rule does apply to that year. It is also possible that the income attribution rule may apply to the year after the change (if there are no other buyers).

32. Section GB 28 also contains rules relating to associated persons that are relevant when determining whether two buyers are associated. A person is only treated as being associated with another person for the income attribution rule if they are associated at the time the working person performs the services (s GB 28(2)). Also, no association exists between two buyers where both of them are public authorities (s GB 28(3)(a)).

33. Finally, there will be no association between two buyers where the working person cannot reasonably be expected to know that the two buyers are associated, other than by making a specific inquiry (s GB 28(3)(b)). An example of this would be if the working person were providing services to a company (an arm's length third party) that is part of a large group, and that company had several related companies (also arm's length) that were also contracting with the working person.

34. There is a difference between a person "knowing" that parties are associated (which would be subjective) and being "reasonably expected to know". The use of the words "reasonably expected to know" rather than just "know" indicates that it is an objective test. Accordingly, the question is whether a reasonable person should know.

35. The Commissioner considers that the working person should reasonably be able to know that two buyers may be associated where the associated buyers have similar names, where the working person was contracting with the same person on behalf of two buyers, where there is obvious and immediately accessible public information available to the working person about the buyers, or where there is local or regional knowledge of the association. The requirement that the person should be "reasonably expected to know" will depend on the facts and circumstances of each case.

Example 12. Associated persons - knowledge

Clare owns all of the share capital of Clareco and is the sole employee of Clareco. Clare is the working person and Clareco is the associated entity. The buyers of Clareco services are AUSCO and its wholly owned subsidiary NZCO. Both buyer companies have entered into **separate** contracts with the associated entity that will each provide 50% of Clareco's total income. Clare is not aware that NZCO is a wholly owned subsidiary of AUSCO. The buyers have different company names, and different employees entered into the contracts with the associated entity.

Question:

Can Clare be reasonably expected to know that AUSCO and NZCO are associated buyers?

Answer:

No, Clare cannot be reasonably expected to know that a particular buyer (NZCO) is associated with another buyer (AUSCO) without making specific enquires. The working person (Clare) is not aware of the 100% common shareholding between AUSCO and NZCO and would not reasonably be expected to know they are associated because:

- The two buyers have different company names.
- The two contracts were negotiated and entered into with different employees of NZCO and AUSCO.

However, the answer might be different if AUSCO and NZCO were in the same industry and the services Clare provided were very similar with overlap between the first and the second contract in terms of timeframes, price and so on.

Is 80% of the associated entity's income from personal services earned by the working person or a relative of the working person or a combination of them?

36. The income attribution rules will only apply where 80% or more of the associated entity's income from personal services during the income year is derived through services personally performed by the working person, a relative of the working person, or a combination of both of them (s GB 27(2)(b)). The inclusion of personal services performed by a relative of the working person is designed to ensure personal services cannot be split between relatives to make them appear to fall outside the income attribution rules. A common example would be where the services are provided by spouses or by a parent and an adult child.

37. "Relative" is defined in s YA 1 as a person connected with another person by being:
    - within the second degree of blood relationship to the other;
    - in a marriage, civil union, or de facto relationship with the other;
    - in a marriage, civil union, or de facto relationship with a person who is within the second degree of blood relationship to the other;
    - adopted as a child of the other or as a child of a person who is within the first degree of relationship to the other; or
    - the trustee of a trust under which a relative has benefited or is eligible to benefit.
38. This definition is consistent with the meaning of "relative" in the associated persons provisions, and covers parents, siblings and children.
39. The definition of "relative" is, however, limited by s GB 28(4) for the purposes of the income attribution rules. Section GB 28(4) states that a person is a relative of the working person only if the person is a relative at the beginning of the relevant income year. As an example, if during an income year two persons who each provide services to the entity begin a de facto relationship, they will not be caught within the provision until the next income year. However, if two people are in a de facto relationship, but split up during the year, they will be treated as being associated for the purposes of the income attribution rule for that income year.

Example 13. Relatives of working person

Dawn and her spouse Richard own all of the share capital of D&Dco. Dawn is the only full time employee of D&Dco. Richard and their adult children Diana and David are equally capable of providing the same services that would otherwise have been provided by Dawn. D&Dco is the associated entity. There is a single buyer of D&Dco services. The contract between D&Dco *and the buyer* provides that 50% of the services will be provided by Dawn and 50% of the services will be provided by Richard. The contract also provides that Richard can arrange for all or a proportion of his services to be provided by Diana or David or both.

Question:

Are Dawn and her relatives providing more than 80% of their services to a buyer?

Answer:

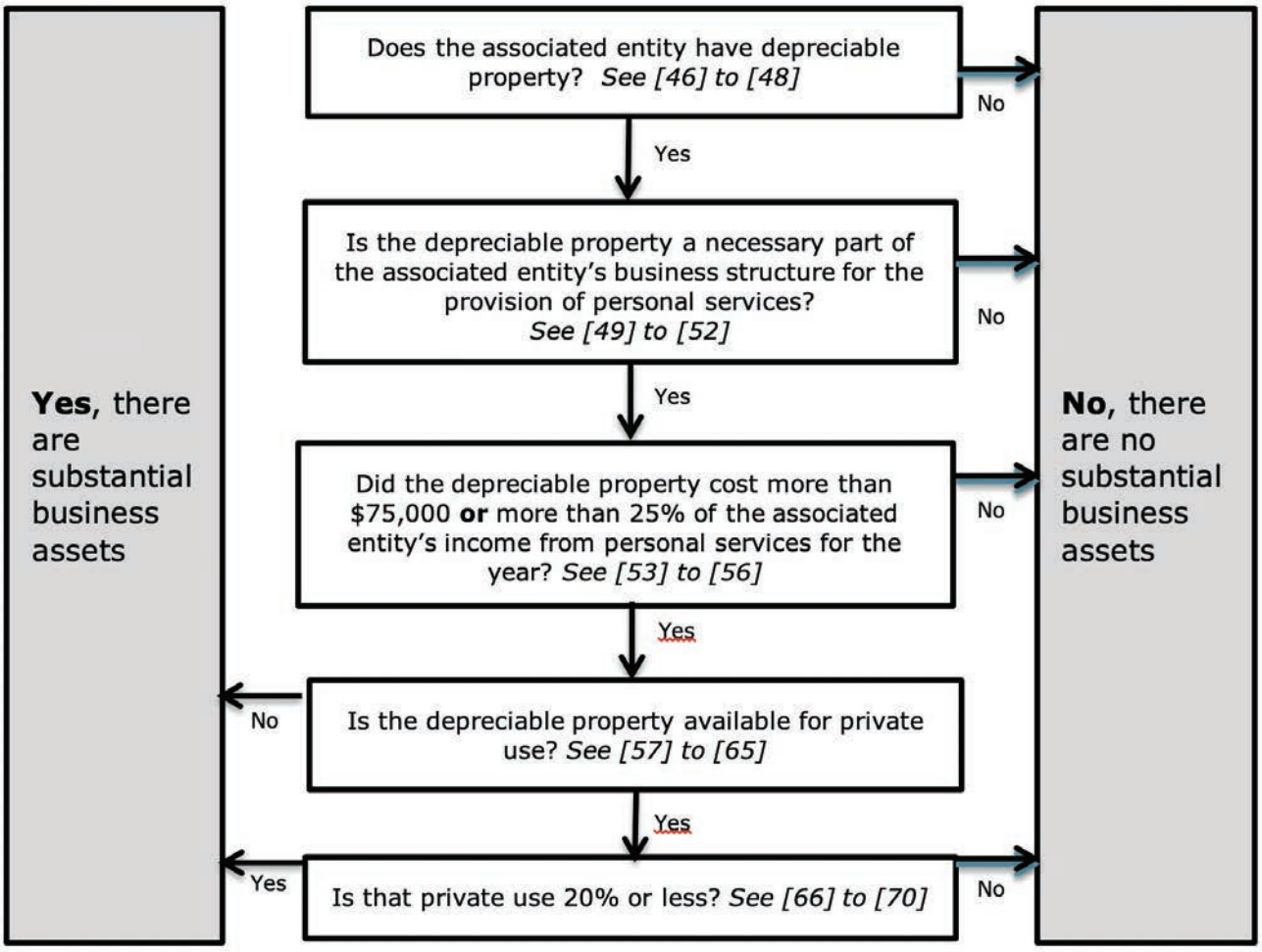
Yes, Dawn and her relatives are providing more than 80% of their services to a buyer. More than 80% (in this case 100%) of the services provided by D&Dco will be provided by a combination of the working person (Dawn) and the relatives of Dawn (Richard, Diana or David).

Are there substantial business assets?

40. The income attribution rules will not apply if the associated entity:
    - has "substantial business assets"; and
    - those assets are a necessary part of the business structure that is used to derive the associated entity's income from the provision of personal services to the buyer.
41. If the associated entity does not have substantial business assets, or those assets are not a necessary part of the business structure that is used to derive gross income from the provision of personal services, then income attribution may be required (subject to the application of the other thresholds and exemptions discussed in this Interpretation Statement) (s GB 27(2)(d)).
42. The substantial business assets test is designed to recognise that when substantial business assets are used in the associated entity's business of providing personal services there should also be a return on that capital. For example, the owner-driver of a petrol tanker should receive a return based on both the asset employed and the labour provided.
43. The expression "substantial business assets" is defined in s GB 28(6) as depreciable property that:
    - has a total cost of more than:
        - $75,000; or
        - 25% or more of the associated entity's total income from services for the income year; and
    - is not for "private use", which will not apply where the private use of the depreciable property is 20% or less of its total use (s GB 28(8)).
44. "Substantial business assets" can comprise a single asset or multiple assets.
45. The questions that need to be considered to determine whether an associated entity has substantial business assets are summarised in Flowchart 2.

46. The text following the flowchart to [85] considers each question in the order that it appears in the flowchart.

Flowchart 2: Are there substantial business assets?



Does the associated entity have depreciable property?

47. As stated above, to have a "substantial business asset", an associated entity must have property that is "depreciable property".

48. "Depreciable property" is, generally, defined as being property that, in normal circumstances, might reasonably be expected to decline in value while it is used or available for use in deriving assessable income, or in carrying on a business for the purpose of deriving assessable income (s EE 6). Depreciable property includes items that are "depreciable intangible property" (listed in sch 14). These items include property such as a patent or the right to use a patent, and the right to use a copyright. However, "depreciable property" does not include items of property that are listed in s EE 7, such as land, trading stock, and financial arrangements.

49. To be depreciable property, the substantial business assets must be used, or available for use, to derive the associated entity's assessable income from the provision of personal services. Not all property will automatically satisfy this requirement. Property that is used for private use is unlikely to satisfy this test. This is consistent with the definition of "substantial business assets".

Is the depreciable property a necessary part of the associated entity's business structure for the provision of personal services?

50. As discussed above, it is a requirement that the depreciable property be a necessary part of the associated entity's business structure that is used to provide personal services to the buyer. The first step is to identify the business that the associated entity is undertaking and then the structure that is being used. In most cases the business being undertaken by the associated entity will be self-evident. It can then be considered whether the particular assets being considered (to be substantial business assets) are a necessary part of the business structure.

51. An associated entity's "business structure" is the structure or organisation that has been established to carry out the associated entity's contractual obligations to the buyer of the working person's services (*CIR v Trustpower Ltd* (2016) 27 NZTC 22-010 (CA); *Sun Newspapers Ltd v FCT* (1938) 5 ATD 87 (HCA)).

52. The dictionary definitions of "necessary" indicate that the depreciable property must be essential, vital, indispensable or imperative to the success of the activity being performed. Case law indicates that the word "necessary" can have a narrow or a wide interpretation depending on the statutory context. In the context of the income attribution rule, which is a specific anti-avoidance rule, the Commissioner's view is that the word "necessary" should be narrowly interpreted (*Pabari v Secretary of State for Work and Pensions* [2005] 1 All ER 287).

53. Therefore, it is the Commissioner's view that business assets must be indispensable or essential to the provision of the particular services provided by the working person to the buyer of those services. Tools and equipment that are only infrequently (if at all) used by a working person to perform the personal services provided to a buyer of the personal services may not satisfy the narrow test of indispensability.

Example 14. Necessary business tools

Wendy the plumber is the working person. She is a very experienced plumber and is employed by her associated entity. The associated entity's business is providing plumbing services. The associated entity owns all of the plumbing equipment that Wendy needs to carry out her work and a van to carry that equipment. The buyer is constructing a large commercial building that will take at least three years to build.

Question

Are the plumbing equipment and van a necessary part of the business structure?

Answer

Yes the plumbing equipment and the van owned by the associated entity are a necessary part of the associated entity's business structure.

Example 15. Necessary business tools

Barry the builder is the working person. Barry is employed by his associated entity which runs a business providing building services. All of the income of the associated entity is from a single buyer. The buyer owns all of the building equipment that Barry needs to carry out the buyer's building contract. The buyer also provides a vehicle to transport Barry from the buyer's premises to the construction site.

The associated entity owns some equipment that is not used for building and it is stored at Barry's private residence. Barry uses a motor vehicle owned by the associated entity to drive from his private residence to the buyer's premises. Barry then uses the buyers building equipment and motor vehicle to travel to the construction site.

Question

Are the associated entity's equipment and motor vehicle a necessary part of the business structure?

Answer

No, based on the facts provided the associated entity's equipment and motor vehicle are not necessary parts of the business structure (while the motor vehicle may be a necessary part of the business structure more information would be needed before this could be decided). The equipment owned by the associated entity is not a necessary part of the business structure because it does not relate to the business of the associated entity and the buyer provides Barry with all of the building equipment necessary.

Did the depreciable property cost more than $75,000 or more than 25% of the associated entity's income from personal services for the year?

54. Depreciable property will only be a "substantial business asset" if it has a total cost of more than (s GB 28(6)(a)):

- $75,000; or
- 5% or more of the associated entity's total income from personal services for the income year.

55. These are alternative tests, **either** of which must be satisfied.

56. This test requires the taxpayer to correctly ascertain the relationship between the cost of their depreciable property and the two statutory thresholds. It is "cost" and not market value that is relevant. The "cost" will be the same as the cost the associated entity uses for depreciation purposes.

57. The most common categories of business assets owned by associated entities include motor vehicles, tools and equipment, computers and communication equipment.

Example 16. Substantial business assets – monetary thresholds

Cost of depreciable property	$40,000
Total income from services	$120,000
25% of total income from services	$30,000
Statutory amount	$75,000

Question

Does the asset meet the monetary threshold?

Answer

Yes, the asset meets the monetary threshold. The cost of the depreciable property is $40,000 which is **less** than the statutory amount of $75,000. The first limb of the test is not satisfied. However, the cost of $40,000 is **more** than 25% of income from personal services which is $30,000. The second limb of the test is satisfied.

Example 17. Substantial business assets – monetary thresholds

Cost of depreciable property	$50,000
Total income from services	$240,000
25% of total income from services	$60,000
Statutory amount	$75,000

Question

Does the asset meet the monetary threshold?

Answer

No, the asset does not meet the monetary threshold. The cost of the depreciable property is $50,000 which is **less** that the statutory amount of $75,000. The cost is also **less** than 25% of income from personal services which is $60,000. The test has **not** been satisfied because the taxpayer has failed both of the alternative tests.

Example 18. Substantial business assets – monetary thresholds

Cost of depreciable property	$80,000
Total income from services	$280,000
25% of total income from services	$70,000
Statutory amount	$75,000

Question

Does the asset meet the monetary threshold?

Answer

Yes. The asset meets the monetary threshold. The cost of the depreciable property is $80,000 which is **more** than the statutory amount of $75,000. The cost is also **more** than 25% of income from personal services which is $70,000. The test is satisfied because the taxpayer has satisfied both of the alternative tests (and only one test needs to be satisfied).

Example 19. Substantial business assets – monetary thresholds

Cost of depreciable property	$80,000
Total income from services	$360,000
25% of total income from services	$90,000
Statutory amount	$75,000

Question

Does the asset meet the monetary threshold?

Answer

Yes, the asset meets the monetary threshold. The cost of the depreciable property is $80,000 which is **more** than the statutory amount of $75,000. The first of the alternative tests has been satisfied. It does not matter that the cost of $80,000 is **less** than 25% of income from personal services which is $90,000. The test is satisfied because the taxpayer is required to satisfy only one of the alternative tests.

Is the depreciable property used for private use?

58. Depreciable property may not be a "substantial business asset" if it is used for private use (subject to the 20% test discussed from [67]).

59. The Act does not contain a general definition of "private use". The dictionary definitions relevantly indicate that "private" refers to the part of a person's life that is concerned with situations or activities in a person's personal relationships and activities rather than with the person's work or business relationships (*CIR v Haenga* (1985) 7 NZTC 5, 198 (CA)).

60. Many business assets, such as computers, printers, tablets, smart phones tools and equipment, are capable of being used for both business and non-business activities. In relation to the use of such assets, the Commissioner considers that any use that is not in the course of undertaking specific income earning activities should be classified as private use.

Private use of motor vehicles

61. The Act contains a specific definition of "private use" for motor vehicles. Under s CX 36, private use for a motor vehicle includes:
    - the employee's use of the vehicle for travel between home and work; and
    - any other travel that confers a private benefit on the employee (for example, use after hours, during the weekend or when the working person is on leave).
62. Section GB 28(9), which sets out how to calculate the percentage of private use of a substantial business asset (discussed from [67]), refers to the number of days for which fringe benefit tax (FBT) is payable for the property. Because FBT is payable for motor vehicles depending on their private use, this definition is also relevant when determining the private use of a motor vehicle for the purposes of the substantial business asset test.
63. This Interpretation Statement briefly discusses where there will be private use of a motor vehicle. For more information on this topic see "Travel by Motor Vehicle Between Home and Work – Deductibility of Expenditure and FBT Implications" *Tax Information Bulletin* Vol 16, No 10 (November 2004): 31 (IS 3448), and IS 17/07 "Fringe Benefit Tax – Motor Vehicles" *Tax Information Bulletin* Vol 29, No 9 (October 2017): 12.

Travel between home and work

64. In most cases, the Commissioner considers that travel between home and work in a vehicle owned by an associated entity will confer a private advantage and be considered private use of that vehicle. However, where a **home is also a workplace** and an employee is **required for sound business reasons** to travel to perform employment duties partly at the home workplace and partly at another workplace, then no private benefit will be conferred by that travel (*CIR v Schick* (1998) 18 NZTC 13,738 (HC)).
65. If the working person's home is also the associated entity's premises, and sound business reasons exist for this arrangement, travel in a motor vehicle from the home to the buyer's premises will be considered work-to-work travel. This travel will not be considered private use for s GB 28(6)(b).
66. If the associated entity's premises are separate from the working person's home, the standard rules relating to FBT and motor vehicles as set out in IS 17/07 and IS3448 apply. It is likely that any travel between home and those premises in a motor vehicle will be considered private use under s GB 28(6)(b).

Is the private use 20% or less?

67. The phrase "private use" is limited for the purposes of the income attribution rule so that where the private use of the depreciable property is 20% or less of its total use it will not be considered private use (s GB 28(8)).
68. This limitation means depreciable property may satisfy the test for substantial business assets even if there is an element of private use or enjoyment, provided the level of private use is not more than 20% of the total use. Or, to put it another way, the classification of an asset as a substantial business asset will not change in cases where the business use of that asset is at least 80%.
69. Section GB 28(9) provides guidance on calculating the percentage of private use of a business asset.
70. In the case of property that is subject to the FBT rules, the percentage of private use must be calculated by comparing the number of days for which FBT is payable with the total days in the tax year in which the property is owned or is subject to a specified lease, a finance lease or a hire purchase agreement.
71. In the case of all other property (including any property that is excluded from FBT under s CX 21), the percentage of private use must be calculated by comparing the expenditure relating to the property that is non-deductible as a result of the private use with the total expenditure relating to the property incurred in the tax year.

Are the services being provided essential support for a product?

72. The income attribution rule will not apply to the extent that the services provided by a working person are essential support for a product supplied by the working person's associated entity (s GB 27(3)(c)).

73. Various dictionary definitions suggest that the word "product", when read in this context, describes the sale of something that has been produced or acquired by the associated entity that is sold to the buyer.

Example 20. Essential support for a product

Computer Comprehensive Service Ltd is the associated entity that has entered into a contract with its only customer, a government department (the buyer). The contract requires Computer Comprehensive Service Ltd to install a new computer system, provide software and hardware support and provide "hands on" training to the buyer's staff. All of the staff training will be undertaken by the working person at the buyer's premises.

Question:

Does the income attribution rule apply?

Answer:

No, the income attribution rule does not apply. Computer Comprehensive Service Ltd (the associated entity) has agreed to provide the government department (the buyer) with a computer system, software and hardware support, and comprehensive hands on training. The training services the working person provides are essential support for the hardware and software (the product) that Computer Comprehensive Service Ltd sold to the government department.

Is the amount being attributed less than $5,000?

74. The income attribution rule will not apply where the total amount to be attributed to the working person by the associated entity is less than $5,000. This means that if the amount attributed under s GB 29 is less than $5,000, no attribution need be made (s GB 27(3)(d)).

75. However, if the working person has more than one associated entity, this exemption can apply only once (s GB 27(3)(d)(i)). This means the second entity must attribute income regardless of the level of that income.

Is the associated entity a controlled foreign company?

76. The $5,000 exemption will not apply if the associated entity is a CFC. This is to ensure that all income from CFCs is returned regardless of the amount. A separate exemption that may apply for CFCs is discussed at [20] and [21].

References

Subject references

associated persons
attribution of income from personal services
controlled foreign companies
income tax

Legislative references

Income Tax Act 2007 – ss CQ 2, CX 21, CX 36, CX 38, DN 2, EE 6, EE 7, EX 1, GB 27 to GB 29, in s YA 1 ("associated persons", " car", "motor vehicle", "relative"), subpart YB, ss YD 1, YD 2, sch 14

Land Transport Act 1998, s 2 ("motor vehicle)

Case references

Case P26 (1992) 14 NZTC 4,196 (TRA)
Case R37 (1994) 16 NZTC 6,208 (TRA)
Case S26 (1994) 17 NZTC 7,182 (TRA)
Case T38 (1997) 18 NZTC 8,255 (TRA)
CIR v Haenga (1985) 7 NZTC 5,198 (CA)
CIR v Schick (1998) 18 NZTC 13,738 (HC)
CIR v Trustpower Ltd (2016) 27 NZTC 22-010 (CA)
Pabari v Secretary of State for Work and Pensions [2005] 1 All ER 287 (EWCA Civ)
Sun Newspapers Ltd v FCT (1938) 5 ATD 87 (HCA)

Other references

"Attribution of Income" *Tax Information Bulletin* Vol 12, No 12 (December 2000): 49
"IS 16/03: Tax Residence" T*ax Information Bulletin* Vol 28, No 10 (October 2016): 2
"IS 17/07: Fringe Benefit Tax – Motor Vehicles" *Tax Information Bulletin* Vol 29, No 9 (October 2017): 12
"New Definitions of 'Associated Persons'" *Tax Information Bulletin* Vol 21, No 8 (October/November 2009): 75
"Travel by Motor Vehicle between Home and Work – Deductibility of Expenditure and FBT Implications" *Tax Information Bulletin* Vol 16, No 10 (November 2004): 31

Appendix – Legislation

Sections GB 27 to GB 29 provide:

GB 27 Attribution rule for income from personal services

Application of section GB 29

(1) An amount of income in an income year of a person (the associated entity) is attributed to another person (the working person) under section GB 29 for the working person's corresponding tax year if,—

(a) during the income year, a third person (the buyer) acquires services from the associated entity, and the services are personally performed by the working person; and

(b) the working person is associated with the associated entity; and

(c) the threshold test in subsection (2) is met; and

(d) none of the exemptions in subsection (3) applies.

Threshold for application of attribution rule

(2) The attribution occurs only if—

(a) 80% or more of the associated entity's total income from personal services during the income year is derived from the supply of services to the buyer, a person associated with the buyer, or a combination of them; and

(b) 80% or more of the associated entity's income from personal services during the income year is derived through services personally performed by the working person, a relative of the working person, or a combination of them; and

(c) the working person's net income for the income year, assuming section GB 29 applies in relation to the associated entity and working person, is more than $70,000; and

(d) substantial business assets are not a necessary part of the business structure that is used to derive the total income referred to in paragraph (a).

Exemptions

(3) The attribution does not occur—

(a) if both the associated entity and the working person are non-residents at all times during the associated entity's income year:

(b) if the associated entity is a natural person and is neither a partner of a partnership nor a trustee of a trust:

(c) to the extent to which the services personally performed by the working person are essential support for a product supplied by the associated entity:

(d) if the total amount to be attributed to the working person, for the associated entity and the income year, is less than $5,000, unless—

(i) the application of this paragraph would prevent income being attributed to the working person for the income year in relation to another associated entity:

(ii) the associated entity is a CFC and a person who holds an attributing interest in the CFC files, after the date (the Royal assent date) on which the Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Act 2016 receives the Royal assent, a return of income in which the amount of income attributed to the working person is determined under this section:

(e) if the associated entity is a CFC and—

(i) the amount gives rise to attributed CFC income under section CQ 2(2B) (When attributed CFC income arises) or attributed CFC loss under section DN 2(2) (When attributed CFC loss arises) for a person who holds an attributing interest in the CFC; and

(ii) the person who holds the attributing interest in the CFC files, after the Royal assent date, a return of income in which the amount attributed to the working person is determined under section EX 20B (Attributable CFC amount).

Treatment of certain dividends

(4) If a company that is required to attribute an amount to the working person under this section pays a dividend, sections HA 14 to HA 19 (which relate to qualifying companies) are treated as applying to the company and the dividend if the company—

(a) has no net income for the tax year in which it pays the dividend other than income attributed under this section, ignoring interest income that is incidental to the company's business; and

(b) is not a qualifying company; and

(c) chooses to have the dividend treated as if it were paid by a qualifying company.

Cancellation of notional imputation credits

(5) For the purposes of subsection (4), to the extent to which the dividend paid by the company would have had an imputation credit attached that arose under section OB 16 (ICA attribution for personal services) in the absence of the election made under subsection (4)(c), the credit is treated as cancelled immediately before it would have been attached under sections HA 14 to HA 19 (which relate to dividends paid by qualifying companies).

GB 28 Interpretation of terms used in section GB 27

When this section applies

(1) This section applies for the purposes of section GB 27.

Associated persons

(2) A person is treated as being associated with another person if they are associated at the time the services are personally performed by the working person.

Non-associated buyers

(3) For the purposes of section GB 27(2)(a), a buyer is not treated as being associated with another buyer if either—

(a) both buyers are public authorities; or

(b) the working person cannot be reasonably expected to know that a particular buyer is associated with another buyer, other than by making a specific enquiry.

Relatives

(4) For the purposes of section GB 27(2)(b), a person is a relative of the working person only if the person is a relative at the beginning of the relevant income year of the working person.

Fringe benefits included

(5) For the purposes of section GB 27(2)(c), the working person's annual gross income includes the taxable value of a fringe benefit, as determined under sections RD 25 to RD 63 (which relate to fringe benefit tax), provided or granted by a person associated with the working person.

Meaning of substantial business assets

(6) Substantial business assets means depreciable property that—

(a) at the end of the associated entity's corresponding income year, has a total cost of more than either—

(i) $75,000; or

(ii) 25% or more of the associated entity's total income from services for the income year; and

(b) is not for private use.

Assets subject to finance lease, hire purchase agreement, or specified lease

(7) For the purposes of subsection (6)(a), the cost of depreciable property includes—

(a) the consideration provided to the lessee in the case of property subject to a finance lease or a hire purchase agreement, including expenditure or loss incurred by the lessee in preparing and installing the finance lease asset for use, unless the lessee is allowed a deduction for the expenditure or loss, other than a deduction for an amount of depreciation loss:

(b) the cost price, in the case of property subject to a specified lease.

Private use of assets

(8) Subsection (6)(b) does not apply to depreciable property if 20% or less of the property's use is for private use.

Calculation of private proportion of use

(9) For the purposes of subsection (8), the percentage of a property's use for private purposes for an income year is calculated according to—

(a) the proportion that the number of days for which fringe benefit tax is payable by the associated entity in relation to the property bears to the total number of days in the income year in which the property is owned by or is subject to a finance lease, hire purchase agreement, or specified lease, involving the associated entity, if the property is subject to the FBT rules:

(b) the proportion that the expenditure incurred in relation to the property, for which a deduction is denied to the associated entity, bears to all expenditure incurred by the associated entity in relation to the property in the income year, if the property is not subject to the FBT rules.

GB 29 Attribution rule: calculation

Amount attributed

(1) A working person is treated as deriving income in an income year equal to the least of the following amounts:

(a) the associated entity's net income for the corresponding tax year, calculated as if their only income were derived from personal services:

(b) the associated entity's net income for the corresponding tax year:

(c) if and to the extent to which the associated entity is a company or a trust that has a loss balance to be carried forward under section IA 4 (Using loss balances carried forward to tax year) arising from a business or a trading activity of supplying personal services, the associated entity's net income for the corresponding tax year after subtracting the loss balance carried forward from an earlier corresponding tax year.

Calculation for trustee or partnership

(2) For the purposes of calculating the associated entity's net income for the corresponding tax year in the application of subsection (1),—

(a) if the associated entity is a trustee of a trust, the trustees are treated as not having made a distribution of beneficiary income out of the year's income:

(b) if the associated entity is a partnership, the associated entity is treated as a taxpayer and section HG 2 (Partnerships are transparent) does not apply:

(c) if the associated entity is a look-through company, the associated entity is treated as a taxpayer and section HB 1 (Look-through companies are transparent) does not apply.

Salary paid or fringe benefits treated as deductions

(3) For the purposes of calculating the associated entity's net income for the corresponding tax year in the application of subsection (1),—

(a) the associated entity is allowed a deduction for employment income paid to the working person during the income year:

(b) the associated entity is allowed a deduction for the taxable value of a fringe benefit provided or granted by the associated entity to the working person during the income year, and for the fringe benefit tax payable on the fringe benefit.

Reduction of attributable income for distributions

(4) For the purposes of calculating the associated entity's net income for the corresponding tax year in the application of subsection (1), the amount of net income of the associated entity for the corresponding tax year is reduced by—

(a) in the case of a trustee of a trust, the amount of beneficiary income derived by the working person from the trust in the income year:

(b) in the case of a partnership, the share of profits allocated by the partnership to the working person:

(c) in the case of a company, a dividend paid—

(i) by the associated entity to the working person during the income year or before the end of 6 months after the end of the income year; and

(ii) from income derived in the income year.

Attribution reduced by market value of administrative services

(5) If the associated entity is a partnership that receives administrative services from another person related to their income from personal services and has not paid for the administrative services, the amount to be attributed to the working person is reduced by the market value of the administrative services provided by the other person.

Reduction of beneficiary income when rule results in trust having tax loss

(6) If the associated entity is a trustee and the amount attributable would cause the associated entity to have a tax loss for the corresponding tax year, for the purposes of this Act,—

(a) beneficiary income from the trust for the income year must be reduced to the extent to which the associated entity's taxable income for the corresponding tax year is zero; and

(b) the reduction in beneficiary income must be divided among the beneficiaries other than the working person—

(i) according to proportions determined by the trust's trustees:

(ii) if the trustees do not make the determination, according to the proportion that each beneficiary's beneficiary income bears to the total beneficiary income from the trust for the income year.

Attribution to more than 1 working person

(7) If the amount attributable is to be attributed to more than 1 working person, the share attributed to each working person must reflect the respective value of the services personally performed by each working person.

LEGISLATION AND DETERMINATIONS

This section of the *TIB* covers items such as recent tax legislation and depreciation determinations, livestock values and changes in FBT and GST interest rates.

Foreign currency amounts – conversion to New Zealand dollars (for the 12 months ending 31 March 2019)

This article provides the exchange rates acceptable to Inland Revenue for converting foreign currency amounts to New Zealand dollars under the controlled foreign company ("CFC") and foreign investment fund ("FIF") rules for the 12 months ending 31 March 2019.

The Income Tax Act 2007 ("2007 Act") requires foreign currency amounts to be converted into New Zealand dollars applying one of the following methods:

- actual rate for the day for each transaction (including close of trading spot exchange rate on the day), or
- rolling 12-month average rate for a 12-month accounting period or income year (see the table **Currency rates 12 months ending 31 March 2019 – rolling 12-month average**), or
- mid-month actual rate as the basis of the rolling average for accounting periods or income years greater or lesser than 12 months (see the table **Currency rates 12 months ending 31 March 2019 – mid-month actual**).

Legislation enacted in September 2010 with effect from 1 April 2008 permits the Commissioner to set currency rates and approve methods of calculating exchange rates. The Commissioner can set rates for general use by taxpayers or for specific taxpayers. The Commissioner's ability to set rates and approve methods applies in circumstances where the 2007 Act does not contain a specific currency conversion rule (sections YF 1(5) and (6)), or in circumstances where the 2007 Act provides a rate or method for currency conversion (section YF 2).

Inland Revenue uses wholesale rates from Bloomberg for rolling 12-month average, mid-month actual and end of month. These rates are provided in three tables.

You must apply the chosen conversion method to all interests for which you use the FIF or CFC calculation method in that and each later income year.

To convert foreign currency amounts to New Zealand dollars for any country listed, divide the foreign currency amount by the exchange rate shown. Round the exchange rate calculations to four decimal places wherever possible.

If you need an exchange rate for a country or a day not listed in the tables, please contact one of New Zealand's major trading banks.

Note: All section references relate to the 2007 Act.

Actual rate for the day for each transaction

The actual rate for the day for a transaction can be used in the following circumstances:

- where the 2007 Act does not provide a specific currency conversion rule, then foreign currency amounts can be converted by applying the close of trading spot exchange rate on the date the transaction is required to be measured or calculated (section YF 1(2))
- where a person chooses to use the actual rate for the day of the transaction when calculating their FIF income or loss by applying the comparative value method, fair dividend rate method, deemed rate of return method or the cost method (section EX 57(2)(a))
- where a person chooses to use the close of trading spot exchange rate to convert foreign income tax paid by a CFC (section LK 3(a)) or by a FIF where the attributable FIF income method is used (sections EX 50(8)–(9) and LK 3(a)).

Unless the actual rate is the rate for the 15th or the last day of the month, these rates are not supplied by Inland Revenue.

The table **Currency rates 12 months ending 31 March 2019 – month end** provides exchange rates for the last day of the month. These are provided for convenience to assist taxpayers who may need exchange rates on those days.

Currency rates 12 months ending 31 March 2019 – rolling 12-month average table

This table is the average of the mid-month exchange rate for that month and the previous 11 months, ie, the 12-month average. This table should be used where the accounting period or income year encompasses 12 complete months.

This table can be used to convert foreign currency amounts to New Zealand dollars for:

- FIF income or loss calculated under the comparative value method, the fair dividend rate method, the deemed rate of return method or cost method (section EX 57(2)(b)) for accounting periods of 12 months
- FIF income or loss calculated under the attributable FIF income method (section EX 50(3)(a)) for accounting periods of 12 months
- attributed CFC income or loss calculated under the CFC rules (section EX 21(4)(b)) for accounting periods of 12 months
- calculating the New Zealand dollar amount of foreign income tax under the CFC rules (section LK 3(b)) or under the FIF rules where the attributable FIF income method is used (sections EX 50(8)–(9) and LK 3(b)) for accounting periods of 12 months.

Currency rates 12 months ending 31 March 2019 – mid-month actual table

This table sets out the exchange rate on the 15th day of the month, or if no exchange rates were quoted on that day, on the preceding working day on which they were quoted. This table can be used as the basis of the rolling average where the accounting period or income year is less than or greater than 12 months (see Example 4). You can also use the rates from this table as the actual rate for any transactions arising on the 15th of the month.

This table can be used as the basis of the rolling average for calculating:

- FIF income or loss under the comparative value method, the fair dividend rate method, the deemed rate of return method or cost method (section EX 57(2)(b)) for accounting periods or income years of less than or greater than 12 months
- FIF income or loss calculated under the attributable FIF income method (section EX 50(3)(a)) for accounting periods of less than or greater than 12 months
- attributed CFC income or loss calculated under the CFC rules (section EX 21(4)(b)) for accounting periods of less than or greater than 12 months
- the New Zealand dollar amount of foreign income tax under the CFC rules (section LK 3(b)) or under the FIF rules where the attributable FIF income method is used (sections EX 50(8)–(9) and LK 3(b)) for accounting periods of less than or greater than 12 months.

Example 1

A taxpayer with a 30 September balance date purchases shares in a Philippine company (which is a FIF but does produce a guaranteed yield) on 6 September 2018. Its opening market value on 1 October 2018 or its closing market value on 30 September 2018 is PHP 350,000. Using the comparative value method and applying the actual rate for the day (section EX 57(2)(a)), the opening market value is converted as follows:

PHP 350,000 ÷ 35.7208 = $9,798.21

(In this example, the rate selected is the month-end rate for September 2018 for PHP. Refer to the table "**Currency rates 12 months ending 31 March 2019 – month end**".)

Example 2

A CFC resident in Hong Kong has an accounting period ending on 31 December 2018. Attributed CFC income for the period 1 January 2018 to 31 December 2018 is 200,000 Hong Kong dollars (HKD), which converts to:

HKD 200,000 ÷ 5.4341 = $36,804.62

(In this example, the rate selected is the rolling 12-month average rate for December 2018 for HKD. Refer to the table "**Currency rates 12 months ending 31 March 2019 – rolling 12-month average**".)

Example 3

A resident individual with a 31 October 2018 accounting period acquired a FIF interest in a Japanese company on 1 November 2017 for 10,500,000 yen. The interest is sold in October 2018 for 10,000,000 yen. Using the comparative value method and applying section EX 57(2)(b), these amounts are converted as:

JPY 10,500,000 ÷ 76.6840 = $136,925.57

JPY 10,000,000 ÷ 76.6840 = $130,405.30

(In this example, the rolling 12-month rate for October 2018 for JPY has been applied to both calculations. Refer to the table "**Currency rates 12 months ending 31 March 2019 – rolling 12-month average**".)

Example 4

A CFC resident in Singapore was formed on 19 April 2018 and has a balance date of 30 September 2018. During the period 1 May 2018 to 30 September 2018, attributed CFC income of 500,000 Singaporean dollars was derived. For the conversion to New Zealand dollars the taxpayer chooses the method set out in section EX 21(4)(b).

1. Calculating the average monthly exchange rate for the complete months May–September 2018:

0.9227 + 0.9385 + 0.9221 + 0.9061 + 0.9000 = 4.5894

4.5894 ÷ 5 = 0.91788

2. Round exchange rate to four decimal places: 0.9179

3. Conversion to New Zealand currency:

SGD 500,000 ÷ 0.9179 = $544,721.65

(In this example, the rates are from the table "**Currency rates 12 months ending 31 March 2019 – mid-month actual**", from May to September 2018 inclusive for SGD.)

Currency rates 12 months ending 31 March 2019 – rolling 12-month average

Currency	Code	15/04/18	15/05/18	15/06/18	15/07/18	15/08/18	15/09/18	15/10/18	15/11/18	15/12/18	15/01/19	15/02/19	15/03/19
Australia Dollar	AUD	0.9262	0.9254	0.9239	0.9216	0.9201	0.9204	0.9211	0.9238	0.9265	0.9290	0.9314	0.9341
Bahrain Dinar	BHD	0.2713	0.2713	0.2705	0.2688	0.2667	0.2643	0.2623	0.2621	0.2615	0.2600	0.2583	0.2570
Britain Pound	GBP	0.5366	0.5345	0.5309	0.5268	0.5230	0.5200	0.5165	0.5176	0.5188	0.5189	0.5195	0.5189
Canada Dollar	CAD	0.9182	0.9136	0.9103	0.9069	0.9019	0.8989	0.8953	0.8971	0.8979	0.8977	0.8964	0.8933
China Yuan	CNY	4.7262	4.6958	4.6595	4.6229	4.5997	4.5767	4.5616	4.5768	4.5834	4.5758	4.5714	4.5710
Denmark Kroner	DKK	4.5289	4.5001	4.4707	4.4333	4.4108	4.3823	4.3577	4.3708	4.3756	4.3776	4.3879	4.3966
Euporean Community Euro	EUR	0.6086	0.6046	0.6005	0.5954	0.5922	0.5883	0.5848	0.5865	0.5870	0.5872	0.5884	0.5895
Fiji Dollar	FJD	1.4725	1.4704	1.4671	1.4604	1.4543	1.4478	1.4428	1.4439	1.4437	1.4413	1.4391	1.4384
French Polynesia Franc	XPF	72.5984	72.1281	71.6418	71.0321	70.6594	70.1909	69.7812	69.9739	70.0401	70.0621	70.2107	70.3400
Hong Kong Dollar	HKD	5.6246	5.6269	5.6126	5.5772	5.5350	5.4878	5.4484	5.4466	5.4341	5.4037	5.3697	5.3420
India Rupee	INR	46.3764	46.6052	46.6717	46.5907	46.5368	46.5918	46.7473	47.0783	47.3972	47.5823	47.7173	47.7105
Indonesia Rupiah	IDR	9,697.4133	9,742.4808	9,759.3800	9,752.9825	9,737.0467	9,748.0250	9,772.9000	9,829.5700	9,858.7833	9,851.8967	9,820.0425	9,795.8767
Japan Yen	JPY	79.5268	79.3112	79.0557	78.4923	77.8769	77.2760	76.6840	76.6840	76.5437	75.9922	75.7630	75.6731
Korea Won	KOR	793.8149	791.4535	787.3266	781.8825	775.3853	767.7109	762.1395	762.9716	763.6715	762.7554	761.5272	761.4336
Kuwait Dinar	KWD	0.2171	0.2169	0.2161	0.2147	0.2131	0.2113	0.2098	0.2098	0.2094	0.2084	0.2073	0.2064
Malaysia Ringit	MYR	2.9713	2.9507	2.9243	2.8899	2.8528	2.8262	2.8011	2.7992	2.7964	2.7896	2.7819	2.7763
Norway Krone	NOK	5.7959	5.7699	5.7298	5.6862	5.6687	5.6419	5.6150	5.6258	5.6256	5.6312	5.6456	5.6643
Pakistan Rupee	PKR	77.6355	78.2541	78.8854	79.2560	79.6151	79.9799	80.9132	82.5198	83.9712	85.1124	86.2183	87.4344
Phillipines Peso	PHP	36.7417	36.9119	37.0028	36.9240	36.7239	36.5817	36.4670	36.5413	36.5884	36.4961	36.2575	36.0979
PNG Kina	PGK	2.3090	2.3132	2.3107	2.3021	2.2919	2.2789	2.2712	2.2791	2.2824	2.2771	2.2702	2.2653
Singapore Dollar	SGD	0.9698	0.9666	0.9616	0.9545	0.9476	0.9408	0.9352	0.9358	0.9351	0.9318	0.9286	0.9261
Solomon Islands Dollar*	SBD	0.0927	0.0928	0.0927	0.0920	0.0911	0.0903	0.0894	0.0892	0.0888	0.0880	0.0871	0.0864
South Africa Rand	ZAR	9.2394	9.2021	9.2061	9.1572	9.1515	9.1650	9.1568	9.1385	9.1908	9.2225	9.3101	9.4100
Sri Lanka Rupee	LKR	110.6913	110.9774	111.0791	110.6764	110.1891	109.8904	109.9922	111.2604	112.4624	113.5158	114.0998	114.7927
Sweden Krona	SEK	5.9676	5.9579	5.9401	5.9322	5.9492	5.9586	5.9620	5.9949	6.0129	6.0347	6.0758	6.1063
Swiss Franc	CHF	0.6966	0.6967	0.6959	0.6933	0.6890	0.6835	0.6791	0.6797	0.6785	0.6760	0.6766	0.6761
Taiwan Dollar	TAI	21.4724	21.4599	21.3853	21.2558	21.1178	20.9667	20.8554	20.8854	20.8868	20.8414	20.8164	20.8093
Thailand Baht	THB	23.5463	23.4022	23.2523	23.0638	22.8797	22.6497	22.4543	22.4387	22.4044	22.2747	22.1329	22.0477
Tonga Pa'anga*	TOP	1.5683	1.5664	1.5627	1.5549	1.5513	1.5456	1.5394	1.5406	1.5377	1.5323	1.5274	1.5245
United States Dollar	USD	0.7198	0.7196	0.7175	0.7125	0.7069	0.7007	0.6954	0.6950	0.6934	0.6894	0.6849	0.6813
Vanuatu Vatu	VUV	76.8478	76.5251	76.1926	75.7063	75.4235	75.1449	74.8621	75.0506	75.0981	75.0981	74.9467	74.9963
West Samoan Tala*	WST	1.7977	1.7963	1.7923	1.7832	1.7811	1.7735	1.7681	1.7757	1.7733	1.7692	1.7654	1.7615

Notes to table:

All currencies are expressed in NZD terms, ie, 1NZD per unit(s) of foreign currency.

The currencies marked with an asterisk * are not published on Bloomberg in NZD terms. However, these currencies are expressed in USD terms and therefore the equivalent NZD terms have been generated as a function of the foreign currency USD cross-rate converted to NZD terms at the NZDUSD rate provided.

The rates provided represent the Bloomberg generic rate (BGN) based on the last price (mid rate) at which the currency was traded at the close of the New York trading day. Where the date specified was not a trading day, then the rate reflects the last price on the preceding business day.

Source: Bloomberg CMPN BGN

Currency rates 12 months ending 31 March 2019 – mid-month actual

Currency	Code	15/04/18	15/05/18	15/06/18	15/07/18	15/08/18	15/09/18	15/10/18	15/11/18	15/12/18	15/01/19	15/02/19	31/03/19
Australia Dollar	AUD	0.9473	0.9184	0.9332	0.9110	0.9071	0.9149	0.9189	0.9386	0.9466	0.9466	0.9609	0.9592
Bahrain Dinar	BHD	0.2772	0.2588	0.2623	0.2564	0.2476	0.2467	0.2470	0.2575	0.2562	0.2570	0.2586	0.2566
Britain Pound	GBP	0.5165	0.5081	0.5227	0.5113	0.5171	0.5007	0.4981	0.5346	0.5401	0.5301	0.5324	0.5222
Canada Dollar	CAD	0.9271	0.8836	0.9168	0.8883	0.8628	0.8541	0.8511	0.9000	0.9097	0.9044	0.9092	0.9082
China Yuan	CNY	4.6165	4.3710	4.4685	4.5266	4.5534	4.4960	4.5324	4.7386	4.6953	4.6090	4.6494	4.5682
Denmark Kroner	DKK	4.4404	4.3185	4.4573	4.3151	4.3149	4.2015	4.2216	4.4979	4.4882	4.4582	4.5350	4.5297
Euporean Community Euro	EUR	0.5966	0.5797	0.5979	0.5789	0.5788	0.5632	0.5658	0.6029	0.6011	0.5973	0.6076	0.6068
Fiji Dollar	FJD	1.4925	1.4280	1.4474	1.4243	1.4021	1.3996	1.4094	1.4451	1.4420	1.4457	1.4624	1.4545
French Polynesia Franc	XPF	71.1246	69.1395	71.3323	69.1062	69.0793	67.2136	67.5304	71.8997	71.7553	71.2739	72.4824	72.4432
Hong Kong Dollar	HKD	5.7734	5.3871	5.4489	5.3088	5.1546	5.1360	5.1327	5.3468	5.3100	5.3468	5.3849	5.3433
India Rupee	INR	48.1482	46.9939	47.2908	46.1069	46.0272	47.2776	48.2435	49.0272	48.8298	48.4792	48.8228	47.0048
Indonesia Rupiah	IDR	10163.4800	9703.3200	9806.8400	9682.5100	9548.0400	9758.1500	9943.2300	9994.3500	9884.5600	9631.9900	9661.0300	9678.78
Japan Yen	JPY	79.0270	75.7200	76.8980	75.9130	72.6950	73.6690	73.2070	77.6180	77.0710	74.0750	75.8680	75.4280
Korea Won	KOR	788.2948	741.6451	765.7613	764.6012	744.3127	734.3763	741.6187	770.3753	769.8764	765.4724	773.5384	774.1489
Kuwait Dinar	KWD	0.2206	0.2071	0.2101	0.2051	0.1993	0.1981	0.1987	0.2078	0.2070	0.2066	0.2087	0.2070
Malaysia Ringit	MYR	2.8668	2.7354	2.7665	2.7280	2.6874	2.7273	2.7154	2.8548	2.8373	2.8024	2.7929	2.7751
Norway Krone	NOK	5.7199	5.5734	5.6526	5.4893	5.5510	5.4033	5.3412	5.7983	5.8553	5.8223	5.9268	5.8709
Pakistan Rupee	PKR	84.7458	79.3651	83.3333	81.9672	80.6452	81.3008	86.9565	91.7431	94.3396	94.3396	95.2381	96.1538
Phillipines Peso	PHP	38.4202	36.2604	37.0358	36.0631	35.0731	35.5542	35.3610	35.9607	36.0145	35.5726	35.7520	35.7315
PNG Kina	PGK	2.3917	2.2395	2.2648	2.2335	2.1748	2.1746	2.1995	2.3002	2.2892	2.2960	2.3109	2.2961
Singapore Dollar	SGD	0.9649	0.9227	0.9385	0.9221	0.9061	0.9000	0.9019	0.9394	0.9358	0.9248	0.9310	0.9233
Solomon Islands Dollar*	SBD	0.0947	0.0892	0.0907	0.0864	0.0818	0.0838	0.0820	0.0856	0.0855	0.0851	0.0861	5.4581
South Africa Rand	ZAR	8.8851	8.6248	9.3322	8.9766	9.5654	9.7728	9.4126	9.6813	9.7872	9.3653	9.6583	9.8742
Sri Lanka Rupee	LKR	114.9425	108.6957	111.1111	107.5269	105.2632	107.5269	111.1111	120.4819	121.9512	125.0000	121.9512	119.0476
Sweden Krona	SEK	6.2335	5.9592	6.0929	6.0104	6.0441	5.9228	5.8652	6.1913	6.1587	6.1119	6.3675	6.3279
Swiss Franc	CHF	0.7080	0.6870	0.6931	0.6763	0.6523	0.6343	0.6468	0.6875	0.6783	0.6733	0.6902	0.6773
Taiwan Dollar	TAI	21.5781	20.5297	20.9272	20.6958	20.2707	20.1412	20.2404	21.0443	20.9744	21.0217	21.1555	21.0026
Thailand Baht	THB	22.9285	22.0474	22.6786	22.5377	21.8855	21.3868	21.3862	22.5090	22.3140	21.7531	21.4625	21.5943
Tonga Pa'anga*	TOP	1.5914	1.5273	1.5365	1.5135	1.4912	1.4954	1.4860	1.5281	1.5166	1.5231	1.5421	1.5274
United States Dollar	USD	0.7365	0.6862	0.6949	0.6753	0.6565	0.6549	0.6551	0.6830	0.6797	0.6817	0.6868	0.6804
Vanuatu Vatu	VUV	76.9231	72.4638	73.5294	73.5294	73.5294	72.9927	73.5294	76.3359	75.7576	76.9231	76.9231	76.9231
West Samoan Tala*	WST	1.8703	1.7489	1.7580	1.7307	1.7150	1.7230	1.7217	1.7897	1.7527	1.7629	1.7832	1.7687

Notes to table:

All currencies are expressed in NZD terms, ie, 1NZD per unit(s) of foreign currency.

The currencies marked with an asterisk * are not published on Bloomberg in NZD terms. However, these currencies are expressed in USD terms and therefore the equivalent NZD terms have been generated as a function of the foreign currency USD cross-rate converted to NZD terms at the NZDUSD rate provided.

The rates provided represent the Bloomberg generic rate (BGN) based on the last price (mid rate) at which the currency was traded at the close of the New York trading day. Where the date specified was not a trading day, then the rate reflects the last price on the preceding business day.

Source: Bloomberg CMPN BGN

Currency rates 12 months ending 31 March 2019 – month end

Currency	Code	30/04/18	31/05/18	30/06/18	31/07/18	31/08/18	30/09/18	31/10/18	30/11/18	31/12/18	31/01/19	28/02/19	31/03/19
Australia Dollar	AUD	0.9350	0.9251	0.9146	0.9178	0.9206	0.9166	0.9214	0.9418	0.9533	0.9507	0.9596	0.9592
Bahrain Dinar	BHD	0.2672	0.2644	0.2563	0.2577	0.2498	0.2496	0.2457	0.2594	0.2533	0.2609	0.2567	0.2566
Britain Pound	GBP	0.5143	0.5266	0.5131	0.5196	0.5109	0.5084	0.5105	0.5394	0.5266	0.5278	0.5133	0.5222
Canada Dollar	CAD	0.9098	0.9070	0.8887	0.8869	0.8638	0.8549	0.8574	0.9138	0.9163	0.9079	0.8967	0.9082
China Yuan	CNY	4.4900	4.4877	4.4870	4.6439	4.5216	4.5496	4.5462	4.7865	4.6220	4.6352	4.5570	4.5682
Denmark Kroner	DKK	4.3538	4.4564	4.3200	4.3463	4.2544	4.2548	4.2986	4.5360	4.3743	4.5120	4.4666	4.5297
Euporean Community Euro	EUR	0.5843	0.5987	0.5795	0.5832	0.5706	0.5706	0.5760	0.6078	0.5859	0.6043	0.5986	0.6068
Fiji Dollar	FJD	1.4635	1.4516	1.4294	1.4329	1.4071	1.4138	1.4021	1.4535	1.4418	1.4588	1.4524	1.4545
French Polynesia Franc	XPF	69.7227	71.4536	69.2043	69.6070	68.0651	68.0470	68.6612	72.4866	70.0159	72.1375	71.4244	72.4432
Hong Kong Dollar	HKD	5.5607	5.4906	5.3171	5.3520	5.1965	5.1839	5.1096	5.3827	5.2622	5.4290	5.3436	5.3433
India Rupee	INR	47.0380	47.2825	46.2857	46.7442	47.0960	47.9300	48.4223	47.7601	46.8547	49.1405	48.3866	47.0048
Indonesia Rupiah	IDR	9790.53	9723.72	9698.51	9824.28	9780.68	9849.96	9944.94	9821.70	9667.84	9652.83	9626.50	9678.78
Japan Yen	JPY	77.3280	76.1710	74.9500	76.2460	73.5350	75.2660	73.5960	78.0170	73.7050	75.3270	75.8150	75.4280
Korea Won	KOR	756.9887	756.4695	755.6001	759.1365	738.3689	734.8708	744.3133	770.3881	748.6953	769.6601	766.4455	774.1489
Kuwait Dinar	KWD	0.2133	0.2115	0.2052	0.2065	0.2004	0.2006	0.1981	0.2094	0.2038	0.2097	0.2067	0.2070
Malaysia Ringit	MYR	2.7617	2.7843	2.7328	2.7707	2.7320	2.7342	2.7369	2.8761	2.7787	2.8272	2.7841	2.7751
Norway Krone	NOK	5.6425	5.7266	5.5202	5.5636	5.5583	5.3974	5.4994	5.9138	5.8061	5.8324	5.8283	5.8709
Pakistan Rupee	PKR	81.9672	80.6452	81.9672	84.7458	81.3008	81.9672	86.2069	94.3396	93.4579	95.2381	94.3396	96.1538
Phillipines Peso	PHP	36.5833	36.7630	36.1264	36.1946	35.6105	35.7208	34.9513	36.0131	35.3117	36.0475	35.3837	35.7315
PNG Kina	PGK	2.3050	2.2847	2.2288	2.2508	2.1994	2.2147	2.1877	2.3167	2.2631	2.3299	2.2967	2.2961
Singapore Dollar	SGD	0.9381	0.9365	0.9222	0.9282	0.9084	0.9054	0.9031	0.9429	0.9157	0.9312	0.9203	0.9233
Solomon Islands Dollar*	SBD	5.5257	5.4981	5.2926	5.3317	5.1785	5.1761	5.2279	5.4883	5.3899	5.5190	5.4605	5.4581
South Africa Rand	ZAR	8.7463	8.8929	9.2971	9.0526	9.7221	9.3690	9.6282	9.5413	9.6461	9.1680	9.5875	9.8742
Sri Lanka Rupee	LKR	112.3596	111.1111	107.5269	108.6957	106.3830	112.3596	114.9425	123.4568	123.4568	123.4568	121.9512	119.0476
Sweden Krona	SEK	6.1434	6.1701	6.0586	5.9979	6.0504	5.8883	5.9734	6.2629	5.9481	6.2592	6.2889	6.3279
Swiss Franc	CHF	0.7000	0.6900	0.6705	0.6752	0.6412	0.6503	0.6572	0.6852	0.6602	0.6875	0.6795	0.6773
Taiwan Dollar	TAI	20.9801	20.9910	20.6556	20.8474	20.3145	20.1637	20.1649	21.2223	20.5501	21.2410	20.9898	21.0026
Thailand Baht	THB	22.3438	22.4414	22.3782	22.6401	21.6926	21.4024	21.5781	22.6761	21.7225	21.6022	21.5053	21.5943
Tonga Pa'anga*	TOP	1.5598	1.5586	1.5149	1.5319	1.4994	1.4882	1.4769	1.5394	1.5124	1.5486	1.5284	1.5274
United States Dollar	USD	0.7086	0.7001	0.6768	0.6818	0.6622	0.6619	0.6517	0.6872	0.6719	0.6916	0.6807	0.6804
Vanuatu Vatu	VUV	75.1880	74.0741	74.0741	74.6269	72.9927	74.6269	73.5294	76.9231	75.1880	76.9231	76.3359	76.9231
West Samoan Tala*	WST	1.7900	1.7771	1.7355	1.7470	1.7236	1.7160	1.7066	1.7820	1.7535	1.7780	1.7719	1.7687

Notes to table:

All currencies are expressed in NZD terms, ie, 1NZD per unit(s) of foreign currency.

The currencies marked with an asterisk * are not published on Bloomberg in NZD terms. However, these currencies are expressed in USD terms and therefore the equivalent NZD terms have been generated as a function of the foreign currency USD cross-rate converted to NZD terms at the NZDUSD rate provided.

The rates provided represent the Bloomberg generic rate (BGN) based on the last price (mid rate) at which the currency was traded at the close of the New York trading day. Where the date specified was not a trading day, then the rate reflects the last price on the preceding business day.

Source: Bloomberg CMPN BGN

2019 CPI adjustment to DET 09/02 Standard-cost household service for childcare providers

In accordance with the provisions of Determination DET 09/02, as published in *Tax Information Bulletin* Volume 21, Number 4 (June 2009), Inland Revenue advises that, for the 2019 income year:

(a) The variable standard-cost component will be $3.60 per hour per child; and

(b) The administration and record keeping fixed standard-cost component will be $352 per annum, for a full 52 weeks of childcare services provided.

The above amounts have been adjusted as a consequence of the annual movement of the Consumers Price Index for the twelve months to March 2019, which showed an increase of 1.5%. For childcare providers who have a standard 31 March balance date, the new amounts apply for the period from 1 April 2018 to 31 March 2019.

2019 CPI adjustment to Determination DET 05/03: Standard-cost household service for boarding service providers

In accordance with the provisions of Determination DET 05/03, as published in *Tax Information Bulletin* Vol 17, No 10 (December 2005), Inland Revenue advises that, for the 2019 income year:

(a) The weekly variable standard-cost for one to two boarders will be $270 each; and

(b) The weekly variable standard-cost for third and subsequent number of boarders will be $222 each.

The above amounts have been adjusted as a consequence of the annual movement of the Consumers Price Index for the twelve months to March 2019, which showed an increase of 1.5%. For boarding service providers who have a standard 31 March balance date, the new amounts apply for the period from 1 April 2018 to 31 March 2019.

GENERAL ARTICLES

Reminder: First payment of NRWT under the non-resident financial arrangement income rules is due 20 June 2019

The non-resident financial arrangement income (NRFAI) rules were introduced by the Taxation (Annual Rates for 2016-17, Closely Held Companies and Remedial Matters) Act 2017. Broadly speaking, the rules apply to loans from related parties which are subject to non-resident withholding tax (NRWT). One aspect of the rules is the imposition of NRWT on an accrual basis, rather than a payments basis, in cases where the payment of interest is significantly deferred. For March balance date borrowers under loans that are affected by the rules, the first mandatory payment of NRWT on an accrual basis is due on 20 June 2019 (borrowers were able to elect into the rules earlier if they wanted to).

The purpose of this item is to remind borrowers about this requirement, and what interest payments they need to make to avoid triggering the requirement to pay NRWT on an accrual basis.

Subject to a de minimis, interest on a loan will generally be subject to NRFAI where the result from the following equation is less than 0.9 (in a year):

$$\frac{\text{(Total interest payments made up to and including the 20th day of the third month after the end of the year)}}{\text{(Deductions claimed for all years up to the preceding year)}}$$

For both elements of the formula, only deductions and payments since the rule came into force are taken into account. For most loans, the rule came into force for income years beginning 31 March 2017 and later.

If a loan becomes subject to the rule, the borrower must pay NRWT on all deducted but unpaid interest (whatever year the deduction was claimed in), on the 20th day of the third month following the end of the year.

Example

If a borrower has deducted interest on a related party loan in the year ended 31 March 2018, and not paid at least 90 percent of the amount deducted as interest in the period from 1 April 2017 to 20 June 2019, they will need to pay NRWT on all deducted but unpaid interest on the loan. The NRWT will need to be paid on or before 20 June 2019.

For example, suppose a March balance date borrower with a loan from a non-resident related party lender. The borrower has deducted $60,000 of interest on the loan in the 2018 year but has paid no interest on the loan between 1 April 2017 and 19 June 2019. If the borrower makes a payment of interest of $54,000 or more on or before w20 June, there will be no NRWT obligation under the NRFAI rule. If the borrower makes no payment, or a lesser payment, the NRFAI rule will be triggered.

For a taxpayer with a June balance date, the last date for bringing the interest payments up to date, or alternatively paying the NRWT, will be 20 September 2019.

More information

You can find more information in these publications:

- *NRWT – payer's guide (IR291)* - go to **www.classic.ird.govt.nz/** (search keyword: IR291)
- *NRWT – Related party and branch lending Special Report* (April 2017)
  - go to **taxpolicy.ird.govt.nz/** (search keyword: NRWT)

REGULAR CONTRIBUTORS TO THE TIB

Office of the Chief Tax Counsel

The Office of the Chief Tax Counsel (OCTC) produces a number of statements and rulings, such as interpretation statements, binding public rulings and determinations, aimed at explaining how tax law affects taxpayers and their agents. The OCTC also contributes to the "Questions we've been asked" and "Your opportunity to comment" sections where taxpayers and their agents can comment on proposed statements and rulings.

Legal and Technical Services

Legal and Technical Services contribute the standard practice statements which describe how the Commissioner of Inland Revenue will exercise a statutory discretion or deal with practical operational issues arising out of the administration of the Inland Revenue Acts. They also produce determinations on standard costs and amortisation or depreciation rates for fixed life property used to produce income, as well as other statements on operational practice related to topical tax matters.

Legal and Technical Services also contribute to the "Your opportunity to comment" section.

Policy and Strategy

Policy advises the Government on all aspects of tax policy and on social policy measures that interact with the tax system. They contribute information about new legislation and policy issues as well as Orders in Council.

Legal Services

Legal Services manages all disputed tax litigation and associated challenges to Inland Revenue's investigative and assessment process including declaratory judgment and judicial review litigation. They contribute the legal decisions and case notes on recent tax decisions made by the Taxation Review Authority and the courts.

GET YOUR TAX INFORMATION BULLETIN ONLINE

The *Tax Information Bulletin (TIB)* is available online as a PDF at **www.ird.govt.nz** (search keywords: Tax Information Bulletin). You can subscribe to receive an email alert when each issue is published. Simply go to **www.ird.govt.nz/aboutir/newsletters/tib** and complete the subscription form.

There is a TIB index at the link above which is updated annually.