

TAX INFORMATION

Bulletin

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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 (search keywords: public consultation).

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

Public Consultation
Tax Counsel Office
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.

IN SUMMARY

Legislation and determinations

National standard costs for specified livestock determination 2020

This 2020 determination lists the national standard costs for specified livestock. It applies to any specified livestock on hand at the end of the 2019-2020 income year where the taxpayer has elected to value that livestock under the national standard cost scheme for that income year.

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Product ruling

BR Prd 19/03: StockCo Limited

This product ruling covers the leasing of livestock by StockCo Limited to its customers to use in a farming business.

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Commissioner's statement

CS 20/01: GST liability for insurance and settlement payments to third party claimants – Section 5(13) of the Goods and Services Tax Act 1985

This Commissioner's statement sets out the Commissioner's position on the GST liability of a GST registered third party claimant when they receive a payment for damages or loss incurred, including by way of settlement agreement, under a contract of insurance.

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Standard practice statement

SPS 20/01: Tax payments – when received in time

This standard practice statement sets out the Inland Revenue practice for accepting tax payments as having been received in time.

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Operational position

OP 20/01: Part 10B transfers of excess tax, effective date for ICA entries

This operational position considers requests to transfer overpaid tax, within a taxpayer's account or to the account of another entity or associate. It considers effects on the imputation credit account of both transferor and transferee companies of requests to transfer to a date in the past.

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General article

Tax Counsel Office

The Office of the Chief Tax Counsel has become the Tax Counsel Office.

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Tax technical beta site available in late March

As part of our work to build a new and improved tax technical website, we're making a beta, or test version available ahead of the first published release.

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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.

LIVESTOCK VALUES – 2020 NATIONAL STANDARD COSTS FOR SPECIFIED LIVESTOCK

The Commissioner of Inland Revenue has released a determination, reproduced below, setting the national standard costs for specified livestock for the 2019–2020 income year.

These costs are used by farmers as part of the calculation of the value of livestock on hand at the end of the income year, where they have adopted the national standard cost (“NSC”) scheme to value any class of specified livestock.

Farmers using the scheme apply the rising one-year NSC to stock bred on the farm each year, and add the rising two-year NSC to the value of the opening young stock available to come through into the mature inventory group at year-end. The cost of livestock purchased are also factored into the valuation of the immature and mature groupings at year-end, so as to arrive at a valuation reflecting the enterprise’s own balance of farm bred and externally purchased animals.

NSCs are developed from independent survey data of national average costs of production for each type of livestock. Only direct costs of breeding and rearing rising one-year and two-year livestock are taken into account. These exclude all costs of owning (leasing) and operating the farm business, overheads, costs of operating non-livestock enterprises (such as cropping) and costs associated with producing and harvesting dual products (wool, fibre, milk and velvet).

For bobby calves, information from spring 2019 is used while other dairy NSCs are based on the 2018-2019 income and expenditure from a DairyBase sample of owner-operated dairy farms. For sheep, beef cattle, deer and goats, NSCs are based on survey data from the 2017-2018 sheep and beef farm survey conducted by the Beef & Lamb New Zealand Economic Service. This is the most recent information available for those livestock types at the time the NSCs are calculated in December 2019.

For the 2019–2020 income year the NSCs for all livestock types except dairy goats have remained reasonably static when compared to the previous year.

There has been a substantial increase in NSCs for dairy goats. This has come about because of a change in the calculation methodology in the 2017-2018 year. In recent years the dairy goat farming industry has changed from a largely pasture based model to primarily a housed farming system. As a result of these changes, the NSC formula was updated to take account of the different costs structure attributable to this housed farming model. The resultant increase in costs is being phased in over three years and commenced with the 2017-2018 income year.

2020 is the final year of change to the new dairy goat valuation model. This being so, the 2020 NSC values for dairy goats have been arrived based solely on costs incurred by the housed goat system.

The NSCs calculated each year only apply to that year’s immature and maturing livestock. Mature livestock valued under this scheme retain their historic NSCs until they are sold or otherwise disposed of, albeit through a FIFO or inventory averaging system as opposed to individual livestock tracing. It should be noted that the NSCs reflect the national average costs of breeding and raising immature livestock and will not necessarily bear any relationship to either the market values (at balance date) of these livestock classes or the costs of production of any individual farmer. In particular, some livestock types, such as dairy cattle, may not obtain a market value in excess of the NSC until they reach the mature age grouping.

One-off movements in expenditure items are effectively smoothed within the mature inventory grouping, by the averaging of that year’s intake value with the carried forward values of the surviving livestock in that grouping. For the farm-bred component of the immature inventory group, the NSC values will appropriately reflect changes in the costs of production of those livestock in that particular year.

The NSC scheme is only one option under the current livestock valuation regime. The other options are market value, replacement value, the herd scheme and the self-assessed cost scheme (“SAC”) option. SAC is calculated on the same basis as NSC but uses a farmer’s own costs rather than the national average costs. There are restrictions in changing from one scheme to another and before considering such a change farmers may wish to discuss the issue with their accountant or other adviser.

National Standard Costs for Specified Livestock Determination 2020

This determination may be cited as "The National Standard Costs for Specified Livestock Determination 2020".

This determination is made in terms of section EC 23 of the Income Tax Act 2007. It shall apply to any specified livestock on hand at the end of the 2019–2020 income year where the taxpayer has elected to value that livestock under the national standard cost scheme for that income year.

For the purposes of section EC 23 of the Income Tax Act 2007 the national standard costs for specified livestock for the 2019–2020 income year are as set out in the following table.

| Kind of livestock | Category of livestock | National standard cost \$ |
|------------------------|---|------------------------------|
| Sheep | Rising 1 year | 36.60 |
| | Rising 2 year | 26.10 |
| Dairy Cattle | Purchased bobby calves | 194.20 |
| | Rising 1 year | 453.00 |
| | Rising 2 year | 337.30 |
| Beef Cattle | Rising 1 year | 388.10 |
| | Rising 2 year | 220.10 |
| | Rising 3 year male non-breeding cattle (all breeds) | 220.10 |
| Deer | Rising 1 year | 90.70 |
| | Rising 2 year | 56.50 |
| Goats (Meat and Fibre) | Rising 1 year | 30.70 |
| | Rising 2 year | 21.00 |
| Goats (Dairy) | Rising 1 year | 258.80 |
| | Rising 2 year | 57.00 |
| Pigs | Weaners to 10 weeks of age | 104.40 |
| | Growing pigs 10 to 17 weeks of age | 86.80 |

This determination is signed by me on the 27th day of January 2020.

Rob Falk

National Advisor, Technical Standards (Published Statements), Legal Services

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 19/03: StockCo Limited

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 StockCo Limited.

Taxation Laws

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

This Ruling applies in respect of ss BG 1, DA 1(1), DA 2, EA 3, EJ 10, FA 6 to FA 11, FA 12, GA 1 and subpart EW.

The Arrangement to which this Ruling applies

The Arrangement

The Arrangement is the leasing of livestock by StockCo Limited (StockCo) to its customers (Customers) to use in a farming business. Each Customer will be a "New Zealand resident" (as defined in s YA 1). The leased livestock will either be purchased by StockCo from the Customer and will then be leased back to them, or will be specifically purchased by StockCo from a third party and then leased to the Customer. The Customer will lease the livestock over a period of usually four years. The livestock will be progressively culled (or will otherwise go missing or die) over the period of the Lease, with cull payments being returned to StockCo.

Further details of the Arrangement are set out below.

The Purchase of Livestock

1. StockCo will purchase an agreed number of "specified livestock" (as defined in s YA 1), in this case cows, from the Customer, or a third party, for the purchase price (Purchase Price):

WE WILL PURCHASE THE HERD

- 4 We will purchase the Cows specified in each Lease Agreement for the Purchase Price detailed in the Lease Agreement on the Commencement Date.
- 5 When we purchase Cows from you we will create a buyer generated invoice.
- 6 We are purchasing the Cows at your request. You are responsible for inspecting and approving all Cows prior to us purchasing them.

...

2. The Purchase Price is the equivalent of the market value of the purchased cows at the time of acquisition.
3. Where the livestock are purchased from a third party, the Purchase Price will be paid by StockCo to the third party vendor.
4. The Customer will apply the Purchase Price to debt or other farming costs (such as expanding their farming operations or covering other business related costs).

The Lease

5. The Agreement entered into between StockCo and its customers comprises of two documents: the Dairy Herd Lease Master Terms (Master Terms) and the Lease Agreement (Lease Agreement) (together, the Lease). The Lease sets out the terms of the sale (where StockCo purchases livestock from the Customer) and the lease of the livestock.
6. The terms of the Lease Agreement and the Master Terms will not be materially different from the version provided to Inland Revenue on 25 October 2019.

7. As provided for in clause 7 of the Master Terms, StockCo owns the cows and leases the purchased cows to the Customer for the lease period, while the Customer owns all milk and progeny produced by the leased cows:

7 We will own the Cows. You will own all progeny and milk produced by the Cows during the Lease period.

WE WILL LEASE YOU THE HERD

8 We lease to you, and you take on lease, the Herd for the term specified in the Lease Agreement from the time we purchase the Herd.

8. The progeny will be valued in accordance with the livestock valuation rules set out in Part EC of the Act.

9. Clauses 11 to 13 of the Master Terms set out the payment obligations of the Customer:

YOUR PAYMENT OBLIGATIONS

11 You will pay us for each Herd:

11.1 Lease Payments: the Lease Payments as set out in the relevant Lease Agreement. The Lease Payments are the rent payable for the lease of the Herd.

11.2 Cull Payments: the Cull Payments as set out in the relevant Lease Agreement.

(a) The Cull Payments are the amounts we agree to realise from Cull Cows when they are culled. You agree to realise this amount for us by selling the Cull Cows on our behalf.

(b) You will pay us the Cull Payments regardless of the amount you realise from selling the Cull Cows on our behalf. If you realise more than the Cull Payments you may keep the additional amount.

12 On the Commencement Date (or as otherwise specified) you will also pay us any establishment fee or other fee specified in a Lease Agreement.

13 You will provide us with a signed Dairy Order so that the Lease Payments are paid directly to us by the Dairy Company.

10. Under clause 13 the Customer must arrange for the Lease Payments to be made directly to StockCo by the Dairy Company (defined in clause 59 of the Master Terms as "Fonterra"). Accordingly, only Fonterra members are eligible to enter into the Agreement.

11. The Customer will use the livestock valuation regime in subpart EC of the Act to determine the value of the leased livestock.

Early Termination of the Lease and Events of Default

12. Clause 21 of the Master Terms provides for the early termination of the Lease by the customer in certain situations:

EARLY TERMINATION

21 Where there is a material change in your circumstances, you may terminate the Lease early by:

21.1 purchasing the remainder of the Herd for the Net Present Value of the unpaid Lease Payments and Cull Payments; and

21.2 paying us any other amount owing to us under this agreement in relation to the relevant Lease; or

13. It is expected that this clause would be applied only in rare cases as a cost/benefit analysis would normally favour the Customer remaining in the lease and continuing to meet the Lease obligations.

14. Clause 22 of the Master Terms provides for early termination by StockCo:

22 We can end the Lease under clause 25.2 because of your default.

15. Clause 25.2 of the Master Terms states:

25 If an Event of Default has occurred, we may:

...

25.2 end the Lease with effect from any date specified by us and require you to, at our option:

(a) return the Herd to us at the location and by the date nominated by us. If we end the Lease under this clause 25.2(a) you will pay us liquidated damages equal to the amount (if any) by which the market value of the Herd (as determined by us, acting reasonably) is less than the Net Present Value of the unpaid Lease Payments and Cull Payments; or

(b) purchase the Herd for the sum of the Net Present Value of the unpaid Lease Payments and Cull Payments.

16. Clause 25.1 allows for StockCo to repossess the Herd or any Cows following an Event of Default:

25.1 enter the Land (or any land where we consider the Herd or any Cows may be) without notice and repossess any or all of the Cows; ...

17. This Ruling does not consider or rule on Early Termination or Events of Default that occur as part of the Arrangement.

Return of the leased cows

18. The leased cows are returned to StockCo by way of an agreed culling process over the term of the lease. In this respect clauses 9 and 10 of the Master Terms state:

YOU WILL CULL THE COWS ON OUR BEHALF

9 We recognise that the Herd will progressively reach the end of its useful milking life over the Lease period.

10 You agree to reduce the Herd to zero over the Lease period at the approximate Annual Cull Rate specified in the relevant Lease Agreement. The Annual Cull Amount Due has been determined on the basis of the Annual Cull Rate and Cull Value specified in the relevant Lease Agreement.

19. Despite clause 10, it is acknowledged in the Lease that cows may die or go missing. Clauses 15 and 16 of the Lease set out terms relating to missing and dead cows:

MISSING AND DEAD COWS

15 We understand that deaths occur and that Cows may go missing. We have included an annual death and missing cow allowance of 2.5% of the Herd within the Lease Payment calculation.

16 You agree that the Cows are at your sole risk. You must pay the Lease Payments and Cull Payments regardless of anything else, including the reason for, or the number of, deaths or missing cows.

20. A dairy herd generally loses approximately 25% of its mature cows annually through culling of the older cows and natural attrition. Therefore, it is expected that none of the leased livestock will remain at the end of the Lease period.

Deferred Cull Payment

21. The amount and timing of the Cull Payments are agreed at the time of entering into the Lease and is reflected in the Payment Schedule. As the amounts payable are fixed the Customer takes on the risk of under-recovery from the meat works on the culled cows but gets the benefit of any over-recovery.

22. The frequency and timing of the Cull Payments are negotiated between the Customer and StockCo, but payment will generally be either at the time the livestock are culled, or deferred until the end of the Lease term and paid as a lump sum.

23. As legal ownership of the Cull Payments remains with StockCo, it will return the Cull Payments as income in the year in which those payments are derived.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- a) The lease payments are deductible under s DA 1(1) and none of the general limitations in s DA 2 applies to prevent deductibility, provided that:
 - no provision in subparts DB to DZ applies to prevent a deduction under s DA (1).
- b) At the end of an income year, unless excused from this requirement pursuant to a determination issued by the Commissioner, s EA 3 applies to require the unexpired portion of any lease payments to be included in the Customer's income in the current income year and to be an amount for which the Customer is allowed a deduction in the following income year, provided that the Lease is not "revenue account property" or "trading stock" (within the meaning of s YA 1) of the Customer.
- c) The financial arrangements rules in subpart EW do not apply to the Arrangement as the lease is an excepted financial arrangement.
- d) Section EJ 10 does not apply to the Arrangement.
- e) Sections FA 6 to FA 11 do not apply to the Arrangement because the lease is not a finance lease.
- f) Section FA 12 does not apply to the Arrangement because the lease is not a hire purchase agreement.
- g) Sections BG 1 and GA 1 do not apply to negate or vary the above conclusions.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on the date this Ruling is signed and ending on 31 December 2023.

This Ruling is signed by me on the 19th day of December 2019.

Howard Davis

Director (Taxpayer Rulings)

COMMISSIONER'S STATEMENT

The purpose of a Commissioner's Statement is to inform taxpayers of the Commissioner's position and the operational approach being adopted on a particular tax matter. A Commissioner's Statement is not a consultative document.

CS 20/01: GST liability for insurance and settlement payments to third party claimants – Section 5(13) of the Goods and Services Tax Act 1985

All legislative references are to the Good and Services Tax Act 1985 (the Act).

Summary

This Statement confirms the Commissioner's long-standing position on the GST liability of a GST registered third party claimant when they receive a payment for damages or loss incurred, including by way of settlement agreement, under a contract of insurance. The Commissioner's position is, and has been for many years, that when an insurer of an insured person pays an amount to a GST-registered third party claimant, in relation to a claim that the third party claimant has against the insured person, and the other requirements of section 5(13) of the Act are met, then the third party claimant must return GST on the receipt of that payment.

Background

It was recently identified that there has been confusion by some taxpayers as to whether or not a third party claimant has a GST liability under section 5(13) of the Act when an insured person's insurer pays an amount directly to a third party claimant in settlement of the insured person's liability to the third party claimant. Some taxpayers considered that the wording in section 5(13) meant that if an insurer made a payment to a GST registered third party claimant rather than to the GST registered insured person, the insurer was entitled to an input tax credit under section 20(3)(d), **but** the third party claimant did not incur a corresponding output tax liability. The Commissioner considers this latter assertion to be incorrect.

Explanation

Section 5(13) of the Act provides:

For the purposes of this Act, except for subsection (13B) and section 20(3), if a registered person receives a payment under a contract of insurance, whether or not the person is a party to the contract, the payment is, to the extent that it relates to a loss incurred in the course or furtherance of the registered person's taxable activity, deemed to be consideration received for a supply of services performed by the registered person –

- (a) On the day the registered person receives the payment; and
- (b) In the course or furtherance of the registered person's taxable activity:

provided that this subsection shall not apply in respect of any payment received pursuant to a contract of insurance where –

- (a) The supply of that contract of insurance is not a supply charged with tax pursuant to section 8(1); or
- (b) That payment is in respect of an entitlement for any loss of earnings (being earnings within the meaning of the Accident Compensation Act 1982 or the Accident Rehabilitation and Compensation Insurance Act 2001); or
- (c) The supply of the contract of insurance is a supply that is chargeable with tax only because sections 5B and 8(4B) apply to it; or
- (d) The supply of the contract of insurance is a supply of remote services that is zero-rated under section 11A(1)(x).

When interpreting section 5(13), the Commissioner considers that the word "receives" as used in section 5(13), is intended to have a more constrained meaning, restricted to "actual" receipt of a payment (by the GST registered third party claimant) under a contract of insurance rather than any "constructive receipt" by the insured person.

It is considered that "receives" also has the meaning of "being paid". Therefore, a third party claimant of a damages payment funded by the liability insurer of the insured person is "being paid" when they obtain a cheque, cash or have their bank account credited with that sum. Assuming that the relevant amount is being paid under a contract of insurance, then the third party clearly "receives" the payment within the meaning of section 5(13).

The word “under” as provided for in section 5(13) requires a broad interpretation. This is reinforced by the words that follow that – “whether or not the person is a party to the contract [of insurance]”. These words confirm that a person receiving a payment under a contract of insurance might not be a party to that contract. It is consistent with this to take the view that the focus is on whether the payer of the payment is doing so under a contract of insurance rather than whether the recipient receives the payment under that contract or under another agreement (such as a settlement agreement).

Amounts payable by an insurance company in an arrangement, are still amounts payable **under** the original insurance contract. It is just the quantification of the amount due under that contract that is fixed by the settlement agreement between the insured party and the third party claimant. The quantification of the sum due by the settlement agreement does not remove the liability of the insurance company under the insurance contract.

The Commissioner considers that this supports the view that “under” relates to a payment consequential on a claim under an insurance contract, even if quantification of the amount to be paid is determined by a separate settlement agreement. The existence of a settlement agreement is not sufficient to break the connection between the payment to the third party claimant and the contract of insurance.

The Commissioner’s position is that when an insurer of an insured person pays an amount to a GST-registered third party claimant, in relation to a claim that the third party claimant has against the insured person, and the other requirements of section 5(13) of the Act are met, then the third party claimant must return GST on the receipt of that payment.

Example:

While driving between plumbing jobs, Joe Bloggs accidentally drove over Farmer Fred’s fence causing significant damage. In settlement of Joe’s liability to Fred for the loss incurred, Joe’s insurer, AGHY Insurance Ltd, pays Fred \$5,000 in settlement of Fred’s claim under the contract of insurance. AGHY Insurance Ltd is entitled to a GST input tax credit. Fred, as a GST registered farmer, must return GST on the payment received from AGHY Insurance Ltd.

Application

This Statement confirms the Commissioner’s long-standing position (which has been applied for many years) on the application of section 5(13) of the Act. As there has been **no** change in the Commissioner’s position on this issue, the Commissioner will continue to apply this position to all cases, whether past, present or future.

If you have any concerns about your compliance with the tax obligations outlined in this Statement, you should discuss this matter with a tax professional or contact Inland Revenue to make a voluntary disclosure.

Vanessa Montgomery

National Advisor, Escalations

Technical Standards, Legal Services

Date of issue: 03 February 2020

STANDARD PRACTICE STATEMENTS

These statements describe how the Commissioner will, in practice, exercise a discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.

SPS 20/01: Tax payments – when received in time

Introduction

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

This Statement sets out the Commissioner's practice for accepting tax payments as having been made in time.

With the influence of technology there has been a significant shift in practice to use digital methods for making tax payments. The Commissioner encourages customers to use direct banking facilities when they make tax payments (or when refunds are issued).

The table below outlines the payment options for customers, to make payments to Inland Revenue:

| Payment options | You'll need |
|---|---|
| Pay online in myIR - Debit or credit card payments, or - Set up a direct debit (immediate payment or future dated) www.ird.govt.nz/myIR to login or register | IRD number Tax/product type Payment period Authorise IR to take direct debit payment from bank |
| Pay on our secure payment website - Debit or credit card payments www.ird.govt.nz search 'make a payment' | IRD number Tax/product type Payment period |
| Pay using internet banking | IRD number Tax/product type Payment period Authorise the bank to make one-off or regular payments |
| Pay through Westpac (you don't need to be a Westpac customer) - EFTPOS or cash - Use Smart ATM (Westpac customers only) | Counter payment - IRD number - Tax/product type - Payment period - Barcode (off return or IR statement) or create your own at www.ird.govt.nz/barcode |
| Pay through your bank - Phone or visit your bank to discuss options - Examples, direct credit, automatic payment* and phone banking * Automatic payment allows for 2 people to sign, one-off or regular payments | IRD number Tax/product type Payment period |
| Pay IR by phone - Credit and debit card - Domestic direct debits | IRD number Tax/product type Payment period |
| Pay by post - Cheque (exception arrangement) | Prior IR approval necessary IRD number Tax/product type Payment period |

It is important to make your payment by the due date to avoid penalties or interest. If you are not able to pay on time, please contact Inland Revenue to discuss a possible instalment arrangement.

Application

This Statement applies from the date of signing. It replaces SPS 19/01 *Tax payments – when received in time*, which was published in *Tax Information Bulletin*, Vol 31, No 3 (April 2019).

Standard practice

Summary

1. This Statement sets out when the Commissioner will accept a payment as having been received in time, including:
 - New Zealand electronic payments
 - debit/credit cards
 - Westpac over-the-counter payments
 - tax pooling
 - overseas electronic payments
 - tax transfers
 - payments by cheque
 - Income Equalisation Scheme deposits and primary sector business customers
 - weekends and public holidays

Detailed discussion

2. This Statement applies to all tax types, as well as student loan repayments and child support payments (payment of tax).

New Zealand electronic payments

3. Customers are encouraged to make payments electronically, including by internet banking. Payments by this method minimises delays and include formal notification of the date and time payment was made to Inland Revenue. A payment will be received in time when it has been electronically paid or direct credited into an Inland Revenue account either on or before the due date. To ensure payment is received in time, you may need to be familiar with your bank's processing schedule.
4. A customer is able to future-date an electronic payment by using the "my tax payment" option available with all major New Zealand bank's internet banking service.
5. Customers who are registered for myIR can set up direct debits (except for child support payments). A direct debit payment will be received in time when the direct debit transaction is made on or before the New Zealand due date.
6. Tax agents who are registered for myIR can set up instalment arrangements and one-off payments on behalf of their clients (who are registered for myIR) by direct debit, with client authorisation and assistance with making related bank arrangements.

Debit/credit cards

7. Customers can make payment by using a (Visa or Mastercard only) debit/credit card over the phone to Inland Revenue, through the payment page on the IR website and through myIR, our secure online service.
8. A convenience fee of 1.42% is payable (charged by the banks) on all debit/credit card tax payments made. This fee also applies to debit/credit card payments from an overseas bank, except for payments of child support debt and student loan repayments where Inland Revenue pays the convenience fee.
9. A debit/credit card payment will be received in time when it has been paid or direct credited into an Inland Revenue account on or before the New Zealand due date.

Westpac over-the-counter payments

10. Payments cannot be accepted over-the-counter at an Inland Revenue office. Westpac bank is authorised to receive over-the-counter payments on behalf of Inland Revenue.
11. From 1 July 2020, over-the-counter payments at a Westpac branch must either include a barcode obtained from letters, returns^[1], and statements issued by Inland Revenue, or a barcode created through the Inland Revenue website^[2] to provide clear payment instructions. A separate barcode is required for each individual tax type payable and tax period.
12. Customers with a Westpac bank account may pay (cash or EFTPOS) via Westpac Smart ATMs. Customers making payments at a Westpac smartATM must also use a barcode obtained from letters, returns^[3], and statements issued by Inland Revenue, or a barcode generated online^[4]
13. Payments made at Westpac are received in time if they are made on or before the due date.

Tax pooling

14. Tax pooling involves customers depositing money with a tax pooling intermediary who then deposits that money into a tax pooling account with Inland Revenue. These deposits are not tax payments at this stage. When a payment is transferred from the tax pooling account into a taxpayer's tax account it becomes a tax payment.
15. The date of payment to Inland Revenue is triggered when the tax pooling deposit is transferred into a taxpayer's account. The effective date of the transfer can be no earlier than the date the tax pool deposit was received by Inland Revenue.
16. For more information on the implications of tax pooling see *Tax Information Bulletins*^[5], Vol 15, No 5 (May 2003) pages 64 to 67, Vol 23, No 8 (October 2011) pages 35 to 55 and Vol. 29, No. 5 (June 2017) pages 148 to 149.

Overseas electronic payments

17. A payment will be received in time when it has been electronically paid or direct credited into an Inland Revenue account either on or before the New Zealand due date.
18. For more information about making payments from overseas visit www.ird.govt.nz/makepayment/overseas/from-overseas-index.html

Tax transfers

19. For the rules regarding the transfers of overpaid taxes refer to *Tax Information Bulletins*, Vol 14, No 11 (November 2002) pages 35 to 47, Vol 16, No 1 (February 2004) page 71 and Vol. 17, No. 1 (February 2005) pages 101 to 102.

Payments by cheque

20. From 1 March 2020, Inland Revenue will no longer accept cheques as a method for payment of tax. Customers are expected to explore and use other bank services available for making payments.
21. The Commissioner may agree in exceptional circumstances to continue to receive a payment by cheque where a customer is unable to pay by any other means. Customers who consider that none of the other options for paying tax is practicable for them should contact the Commissioner explaining why they cannot use one of the current options and so wish to continue to pay their tax using cheques. Each situation will be considered on a customer's individual circumstances.

Example 1: Alternative payment method available

Mary is 75 and lives in a remote area. She does not have access to the internet and there is no Westpac branch close by. Mary does have a landline and an EFTPOS card. Through discussion with the customer about her circumstances, it was agreed that she is able to (with assistance by phone) set up a direct debit with us, or make payments using an Automatic Payments form. On this basis, an exceptions arrangement to pay tax by cheque post 1 March 2020 would be declined.

^[1] While payment of tax may be made at Westpac branches, Westpac is not authorised to accept returns. Returns may be filed electronically, posted to Inland Revenue or delivered to an Inland Revenue office.

^[2] Through Inland Revenue's website payment page at www.ird.govt.nz/make-a-payment/paying-at-westpac or www.ird.govt.nz/barcode

^[3] While payment of tax may be made at Westpac branches, Westpac is not authorised to accept returns. Returns may be filed electronically, posted to Inland Revenue or delivered to an Inland Revenue office.

^[4] Through Inland Revenue's website payment page – refer note 2 above.

^[5] *Tax Information Bulletins* can be found at www.classic.ird.govt.nz/technical-tax/tib/

Example 2: Agreed cheque exception arrangement

Jock lives in a remote rural area and lives off-the-grid. He does not have access to the internet or a reliable phone service and is many hours from any bank services. His only contact with Inland Revenue is through a Post Office box service from which he collects mail infrequently. The Commissioner would agree his circumstances are exceptional and that he may continue to pay tax by cheque post 1 March 2020.

22. Requests for approval to continue paying by cheque can be made by telephone, SecureMail (log in to myIR), by post and at face to face appointments with Inland Revenue. It is important that requests for cheque exception arrangements made via myIR include customer phone contact details (where possible), should Inland Revenue want to further discuss alternative payment options with them. Customers that are unable to provide phone contact details will be sent a response via myIR (if registered) or by post.

Cheques through post

23. Where the Commissioner's agreement has been given to make cheque payments, cheques must be received on or before the due date irrespective of whether they are posted from within New Zealand or from overseas. Payments by post should be sent to: Inland Revenue, PO Box 39050, Wellington Mail Centre, Lower Hutt 5045.
24. Post-dated cheques will not be accepted as a payment method for tax after 1 March 2020.
25. Cheques will be returned to customers who have not obtained prior agreement from the Commissioner to pay by this method.

Physical delivery to Inland Revenue offices

26. Where the Commissioner's agreement has been given to make cheque payments, cheque payments will be accepted as being received in time if delivered to an Inland Revenue office on or before the close of business on the due date.

Income Equalisation Scheme (IES) deposits and primary sector business customers

27. Customers are to continue paying IES by cheque until an alternative payment option is provided. IES customers will be advised when the myPay tax payment upgrade is available to pay IES deposits.

Weekends and public holidays

28. If a due date falls on a weekend or a public holiday (including a provincial anniversary day), a payment will be in time when it is received at a Westpac branch or an Inland Revenue bank account on or before the next working day.
29. The treatment for a provincial anniversary day only applies to those customers located in the province that is celebrating its anniversary day and usually make tax payments in person over-the-counter at Westpac, so are unable to make payment on that day.

This Standard Practice Statement is signed on 5 February 2020.

Rob Falk

National Advisor, Technical Standards (Legal Services)

OPERATIONAL POSITION

The purpose of an Operational Position is to outline the legal position that the Commissioner considers is correct for an issue identified and the approach the Commissioner will be taking to applying that position in practice.

OP 20/01: Part 10B transfers of excess tax, effective date for ICA entries

Under Part 10B of the Tax Administration Act 1994 (the TAA) taxpayers can request the Commissioner to transfer overpaid tax to another period or tax type within their own tax accounts or to the accounts of other entities or associates. They can also sometimes choose a date (the date of transfer) that a transfer of overpaid tax will be effective from. A question has arisen over the effect on the imputation credit account (ICA) of both transferor and transferee companies if an earlier date is chosen (as the TAA allows). It has been identified that in practice taxpayers, and Inland Revenue, have often treated the effective date as the date the transfer is processed rather than requiring adjustments to the ICA back to whatever earlier date has been chosen.

The Commissioner considers that the correct position is that an ICA must have entries recorded as at the date of transfer ie. the effective date chosen. It is not appropriate to record the entries as at the date Inland Revenue processes the request to transfer excess tax.

This conclusion is consistent with the explanation of the transfer rules in *Tax Information Bulletin* Vol 14, No 11 (November 2002). It may mean, however, that adjustments need to be made to ICA balances back to the date of transfer and that imputation returns after the date of transfer are no longer correct. The consequences of that could include further income tax, imputation penalty tax and Use of Money Interest for the transferor company.

When making requests for transfers, taxpayers need to consider the possible effects on ICA balances and imputation returns and take them into account to ensure the ICA is correct after the transfer.

Operational position

The Commissioner will be applying this interpretation to requests for transfers made on or after 5 February 2020.

The Commissioner will adjust, and apply the correct view of the law, when an audit or investigation uncovers incorrect ICA entries or where incorrect entries are identified when processing a transfer request to an earlier period. However, the Commissioner will not devote resources to identifying adjustments to ICA accounts and assessments affected by an incorrect transfer date being used for a transfer of excess tax under Part 10B of the TAA where transfers have been requested prior to 5 February 2020.

Vanessa Montgomery

National Advisor, Escalations

Technical Standards, Legal Services

Date of issue: 5 February 2020

GENERAL ARTICLE

Tax Counsel Office

On 17 February the Office of the Chief Tax Counsel (“OCTC”) was renamed the Tax Counsel Office. The new Tax Counsel Office (“TCO”) will continue to provide taxpayer rulings, public rulings and other interpretative statements, adjudications of tax disputes, and escalations and advising services. You will not see significant changes to the nature and quality of the TCO’s primary services, but the TCO will operate differently (internally) in several respects to provide timely rulings, guidance and advice on complex matters of law relating to tax and social policy.

Tax technical beta site available in late March

As part of our work to build a new and improved tax technical website, we’re making a beta, or test version available ahead of the first published release. We’re planning to make the beta site available in late March, accessible via the existing Tax Technical section of the Inland Revenue website.

We’re keen to get your thoughts and feedback on the new look and feel, features and layout of the tax technical site and we encourage you to visit the beta version when it’s available. You will be able to provide comments while on the site using the feedback button on each beta page. Feedback we receive during this time will help us to improve the site before the first release.

REGULAR CONTRIBUTORS TO THE TIB

Tax Counsel Office

The Tax Counsel Office (TCO) 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 TCO 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 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.

Technical Standards

Technical Standards sits within Legal Services and contributes 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. Technical Standards also contributes 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.

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.