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TAX INFORMATION Bulletin

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Inland Revenue
Te Tari Taake

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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.taxtechnical.ird.govt.nz** (search keywords: public consultation).

Ref	Draft type	Title	Comment deadline
PUB00385	Question we've been asked	When an employer is party to an employee share scheme, when does an employer's expenditure or loss under s DV 27(6) or income under s DV 27(9) arise?	27 April 2021

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.taxtechnical.ird.govt.nz/subscribe** to receive regular email updates when we publish new draft items for comment.

IN SUMMARY

New legislation

Taxation (Income Tax Rate and Other Amendments) Act 2020 2

The new legislation:

- introduces a new top personal income tax rate of 39% on annual income exceeding $180,000 for the 2021–22 and later income years
- amends other tax rules to ensure that the new top personal tax rate applies consistently across the personal tax system
- clarifies the information-gathering powers of the Commissioner
- introduces increased disclosure requirements for trusts, and
- increases the Minimum Family Tax Credit threshold for the 2020–21 tax year.

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The new legislation allows the Commissioner of Inland Revenue to make grants to eligible businesses affected by increases to the COVID-19 alert levels and increases the minimum family tax credit threshold.

Order in Council

COVID-19 Resurgence Support Payments Scheme (March 2021) Order 2021 12

The COVID-19 Resurgence Support Payments Scheme (March 2021) Order 2021 came into force on 8 March 2021 (the Order). This Order continues the COVID-19 resurgence support payments scheme first activated on 23 February by the COVID-19 Resurgence Support Payments Scheme (February 2021) Order 2021.

Determinations

2021 International Tax Disclosure Exemption ITR32 14

The scope of the 2021 exemption is the same as the 2020 exemption.

EE002B: Variation to *Determination EE002A - Payments to employees for working from home costs* 20

This determination clarifies the tax treatment of reimbursement payments made by employers to employees who work from home. Determination EE002A currently applies to payments made on or before 17 March 2021. This new determination will apply to payment made from 18 March 2021 until 30 September 2021.

Product ruling

BR Prd 21/01: Harbour Fund II GP Limited 22

The Arrangement is the receipt by Harbour Fund II Limited Partnership (Fund) of proceeds under individual funding agreements that the Fund will enter into with litigation claimants to a class action against James Hardie New Zealand and the other James Hardie entities. Under this Arrangement, the Fund agrees to pay all legal and other costs the claimants incur in respect of their claim, in return for a share of the proceeds.

Commissioner's statement

CS 21/01: Income tax treatment of facilitation payments to farmers and debt remission on settlement of a loan 28

This Statement sets out the Commissioner's approach to facilitation payments to farmers and debt remission arising from the settlement of loans to farmers.

NEW LEGISLATION

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

Taxation (Income Tax Rate and Other Amendments) Act 2020

Overview

The Taxation (Income Tax Rate and Other Amendments) Bill was introduced into Parliament on 2 December 2020. It passed through all stages under urgency and was enacted as the Taxation (Income Tax Rate and Other Amendments) Act 2020 on 7 December 2020.

The new legislation:

- introduces a new top personal income tax rate of 39% on annual income exceeding $180,000 for the 2021–22 and later income years
- amends other tax rules to ensure that the new top personal tax rate applies consistently across the personal tax system
- clarifies the information-gathering powers of the Commissioner
- introduces increased disclosure requirements for trusts, and
- increases the Minimum Family Tax Credit threshold for the 2020–21 tax year.

Introducing a new top personal income tax rate

Sections RD 10, RD 17, RD 50, RD 52, RD 53, RD 58–61, RD 67, RL 4, schedules 1, 2 and 6 of the Income Tax Act 2007; sections 28C, 48B and schedules 4 and 5 of the Tax Administration Act 1994

The Taxation (Income Tax Rate and Other Amendments) Act 2020 (the Act) amends sections of the Income Tax Act 2007 (the ITA) and the Tax Administration Act 1994 (the TAA) to introduce a new top personal income tax rate of 39% on annual income exceeding $180,000 for the 2021–22 and later income years. The Act also amends other tax rules to ensure that the new top personal tax rate applies consistently across the personal tax system.

Background

New Zealand's personal income tax rates are progressive. The greater a person's taxable income, the higher the proportion that is taxed.

Prior to the start of the 2021–22 income year, personal income tax rates were as follows:

Taxable income	Tax rate
$0 – $14,000	10.5%
$14,001 – $48,000	17.5%
$48,001 – $70,000	30%
$70,001 upwards	33%

The tax rates that apply to personal income differ from the flat tax rates that apply to entities, such as companies. A flat rate means the rate does not increase as income increases. Portfolio investment entities (PIEs), which includes KiwiSaver funds, are subject to a progressive tax scale, but at rates different to those that apply to personal income.

Key features

The Act introduces a new top personal income tax rate of 39% for the 2021–22 and later income years. The new rate applies to annual income in excess of $180,000.

The Act also amends other basic tax rules to ensure the new rate is applied consistently on all types of personal income. These consequential changes generally apply from 1 April 2021, with the exception of the new RWT rate on interest, which applies from 1 October 2021.

Application date

The new top personal tax rate of 39% applies for the 2021–22 and later income years. For most taxpayers the 2021–22 income year starts on 1 April 2021.

Consequential changes to tax rules largely apply from 1 April 2021. The changes to the PAYE rules, fringe benefit tax (FBT), employer superannuation contributions tax (ESCT), resident land withholding tax (RLWT), retirement savings contributions tax (RSCT) and the Māori authority distributions non-declaration rate apply from 1 April 2021. An exception is the new resident withholding tax (RWT) rate on interest, which applies from 1 October 2021.

Detailed analysis

Table 1 in Part A of schedule 1 of the Income Tax Act 2007 sets out the basic income tax rates that apply to personal income. The Act introduces a new row to accommodate the 39% rate:

Taxable income	Tax rate
$0 – $14,000	10.5%
$14,001 – $48,000	17.5%
$48,001 – $70,000	30%
$70,001 – $180,000	33%
$180,001 upwards	39%

Secondary tax codes (schedule 2, Part A, clause 6B; schedule 5, Part A, clause 1 and tax code table row 6B of the ITA)

This Act amends the PAYE rules by introducing a new tax code (SA) for secondary-income earners whose total PAYE income payments (total income subject to PAYE) are greater than $180,000. The existing secondary tax code ST still applies for secondary employment earnings for an employee whose total income subject to PAYE is more than $70,000, but from 1 April 2021 is limited to income less than $180,000. Where an employee's total income subject to PAYE is greater than $180,000 the new SA code applies from 1 April 2021.

Tax deduction code	Withholding tax rate	Who should use this code
ST	0.330	For secondary employment earnings for an employee whose total PAYE income payments are more than $70,000 but not more than $180,000.
SA	0.390	For secondary employment earnings for an employee whose total PAYE income payments are more than $180,000.

Extra pay (sections RD 10, RD 17, and schedule 2, Part B, table 1 of the ITA)

Lump sums earned in the course of employment ("extra pays") such as bonuses, back pay, redundancy and retirement payments are generally taxed at the employee's marginal rate. The Act introduced a new 39% tax rate on extra pays if a person's taxable income is expected to exceed $180,000.

Fringe benefit tax (sections RD 50, 52, 53, 58–61, and schedule 1, Part C, table 1 of the ITA)

Fringe benefit tax (FBT) is paid by employers on non-monetary benefits provided to employees, such as the use of motor vehicles. The rates and thresholds are calculated using the after-tax value of a benefit paid to an employee and takes into account the PAYE which would otherwise been paid had an employee received an equivalent amount as salary or wages instead of the fringe benefit. It is for this reason FBT rates and thresholds differ from the basic personal income tax rates and thresholds.

The FBT rate is calculated using the formula:

$$\frac{\text{tax rate}}{1 - \text{tax rate}}$$

NEW LEGISLATION

To account for the introduction of the new top personal tax rate of 39%, the Act amends table 1, Part C of schedule 1 to the ITA to introduce a new top FBT rate of 63.93% applying to all-inclusive pay exceeding $129,680.

Row	Range of dollar in all-inclusive pay	New rate
1	$0 – $12,530	0.1173
2	$12,531 – $40,580	0.2121
3	$40,581 – $55,980	0.4286
4	$55,981 – $129,680	0.4925
5	$129,681 upwards	0.6393

Certain parts of the FBT rules in the Income Tax Act 2007 referred to the previous top FBT rate (49.25%) as well as the previous second highest FBT rate (42.86% or 43%). These references have been updated to 63.93% and 49.25% respectively.

The FBT changes apply to fringe benefits provided or granted on, or after, 1 April 2021, for the 2021–22 and later income years.

Resident withholding tax rates on interest income for individuals (schedule 1, Part D tables 2 and 3 of the ITA)

The Act introduced a new RWT rate for individuals who receive interest income. This mirrors the new top personal rate of 39%. Individuals are able to elect this new rate on interest earned from 1 October 2021. The new RWT rate on interest has a later application date than other amendments in the Act to allow interest payers to implement the required systems changes. The non-declaration rate remains at 45%. This applies if an individual does not give their IRD number to the interest payer.

Employer's superannuation contribution tax (section RD 67 and schedule 1, Part D, table 1 of the ITA)

ESCT applies to superannuation contributions made by a person's employer. The rates are set at the same rate as basic income tax rates, but only one single ESCT rate applies to the amount of the contribution. The thresholds for determining which ESCT rate applies are based on the income tax rate thresholds but are grossed up to minimise the risk that employers' superannuation contributions are taxed at a higher rate than the rest of an employee's salary and wages. In most cases, this ESCT rate threshold amount is the amount of salary and wages earned by the employee and their gross employer's contributions made in the preceding tax year. This then determines which ESCT rate applies to superannuation contributions made by a person's employer in the current year. The Act introduces a new ESCT rate of 39% on superannuation contributions made for an employee whose ESCT rate threshold amount exceeds $216,000. The rate of ESCT that applies to the employer's superannuation contribution is 39% if the contribution is made for the benefit of one or more past employees or if the employer chooses the rate of 39% and the contribution is made to a defined benefit fund.

Residential land withholding tax (section RL 4 of the ITA)

RLWT applies to sales of residential property by offshore persons made within five years of acquisition. From 1 April 2021, the RLWT rate is 39%, except for where the vendor is a company. If the vendor is a company, the RLWT rate remains at the company rate of 28%.

Retirement scheme contribution tax (schedule 1, Part D, schedule 6 table 2 of the ITA, section 28C of the TAA)

A new RSCT rate of 39% applies where the other rates notified under section 28C of the Tax Administration Act 1994 do not apply.

Taxable Māori authority distributions non-declaration rate (schedule 1, Part D, table 4 of the ITA)

Under the Act, the payment of a taxable Māori authority distribution that is more than $200 where the Māori authority does not have a record of the member's IRD number is subject to a non-declaration tax rate of 39%. The previous non-declaration rate for payments up to 1 April 2021 was the previous top rate of 33%. The standard rate for a taxable Māori authority distribution is 17.5%, which has not changed.

Clarifying the information-gathering powers of the commissioner

(Section 17GB of the Tax Administration Act 1994)

New section 17GB of the Tax Administration Act 1994 clarifies that the Commissioner of Inland Revenue's information-gathering powers include being able to require persons to provide information solely for the purpose of tax policy development.

Background

Existing section 17B of the Tax Administration Act 1994 provides the Commissioner with the ability to request information where the information is required under the Inland Revenue Acts or the information is required for any other function lawfully conferred on the Commissioner. There has been uncertainty as to whether this allows the Commissioner to require persons to provide information solely for tax policy development purposes.

Key features

New section 17GB has been inserted into the Tax Administration Act 1994, to clarify that the Commissioner's information-gathering powers extend to requiring information for the purpose of tax policy development. Having access to information is critical to providing good tax policy advice. New section 17GB provides that the Commissioner may require information to be provided for the development of policy for the improvement or reform of the tax system. The term "tax system" is intended to include social policy products administered by the Commissioner.

There is a limitation on how information collected under new section 17GB can be used. Section 17GB(2) provides that information collected under this new provision cannot be used in proceedings as evidence against the person providing the information. However, 17GB(3) ensures this limitation does not apply if the information is collected under another section of the Tax Administration Act 1994, for example, existing section 17B. This recognises that the purpose of gathering information under section 17GB is to support the development of tax policy rather than enforcement activities; there are already well-established powers available to the Commissioner to require and use information for compliance and enforcement purposes.

The restriction against using the information as evidence against the person in proceedings includes criminal proceedings.

Application date

This provision applies from 7 December 2020, the date of enactment of the Taxation (Income Tax Rate and Other Amendments) Act 2020.

Increased information required in trustees' annual returns

(Sections 59BA and 59BAB of the Tax Administration Act 1994 and section YA 1 of the Income Tax Act 2007)

New section 59BA of the Tax Administration Act 1994 requires the collection of more information on settlements, financial positions and distributions in relation to trusts. This remedies a current deficit in information collected and held by the Commissioner. This additional information is required from the 2021–22 income year onwards. New section 59BAB allows the Commissioner to require this information from certain trustees in relation to the prior seven years.

This supports the Commissioner's ability to assess compliance with the new 39% personal income tax rate. It also assists the Commissioner in understanding and monitoring the use of structures and entities by trustees.

Background

Before the enactment of the Taxation (Income Tax Rate and Other Amendments) Act 2020, trustees were already required to provide a return for income derived in an income year.

As part of the return, trustees are required to include information on allocations to beneficiaries and identifying information for the beneficiaries.

Some types of trusts, such as trading trusts, already return financial statement summary information. The amendments expand this current obligation in order to provide Inland Revenue with more information on the use and financial position of trusts, and to remedy the current information deficit.

Existing provisions to exempt non-active trusts from the requirement to file remain unchanged.

Key features

New section 59BA of the Tax Administration Act 1994 introduces a requirement to collect information from trustees about the financial position of trusts as part of a trustee's tax return. This includes financial information for the trust and information on settlements and distributions relating to the trust.

The requirement applies to trustees of all trusts which have assessable income and required to file a return under former section 59(3) of the Tax Administration Act 1994. New section 59BA replaces section 59(3).

This increased disclosure requirements do not apply to the following types of trusts:

- non-active trusts that are not required to file pursuant to section 43B of the Tax Administration Act 1994
- charitable trusts incorporated under the Charitable Trusts Act 1957
- trusts eligible to be a Māori authority
- resident trustees of foreign trusts.

New section 59BAB provides the ability for the Commissioner to request information for certain prior years.

Detailed analysis

Information required to be provided

New section 59BA requires financial accounting information to be provided by trustees on an ongoing basis. This includes:

- profit and loss statements
- balance sheet items, and
- other information to be specified by the Commissioner (for example any transfers to the trust by associated persons).

The Commissioner will prescribe additional information relevant to trusts which must be provided as part of the return information, such as loans to or by related parties.

Trustees will also be required to provide information on settlements and distributions made during the income year and include that in their returns.

Settlements

The information required for settlements over the year includes identifying information for settlors such as name, IRD number and date of birth, as well as the amount and nature of each settlement. In addition, it is intended that for the 2021–22 return year, trustees provide names and details of settlors from prior years. This is achieved in new section 59BA(2)(c) by requiring details for those settlors whose details have not previously been supplied to the Commissioner.

Inland Revenue does not currently collect information on subsequent settlements on a trust. This is an information gap which means that Inland Revenue is not capturing information on all settlors. This is a key piece of information, as New Zealand has a settlor-based trust taxation regime.

Example 1

Socks and Boots Trust was settled by Lane Boots and Kane Socks in 2000 for the purpose of running a clothing shop. In January 2022, Jane Socks transfers a car to the trust for use in the business.

For the 2021–22 income year, the trustee of Socks and Boots Trust must provide the details of Jane Socks as a settlor in the current income year, and also the details of Lane Boots and Kane Socks as settlors whose details have not previously been provided to the Commissioner.

The trustee must also provide details on the amount and nature of the settlement Jane Socks made in the 2021–22 year.

Example 2

No further settlements are made on the trust in the 2022-23 income year. The trustee does not have to provide any settlement or settlor details as part of their return for this year.

Distributions

For distributions, the information required includes identifying information for beneficiaries such as their name, IRD number and date of birth. This is set out in new section 59BA(2)(d).

The information required for distributions is similar to the information Inland Revenue collects about beneficiaries as part of the current tax return process, where there is an allocation of income to the beneficiary.

The Commissioner may require other information relating to distributions to be reported, which could include, for example, the source of the distribution.

Other relevant persons

New section 59BA(2)(e) requires trustees to provide information on those with the power under the trust to appoint or dismiss a trustee, to add or remove a beneficiary, or to amend the trust deed.

Requiring this information is necessary as "appointers" or those with power to amend the trust deed would not be disclosed otherwise. The reference to the power arising "under the trust" is intended to ensure this does not capture beneficiaries where they have one of the above powers only if all beneficiaries agree.

This forms part of a trustee's annual return requirements and therefore if the information is not provided or false information is provided, existing penalty provisions apply as appropriate. There are no additional or specific penalties.

Power for the Commissioner to request the information for prior years

New section 59BAB allows the Commissioner to collect information referred to in section 59BA for prior years, where such information exists. This is necessary because even if more information is provided going forward, there would still be an information deficit relating to years prior to the 2021–22 income year.

This provision is necessary to assist with assessing compliance with the new top personal income tax rate of 39%. Information for income years prior to 2021–22 is expected to assist in understanding and monitoring the changes in the use of structures and entities by trustees in response to the new 39% rate.

Rather than requiring prior year information for all trusts, the Commissioner is able to determine for which trusts the information is likely to be the most useful in order to minimise compliance and administration costs. The Commissioner must notify a trustee if they are required to provide prior year information.

This provision is limited to the prior seven years to align with record keeping rules. However, it is recognised that record keeping rules may not necessarily have applied for the requested information. New section 59BAB(1)(c) makes it clear that trustees are only required to provide the requested information if it is within their knowledge, possession or control.

While this does not form part of a return, it is information required to be provided to the Commissioner under tax law.

Who the new rules apply to

Trustees currently filing

The disclosure rules are intended to be additional annual return requirements for those trustees who currently file returns with Inland Revenue. Trusts not deriving assessable income are not required to file additional return requirements

Trusts treated as companies for tax purposes

Where trusts are treated as companies for tax purposes, for example, unit trusts, they are not required to comply with trust filing requirements as they instead file as a company. Accordingly, the increased disclosure requirements do not apply to these trusts.

Excluded trusts

The new provisions do not apply to certain types of trusts:

- Non-active trusts are excluded as they are not required to file a trust return pursuant to section 43B.
- Charitable trusts incorporated under the Charitable Trusts Act 1957 are also not required to file a return of income. In addition, many of these trusts are registered with Charities Services which has its own set of reporting requirements.
- Trusts eligible to be a Māori authority under section HF 2 of the Income Tax Act 2007, this includes Māori land trusts constituted under the Te Ture Whenua Māori Act 1993.
- Resident trustees of foreign trusts, as they already provide information to Inland Revenue as part of the foreign trust disclosure rules.

Example 3

Coats and Hats Trust was set up by Jo Coats and Matt Hats in 2019, and they transferred their family home into the trust that year. The trust does not hold any other property, and Jo and Matt reside in the home.

The trustee of Coats and Hats Trust filed a declaration to the Commissioner that Coats and Hats Trust is a non-active trust. The additional disclosure requirements do not apply to this trust while it is classified as a non-active trust.

Obligation to provide the information

Trustees have filing obligations under the Tax Administration Act 1994. This includes a trust with a New Zealand resident settlor and a non-resident trustee. Section 59BA(4) places an additional obligation regarding compliance with the new annual returns in section 59BA on New Zealand resident settlors to ensure the performance of the obligations imposed on non-resident trustees under the new annual return section. This reflects the greater enforcement difficulty in relation to non-resident taxpayers compared with residents.

New 59BAB(3) repeats the obligation for requests for information for prior income years.

These are additional obligations imposed on the NZ-resident settlor but do not supplant the obligations that a non-resident trustee has in relation to filing.

Application date

The amendments apply for trustees' annual returns for the 2021–22 and later income years.

Minimum family tax credit for 2020–21

(Section ME 1 of the Income Tax Act 2007)

Background

The minimum family tax credit (MFTC) is a payment to low-income working families. The purpose of the MFTC is to ensure that the incomes of families who work full time (defined as 20 hours for sole parents and 30 hours for couples) and do not receive a benefit are always higher than what their income would be if they received a benefit.

The MFTC threshold is set above the maximum income a two-parent family could receive on a benefit. It is therefore sensitive to changes that impact how much income a family can receive on a benefit, such as benefit rates, benefit abatement thresholds and the minimum wage. The MFTC threshold has been adjusted each year since 2006 to reflect changes to these settings.

Key features

The amendment to section ME 1 of the Income Tax Act 2007 increases the MFTC threshold for the 2020–21 tax year to $29,432 per annum ($566 per week) from $27,768 per annum ($534 per week). The new threshold applies from the start of the 2020–21 tax year (1 April 2020) and will apply for later tax years, unless a further adjustment to the MFTC threshold is made.

In response to COVID-19, main benefits were increased by $25 per week from 1 April 2020. The MFTC has been adjusted retrospectively to reflect the $25 increase to main benefits.

The increase to the 2020–21 MFTC threshold provides an additional $32 to families in each week that they receive the MFTC in the 2020–21 tax year.

Taxation (COVID-19 Resurgence Support Payments and Other Matters) Act 2021

Overview

The Taxation (COVID-19 Resurgence Support Payments and Other Matters) Bill was passed under urgency on 16 February 2021. The new Act received Royal assent on 18 February 2021. It amends the Tax Administration Act 1994 and the Income Tax Act 2007.

The new legislation allows the Commissioner of Inland Revenue to make grants to eligible businesses impacted by increases to the COVID-19 alert levels and increases the minimum family tax credit threshold.

COVID-19 Resurgence Support Payments Scheme

Sections 3, 7AAB, 7AAC, 157, and schedule 7 of the Tax Administration Act 1994; sections MB 13 and YA 1 of the Income Tax Act 2007

The Act provides authorisation for the Commissioner of Inland Revenue to make grants to eligible businesses under the COVID-19 Resurgence Support Payments Scheme (the scheme) and to administer the scheme on behalf of the Government.

Background

The Act contains a number of amendments to support the scheme to assist businesses who are adversely affected by increases to the COVID-19 alert levels.

The scheme is administered by Inland Revenue.

More detailed information on the operation of the scheme is available at **www.ird.govt.nz/covid-19/business-and-organisations/employing-staff/financial-support/resurgence-support-payment**

Key features

The new Act makes the following changes to the Tax Administration Act 1994 (TAA).

- Inserting new section 7AAB authorising the Commissioner of Inland Revenue to make grants to eligible businesses.
- Inserting new section 7AAC which allows the scheme to be activated by Order in Council.
- Amending the definition of "tax" in section 3 of the TAA to allow Inland Revenue to use its existing debt management and care and management powers to administer the scheme.
- Amending schedule 7 of the TAA to allow the Commissioner of Inland Revenue to publish information relating to the scheme, including names of persons to whom the Commissioner has made a grant under the scheme.

Application date

The amendments apply from the date the Act received Royal assent.

Detailed analysis

The Act amends the Tax Administration Act 1994 and the Income Tax Act 2007.

Section 3 of the Tax Administration Act 1994

The definition of "tax" in section 3 of the Tax Administration Act 1994 is amended to include an amount payable in relation to the grant made under the scheme. The amendment would allow Inland Revenue to use its existing debt management and care and management powers to administer the grant.

Section 7AAB of the Tax Administration Act 1994

The new section 7AAB authorises the Commissioner of Inland Revenue to make a grant under the scheme to an eligible applicant when the scheme has been activated. The subsection (1) outlines:

- the main criteria for activating the scheme – an escalation in alert levels, and
- the main eligibility criteria – that the applicant has suffered a significant reduction in revenue as a result of the escalation in alert levels.

While the details of these two criteria have not been specified in the Act, the policies underpinning the scheme are as follows.

- The scheme may be activated when there is an increase in alert level from alert level 1 to alert level 2 or higher, and after remaining at an alert level higher than 1 for 7 days or more.
- A reduction in revenue of 30% or more constitutes "a significant reduction in revenue". This is to be calculated by comparing a 7-day period at alert level 2 or higher with the typical weekly revenue in the 6 weeks preceding the move from alert level 1.
- The amount of decline in revenue will also be used to determine the size of the grant the applicant is eligible to receive. The amount of the grant will be the lower of the amount calculated using the formula ($1,500 plus $400 per FTE) and four times the amount the applicant's revenue has declined by as declared by them in their application.

In the event of an increase in alert levels from alert level 1, subsection (2) authorises the Commissioner of Inland Revenue to make a grant under the scheme to an eligible person provided that the scheme has been activated by an Order in Council made under the new section 7AAC.

Once the scheme has been activated, subsection (3) requires the Commissioner of Inland Revenue to determine and publish the eligibility criteria and determine the terms and conditions of the scheme.

Subsections (6) and (7) require the entire amount of the grant, and any amount payable under the terms such as interest and penalties if any, to be paid back to the Commissioner of Inland Revenue under particular circumstances. This would ordinarily be when a person receives the grant despite not meeting the eligibility requirements, or when the recipient of the grant breaches the terms and conditions of the grant. However other circumstances may be specified in the terms and conditions.

Subsection (8) clarifies that the recipient of the grant must keep sufficient records to demonstrate that they meet the eligibility requirements and that they have not breached the terms and conditions. This information keeping requirement extends to the person who applied for the grant on behalf of the recipient.

Subsection (10) allows for the scheme to be activated and grants made under this scheme for increases in alert levels prior to the enactment of this Bill.

Section 7AAC of the Tax Administration Act 1994

The new section 7AAC allows the scheme to be activated by Order in Council. Such an Order in Council may describe a class or classes of persons who may apply for support under the scheme and specify:

- the period in which the scheme will operate
- the amount of the grant, and
- any amendments to the scheme as required.

Section 7AAC also allows the Order in Council to extend, renew, or replace a time limit in relation to the publication of information in relation to the scheme.

Section 157 of the Tax Administration Act 1994

The definition of "income tax" in section 157(10) of the Tax Administration Act 1994 is amended to include the entire amount of the grant that the recipient has to pay back. In the event that the recipient makes a default in the repayment of the grant to the Commissioner of Inland Revenue, the Commissioner is able to pursue the outstanding balance by issuing a notice under section 157.

Schedule 7, part A, clause 13B of the Tax Administration Act 1994

The new clause 13B in schedule 7, part A, of the Tax Administration Act 1994 allows the Commissioner of Inland Revenue to publish information relating to the scheme. Information that the Commissioner intends to publish includes the names of the persons to whom the Commissioner makes a grant under the scheme. However, the Commissioner is limited in the types of information that can be published and the clause imposes a time limit of 24 months for the information to remain published. This time limit may be extended by Order in Council made under section 7AAC on the recommendation of the Minister of Revenue.

Although this is not specified in the Act, the current policy on the publication of information is that only the following will be published:

- the name of the recipient of the grant
- the amount paid, and
- the period of alert level escalation for which this payment relates.

However, the above will not be published if:

- the recipient has fewer than three employees, or
- the amount paid is capped four times the declared revenue decline.

The information will be published on a searchable database on the Inland Revenue website.

Section MB 13 of the Income Tax Act 2007

The amendment to section MB 13 of the Income Tax Act 2007 excludes a payment under the scheme from the calculation of a person's family scheme income. The rationale behind this is a grant made under the scheme is for business purposes only. As the grant is not available for private use, it should not be included in calculating a person's family scheme income.

Section YA 1 of the Income Tax Act 2007

The definition of "exempt interest" in section YA 1 of the Income Tax Act 2007 is amended to include interest payable in relation to the repayment of a grant under the scheme. This amendment relates to resident withholding tax (RWT) and ensures the grant recipient does not have to deduct RWT on any interest charged by the Commissioner of Inland Revenue.

Minimum family tax credit threshold increased

Section ME 1 of the Income Tax Act 2007

The Act increases the minimum family tax credit (MFTC) threshold to align with the increases in benefit abatement thresholds.

Background

From 1 April 2021, the benefit abatement thresholds will increase, allowing beneficiaries to earn a greater amount of additional income before their benefits start to reduce. As a consequence, the MFTC threshold is increased from 1 April 2021.

Key features

The Act increases the MFTC threshold (described as the "prescribed amount" in section ME 1(3)(a)) of the Income Tax Act 2007) from $29,432 to $30,576, for the purposes of calculating MFTC entitlements (section ME 1(2)). The increase in the prescribed amount represents a $22 increase in weekly income for MFTC recipients.

Application date

The increase applies from 1 April 2021.

The COVID-19 Resurgence Support Payments Scheme (March 2021) Order 2021

The COVID-19 Resurgence Support Payments Scheme (March 2021) Order 2021 came into force on 8 March 2021 (the Order). This Order continues the COVID-19 resurgence support payments scheme first activated on 23 February by the COVID-19 Resurgence Support Payments Scheme (February 2021) Order 2021.

Background

Section 7AAB of the Tax Administration Act 1994 (the TAA) authorises the Commissioner of Inland Revenue to make grants under the COVID-19 Resurgence Support Payments Scheme (the Scheme) if there is a period of raised COVID-19 alert levels in New Zealand. In general, the Scheme will be activated when there is a period of 7 days or more at the raised alert levels. The intention of the scheme is to provide for grants to be made to support businesses to cover their fixed costs when there is an escalation in COVID-19 alert levels and a reduction in revenue is suffered as a result.

Section 7AAC of the TAA is an empowering provision for the making of an Order in Council activating the Scheme, and determining the class of persons who can apply for the scheme and the payment amount.

On 15 February 2021, COVID-19 alert levels in New Zealand were raised. This escalation lasted 7 days, triggering the activation of the Scheme. New Zealand returned to alert level 1 on 22 February 2021. The *COVID-19 Resurgence Support Payments Scheme (February 2021) Order 2021* (the February Order) came into force on 23 February 2021 activating the Scheme.

On 28 February 2021, there was a further escalation of the alert levels for a period of at least 7 days, triggering a further affected revenue period for which applications may be submitted under the Scheme. The extension was made in the *COVID-19 Resurgence Support Payments Scheme (March 2021) Order 2021* (the March Order) which came into force on 8 March. The February Order was revoked on 8 March 2021.

The March Order continues the Scheme until the first working day that is at least one month after all of New Zealand returns to alert level 1.

Class of persons covered

The March Order sets out the class of persons eligible for a grant.

An eligible person must be one of:

- an individual who is self-employed
- a body corporate or an unincorporated body
- a registered charity
- an incorporated society
- a post-settlement governance entity
- a trust
- a partnership (as defined in sections 8 and 9 of the Partnership Law Act 2019)
- any department of State or organisation in the State services (as defined in section 5 of the Public Service Act 2020) that is approved by the Minister of Finance as a participant in the Scheme
- a non-government organisation
- a pre-revenue firm; or
- a joint venture.

The person must be living in New Zealand, or if a non-natural person, registered or otherwise established in New Zealand. The person may be entitled[1] to receive a grant of money under the Scheme if they experience a minimum 30% revenue decline when comparing a consecutive 7-day period before the escalation in alert levels with a consecutive 7-day period that anywhere in New Zealand was at alert level 2 or above. The person must apply this revenue decline test in accordance with the eligibility criteria set by the Commissioner of Inland Revenue.

A person may be eligible for one payment each time there has been an escalation in alert levels for at least 7 days, and the Government has activated the Scheme in respect of that escalation.

To qualify for a grant for the first resurgence of COVID 19, the 7-day period used to demonstrate a decline in revenue must be between 15 February to 22 February 2021 (both dates inclusive).

[1] Full eligibility criteria are set by the Commissioner of Inland Revenue.

To qualify for a grant for the second resurgence of COVID 19, the 7-day period used to demonstrate a decline in revenue must be within 28 February until the date immediately before all areas of New Zealand return to Alert level 1 (both dates inclusive).

Further eligibility requirements have been set out by the Commissioner of Inland Revenue under section 7AAB(3) of the Tax Administration Act 1994 and are published on the Inland Revenue website **www.ird.govt.nz/covid-19/business-and-organisations/resurgence-support-payment/eligibility**.

Amount of the grant

The March Order sets out the amount of the payment that the person will be entitled to as the lesser of:

- $1,500 plus $400 for each full-time equivalent worker employed by the person (up to a maximum of 50 full-time equivalent workers); or
- 4 times the amount by which the eligible person's revenue has declined.

If they meet the relevant eligibility criteria, a person will be entitled to a payment for each period of escalation.

Applications

Applications in response to the first escalation opened on 23 February 2021 and may be submitted until the end of day on 22 March 2021. Applications for the second escalation opened on 8 March 2021. Further procedural requirements in relation to the making of an application have been set out by the Commissioner of Inland Revenue under section 7AAB(3) of the Tax Administration Act 1994 and are published on the Inland Revenue website **www.ird.govt.nz/covid-19/business-and-organisations/resurgence-support-payment/apply**.

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.

2021 International tax disclosure exemption ITR32

Introduction

Section 61 of the Tax Administration Act 1994 ("TAA") requires taxpayers to disclose interests in foreign entities.

Section 61(1) of the TAA states that a person who has a control or income interest in a foreign company or an attributing interest in a foreign investment fund ("FIF") at any time during the income year must disclose the interest held. In the case of partnerships, disclosure needs to be made by the individual partners in the partnership. The partnership itself is not required to disclose.

Section 61(2) of the TAA allows the Commissioner of Inland Revenue to exempt any person or class of persons from this requirement if disclosure is not necessary for the administration of the international tax rules (as defined in section YA 1) contained in the Income Tax Act 2007 ("ITA").

To balance the revenue forecasting and risk assessment needs of the Commissioner with the compliance costs of taxpayers providing the information, the Commissioner has issued an international tax disclosure exemption under section 61(2) of the TAA that applies for the income year corresponding to the tax year ended 31 March 2021. This exemption may be cited as "International Tax Disclosure Exemption ITR32 "("the 2021 disclosure exemption") and the full text appears at the end of this item.

Scope of exemption

The scope of the 2021 disclosure exemption is the same as the 2020 disclosure exemption.

Application date

This exemption applies for the income year corresponding to the tax year ended 31 March 2021.

Summary

In summary, the 2021 disclosure exemption **removes** the requirement of a resident to disclose:

- An interest in a foreign company if the resident has an income interest of less than 10% in that company and either that income interest is not an attributing interest in a FIF or it falls within the $50,000 de minimis exemption (see section CQ 5(1)(d) and section DN 6(1)(d) of the ITA). The de minimis exemption does not apply to a person that has opted out of the de minimis threshold by including in the income tax return for the income year an amount of FIF income or loss.
- If the resident is not a widely-held entity, an attributing interest in a FIF that is a direct income interest of less than 10%, if the foreign entity is incorporated (in the case of a company) or otherwise tax resident in a treaty country or territory, and the fair dividend rate or comparative value method of calculation is used.
- If the resident is a widely-held entity, an attributing interest in a FIF that is a direct income interest of less than 10% (or a direct income interest in a foreign PIE equivalent) if the fair dividend rate or comparative value method is used for the interest. The resident is instead required to disclose the end-of-year New Zealand dollar market value of all such investments split by the jurisdiction in which the attributing interest in a FIF is held or listed.

The 2021 disclosure exemption also removes the requirement for a non-resident or transitional resident to disclose interests held in foreign companies and FIFs.

Commentary

Generally, residents who hold an income interest or a control interest in a foreign company, or an attributing interest in a FIF are required to disclose these interests to the Commissioner. These interests are considered in further detail below.

Attributing interest in a FIF

A resident is required to disclose an attributing interest in a FIF if FIF income or a FIF loss is calculated using one of the following calculation methods:

- attributable FIF income, deemed rate of return or cost methods; or
- fair dividend rate or comparative value methods, if the resident is a "widely-held entity"; or
- fair dividend rate or comparative value methods, if the resident is not a "widely-held entity" and either the foreign entity is incorporated or otherwise tax resident in a country or territory with which New Zealand does not have a double tax agreement in force as at 31 March 2021, or the resident has a direct income interest of 10% or more.

For the purpose of this disclosure exemption, the term "double tax agreement" does not include tax information exchange agreements or collection agreements and is limited to the double tax agreements in force as at 31 March 2021 with the 40 countries or territories listed below.

Australia	France	Mexico	Spain
Austria	Germany	Netherlands	Sweden
Belgium	Hong Kong	Norway	Switzerland
Canada	India	Papua New Guinea	Taiwan
Chile	Indonesia	Philippines	Thailand
China	Ireland	Poland	Turkey
Czech Republic	Italy	Russian Federation	United Arab Emirates
Denmark	Japan	Samoa	United Kingdom
Fiji	Korea	Singapore	United States of America
Finland	Malaysia	South Africa	Viet Nam

For the purpose of this disclosure exemption, a "widely-held entity" is an entity which is a:

- portfolio investment entity (this includes a portfolio investment-linked life fund); or
- widely-held company; or
- widely-held superannuation fund; or
- widely-held group investment fund ("GIF").

Portfolio investment entity, widely-held company, widely-held superannuation fund and widely-held GIF are all defined in section YA 1 of the ITA.

The disclosure required, by widely-held resident entities, of attributing interests in FIFs in which the resident has a direct income interest of less than 10% (or a direct income interest in a foreign PIE equivalent) and for which they use the fair dividend rate or the comparative value method of calculation is that, for each calculation method, they disclose the end-of-year New Zealand dollar market value of investments split by the jurisdiction in which the attributing interest in a FIF is held, listed, organised or managed.

In the event that the jurisdiction is not easily determined, a further option of a split by currency in which the investment is held will also be accepted as long as it is a reasonable proxy - that is at least 90-95% accurate - for the underlying jurisdiction in which the FIF is held, listed, organised or managed. Investments denominated in euros will not be able to meet this test and so euro denominated investments will need to be split into the underlying jurisdictions.

FIF interests

The types of interests that fall within the scope of section 61(1) of the TAA are:

- rights in a foreign company (a company includes any entity deemed to be a company for the purposes of the ITA (e.g. a unit trust))
- rights in a foreign superannuation scheme held by a person as a beneficiary or member, if the person acquired the interest before 1 April 2014 and treated the interest as a FIF interest in a return of income filed before 20 May 2013 and for all subsequent income years
- rights in a foreign superannuation scheme held by a person as a beneficiary or member, if the person's interest in the scheme was first acquired whilst the person was tax resident of New Zealand
- rights to benefit from a life insurance policy offered and entered into outside New Zealand
- rights in an entity specified in schedule 25, part A of the ITA.

However, interests that are exempt (under sections EX 31 to EX 43 of the ITA) from being an attributing interest in a FIF do not have to be disclosed. The following is a summary of these exemptions:

- certain interests in Australian resident companies included on the official list of the Australian Stock Exchange and required to maintain a franking account (refer to Inland Revenue's website **www.ird.govt.nz** (keyword: other exemptions))
- certain interests in Australian unit trusts that have a New Zealand RWT proxy and either a high turnover or high distributions
- interests held by a natural person in foreign superannuation schemes that are an Australian approved deposit fund, Australian exempt public sector superannuation scheme, Australian regulated superannuation fund or Australian retirement savings account
- income interests of 10% or more in controlled foreign companies ("CFCs") (although separate disclosure is required of these as interests in foreign companies – refer below)
- certain interests of 10% or more in foreign companies that are treated as resident, and subject to tax, in Australia (although separate disclosure is required of these as interests in foreign companies – refer below)
- interests in certain unlisted grey-list companies which have migrated out of New Zealand for a year which begins within 10 years of that migration, where the person has held the interests continuously since the migration and the company has retained a significant presence in New Zealand through a fixed establishment
- interests in certain unlisted grey-list companies which hold more than 50% of a New Zealand company for a year which begins within 10 years of the company first holding that 50%, where the New Zealand company has retained a significant presence in New Zealand
- certain interests in grey-list companies resulting from shares acquired under a venture investment agreement
- interests in certain grey-list companies resulting from the acquisition of shares under certain employee share schemes
- certain interests held by natural persons in FIFs located in a country where exchange controls prevent the person deriving amounts from the interests, or from disposing of the interests, in New Zealand currency or consideration readily convertible to New Zealand currency.
- certain interests in foreign superannuation schemes or life insurance policies (offered and entered into outside New Zealand) held by natural persons who acquired the interests when a non-resident or transitional resident
- beneficial interests in foreign superannuation schemes which are not FIF superannuation interests
- certain interests in pensions or annuities provided by FIFs and held by natural persons who acquired the interests when a non-resident (or in certain cases, a resident) (see Inland Revenue's guide **Overseas pensions and annuity schemes - IR257** for more information).

De minimis

Interests of less than 10% in foreign companies which are attributing interests in a FIF held by a natural person not acting as a trustee also do not have to be disclosed if the total cost of the interests is $50,000 or less at all times during the income year. This disclosure exemption is made because no FIF income under section CQ 5 of the ITA or FIF loss under section DN 6 of the ITA arises in respect of these interests.

- This de minimis exemption does not apply to a person who has included in the income tax return for the year a FIF income or loss. Please note that a person opting out of the de minimis threshold is generally required to continue to apply the FIF rules in each subsequent tax year. Where a person has included FIF income or loss from attributing interests in FIFs where the total cost was $50,000 or less in 1 of the preceding 4 income years, they will be required to apply the FIF rules in the current year.

Format of disclosure

The forms for the disclosure of FIF interests are as follows:

- IR443 form for the deemed rate of return method
- IR447 form for the fair dividend rate method (for individuals or non-widely-held entities)
- IR448 form for the comparative value method (for individuals or non-widely-held entities)
- IR449 form for the cost method
- IR458 spreadsheet form (this spreadsheet form can be used to make electronic disclosures for all methods)
- myIR income tax return attachment form (this form can be used to make electronic disclosures for all methods)

The IR458 spreadsheet and myIR income tax return attachment forms, which are the only disclosure options for the fair dividend rate and comparative value methods for widely-held entities, must be filed online. Disclosure of FIF interests by widely-held entities using the fair dividend rate or comparative value methods may be made by country rather than by individual investment where the direct income interests are less than 10% (or are direct income interests in a foreign PIE equivalent).

If you choose the spreadsheet option you will be able to save the form as a working paper on your computer. When completed, submit the form by logging into your myIR account and uploading it as part of the electronic income tax return filing process, or by logging into your myIR account and attaching it to a web message with 'FIF disclosure' in the subject line.

Alternatively, you can complete the myIR income tax return attachment disclosure form online when preparing your income tax return electronically in myIR.

The IR443, IR447, IR448, IR449 and IR458 forms can be found at **www.ird.govt.nz/income-tax/income-tax-for-businesses-and-organisations/types-of-business-income/foreign-investment-funds-fifs/file-a-foreign-investment-fund-disclosure**. Click 'Other ways to do this' on this web page to access the IR458 spreadsheet form.

Income interest of 10% or more in a foreign company

A resident is required to disclose an income interest of 10% or more in a foreign company. This obligation to disclose applies to all foreign companies regardless of the country of residence. For this purpose, the following income interests need to be considered:

a. an income interest held directly in a foreign company
b. an income interest held indirectly through any interposed foreign company
c. an income interest held by an associated person (not being a CFC) as defined by subpart YB of the ITA.

To determine whether a resident has an income interest of 10% or more for CFCs, sections EX 14 to EX 17 of the ITA should be applied. To determine whether a resident has an income interest of 10% or more in any entity that is not a CFC, for the purposes of this exemption, sections EX 14 to EX 17 should be applied to the foreign company as if it were a CFC.

Format of disclosure

The forms for disclosure of all interests in a CFC are:

- IR458 spreadsheet form, or
- myIR income tax return attachment form

If you choose the spreadsheet option you will be able to save the form as a working paper on your computer. When completed, submit the form by logging into your myIR account and uploading it as part of the electronic income tax return filing process.

Alternatively, you can complete the myIR income tax return attachment disclosure form online when preparing your income tax return electronically in myIR.

The IR458 spreadsheet form must be accessed online at **www.ird.govt.nz** (keyword: IR458).

Please note that electronic filing is a mandatory requirement for CFC disclosure.

Overlap of interests

It is possible that a resident may be required to disclose an interest in a foreign company which also constitutes an attributing interest in a FIF. For example, a person with an income interest of 10% or greater in a foreign company that is not a CFC is strictly required to disclose both an interest held in a foreign company and an attributing interest in a FIF.

To meet disclosure requirements, only one form of disclosure is required for each interest. If the interest is an attributing interest in a FIF, then the appropriate disclosure for the calculation method, as discussed previously, must be made.

In all other cases, where the interest in a foreign company is not an attributing interest in a FIF, the IR458 spreadsheet form or myIR income tax return attachment form for CFCs must be filed.

Interests held by non-residents and transitional residents

Interests held by non-residents and transitional residents in foreign companies and FIFs do not need to be disclosed.

This would apply for example to an overseas company operating in New Zealand (through a branch) in respect of its interests in foreign companies and FIFs; or to a transitional resident with interests in a foreign company or an attributing interest in a FIF.

Under the international tax rules, non-residents and transitional residents are not required to calculate or attribute income under either the CFC or FIF rules. Therefore, disclosure of non-residents' or transitional residents' holdings in foreign companies or FIFs is not necessary for the administration of the international tax rules and so an exemption is made for this group.

Persons not required to comply with section 61 of the Tax Administration Act 1994

This exemption may be cited as "International Tax Disclosure Exemption ITR32".

1. Reference

This exemption is made under section 61(2) of the Tax Administration Act 1994 ("TAA"). It details interests in foreign companies and attributing interests in foreign investment funds ("FIFs") in relation to which any person is not required to comply with the requirements in section 61 of the TAA to make disclosure of their interests, for the income year ended 31 March 2021.

2. Interpretation

For the purpose of this disclosure exemption:

- to determine an income interest of 10% or more in a foreign company, sections EX 14 to EX 17 of the Income Tax Act 2007 ("ITA") apply for interests in controlled foreign companies ("CFCs"). In the case of attributing interests in FIFs, those sections are to be applied as if the FIF were a CFC, and
- "double tax agreement" means a double tax agreement in force as at 31 March 2021 in one of the 40 countries or territories as set out in the commentary.

The relevant definition of "associated persons" is contained in subpart YB of the ITA.

Otherwise, unless the context requires, expressions used have the same meaning as in section YA 1 of the ITA.

3. Exemption

i. Any person who holds an income interest of less than 10% in a foreign company, including interests held by associated persons, that is not an attributing interest in a FIF, or that is an attributing interest in a FIF in respect of which no FIF income or loss arises due to the application of the de minimis exemption in section CQ 5(1)(d) or section DN 6(1)(d) of the ITA , is not required to comply with section 61(1) of the TAA for that person's interests in the foreign company and that income year.

ii. Any person who is a portfolio investment entity, widely-held company, widely-held superannuation fund or widely-held GIF, who has an attributing interest in a FIF, other than a direct income interest of 10% or more in a foreign company that is not a foreign PIE equivalent, and uses the fair dividend rate or comparative value calculation method for that interest, is not required to comply with section 61(1) of the TAA in respect of that interest and that income year, if the person discloses the end-of-year New Zealand dollar market value of investments, in an electronic format prescribed by the Commissioner, split by the jurisdiction in which the attributing interest in a FIF is held, organised, managed or listed.

iii. Any person who is not a portfolio investment entity, widely-held company, widely-held superannuation fund or widely-held GIF, who has an attributing interest in a FIF, other than a direct income interest of 10% or more in a foreign company, and uses the fair dividend rate or comparative value calculation method is not required to comply with section 61(1) of the TAA in respect of that interest and that income year, to the extent that the FIF is incorporated or tax resident in a country or territory with which New Zealand has a double tax agreement in force at 31 March 2021.

iv. Any non-resident person or transitional resident who has an income interest or a control interest in a foreign company or an attributing interest in a FIF in the income year corresponding to the tax year ending 31 March 2021, is not required to comply with section 61(1) of the TAA in respect of that interest and that income year if either or both of the following apply:

- no attributed CFC income or loss arises in respect of that interest in that foreign company under sections CQ 2(1)(d) or DN 2(1)(d) of the ITA; and/or
- no FIF income or loss arises in respect of that interest in that FIF under sections CQ 5(1)(f) or DN 6(1)(f) of the ITA.

This exemption is made by me acting under delegated authority from the Commissioner of Inland Revenue pursuant to section 7 of the TAA.

This exemption is signed on 31 March 2021

Glen Holbrook
Technical Specialist

EE002B: Variation to *Determination EE002A - Payments to employees for working from home costs*

Application

Determination EE002B (the Determination) applies to relevant payments made by employers for the period from 18 March 2021 to 30 September 2021.

Discussion

During the COVID-19 pandemic national lockdown some employers made payments to employees to reimburse costs incurred by those employees as a consequence of the employees having to work from home. Inland Revenue was asked to clarify the tax treatment of such payments and subsequently issued Determination *EE002: Payments to employees for working from home costs during the COVID-19 pandemic* in April 2020.

Determination EE002 was issued as a temporary response to the COVID-19 pandemic and applied to reimbursement payments made by employers during the six month period from 17 March to 17 September 2020, so long as the employee who received the payment was working from home as a consequence of the COVID-19 pandemic. Where this occurred the reimbursement payments were exempt income in term of section CW 17 of the Income Tax Act 2007 (the Act).

In order to ensure that these payments continued to be treated as exempt income after the lockdown period, and to allow the Commissioner time to consider the tax implications of reimbursement payments made to employees who work from home as a "new way of working", the Commissioner subsequently issued Determination *EE002A: Variation to Determination EE002 - Payments to employees for working from home costs during the COVID-19 pandemic*. This determination mirrored Determination EE002 but extended the timeframe of the determination to 17 March 2021. It also removed the requirement that the expenditure or loss must be incurred by the employee as a result of the employee being required to work from home because of the COVID-19 pandemic. It applied to any payment made to an employee that worked from home, to the extent it was to reimburse that employee for costs incurred in working from home.

The Commissioner is continuing to consider the wider tax implications of reimbursing employees who work from home as a "new way of working". Because any public statement on this topic will not be ready for publication before 17 March 2021, it is the Commissioner's view that both employers and employees should be able to continue applying the approach set out in Determination EE002 and EE002A until 30 September 2021. This will allow further time for the Commissioner to consider all matters relating to the tax consequences of employees working from home.

In order to achieve this outcome the Commissioner is issuing this determination in terms of s 91AAT(6) of the Tax Administration Act 1994, to vary and extend Determination EE002A by:

- extending the timeframe through to 30 September 2021; Determination EE002B applies to reimbursement payments made by employers from 18 March 2021 to 30 September 2021.

This variation will ensure that, for this extended period, the determination will continue to apply to any employee that works from home and that qualifying payments continue to be treated as exempt income under section CW 17 of the Act.

It is important to note that, other than for the above variation, all aspects of Determination EE002 remain in place, including the following requirements and exclusions. The requirements are that:

- An employer must make a payment to an employee.
- The payment must be for expenditure or a loss incurred (or likely to be incurred) by the employee.
- The expenditure or loss must be incurred by the employee in deriving their employment income and not be private or capital in nature (the capital limitation does not apply to an amount of depreciation loss).
- The payment must be made because the employee is doing their job and the employee must be deriving employment income from performing their job.
- The expenditure or loss must be necessary in the performance of the employee's job.

Excluded from the determination are:

- Expenditure on account of an employee.
- Any payments made for a period after an employee ceases to work from home.
- All amounts paid under a salary sacrifice arrangement.
- Payments made to an employee to compensate the employee for the conditions of their service.

This determination was signed by me on 15 February 2021

Rob Falk
National Advisor, Technical Standards, 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 21/01: Harbour Fund II GP Limited

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

Name of person who applied for the Ruling (the Applicant)

This Ruling has been applied for by Harbour Fund II GP Limited.

Taxation Laws

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

This Ruling applies in respect of ss BD 1(4) and (5) and BG 1, and the definition of "interest" in s YA 1.

The Arrangement to which this Ruling applies

The Arrangement is the receipt by Harbour Fund II Limited Partnership (the Fund) of proceeds (Proceeds) under individual funding agreements that the Fund will enter into with litigation claimants (Claimants) to a class action against James Hardie New Zealand and the other James Hardie entities, under which the Fund agrees to pay all legal and other costs the Claimants incur in respect of their claim (Claim), in return for a share of the Proceeds.

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

Background to the Arrangement

1) The Fund is a limited partnership registered in the Cayman Islands and established to make litigation and arbitration funding available for all types of claims other than personal injury, divorce and defamation proceedings. The Fund is not a trustee of a trust.
2) Under the law of Cayman Islands, the Fund does not have a legal personality that is separate from that of its partners (Limited Partners). The Fund is not the beneficial owner of its assets, which Harbour Fund II GP Limited (the General Partner) holds in accordance with the terms of the Fund's limited partnership agreement (Partnership Agreement).
3) The Fund provides funding for litigation claimants all around the world who have met certain criteria. The criteria include the creditworthiness of the defendant, the legal merits of the case, the expertise of the legal team and the likely legal fees.
4) Harbour Advisors Cayman Limited (the Investment Advisor), a company incorporated in the Cayman Islands, advises the Fund. The Investment Advisor has been contracted by the General Partner under an investment advisory agreement (Investment Advisory Agreement) to perform investigation, evaluation and due diligence services in respect of potential claims for which funding is sought.
5) The Investment Advisor, in turn, has subcontracted preliminary investigation and due diligence services to Harbour Litigation Funding Limited (the Sub-Advisor), which is a company incorporated in England and Wales under a sub-advisory agreement (Sub-Advisory Agreement). The Sub-Advisor earns fees under the Sub-Advisory Agreement for providing these services to the Investment Advisor.
6) Details of the activities the Investment Advisor and SubAdvisor (together, the Advisors) undertake when investigating and evaluating potential claims are set out in [7] to [14].

BINDING RULINGS

Summary of the normal investment procedures

7) The Advisors ensure interested parties know about the business of the Fund. However, the Advisors do not actively or routinely seek to identify and locate specific claims for which funding might be provided.

8) Generally, once a request for funding is received, a confidentiality agreement is entered into, and the Advisors conduct a preliminary assessment. Information is gathered regarding the claim and an immediate analysis is conducted to assess whether the claim is likely to satisfy the Fund's criteria. If the Advisors think the claim is unlikely to satisfy the criteria, they will generally reject it at this stage.

9) If a claim passes the preliminary analysis, the Sub-Advisor, if appropriate, will enter into a letter of intent, usually with the claimant directly, but in the case of a class or group action, with the legal representative seeking funding on behalf of the claimants. This procedure has been adopted because, in the case of a class action, there are too many claimants to execute separate documents with and not all claimants may have been identified yet. The Sub-Advisor will then conduct a more detailed due diligence to ascertain whether the claim would be likely to meet the criteria for funding.

10) The Investment Committee established by the Investment Advisor then meets periodically to evaluate the legal merits of the cases for which funding is sought and that satisfy the Fund's criteria. The Investment Committee reviews updates on the progress of existing funded claims.

11) At the conclusion of each meeting, the Investment Committee, where appropriate, makes a formal recommendation to the board of the Investment Advisor about investing in proposed new claims. The Investment Committee also reports to the board on existing funded claims if material developments have occurred with those claims.

12) The board of the Investment Advisor at its next following meeting considers the recommendations made by the Investment Committee. Where the board considers that a proposed claim is likely to meet the Fund's criteria for funding, the board makes a recommendation to the board of the General Partner, which has the authority to invest in claims on behalf of the Fund.

13) The board of the General Partner meets periodically to consider the recommendations the board of the Investment Advisor made.

14) Where the board of the General Partner (on behalf of the Fund) considers that a recommended claim is meritorious, the Fund will make funds directly available for the claim by entering into a funding agreement or agreements with the claimants.

How the decision to fund this Claim was made

15) The Sub-Advisor was contacted by email in November 2014 by a barrister working with Adina Thorn Lawyers in relation to the possible funding of a representative action in relation to cladding supplied and fitted in buildings throughout New Zealand. The claim would be based in negligence and breach of statutory duties and was expected to involve over 500 Claimants with a claim for damages in excess of NZD $100m (the Claim).

16) In accordance with standard procedure, as summarised in [7] to [14], this approach for funding was subjected to a preliminary assessment. The Advisors concluded that the Claim could potentially satisfy the Fund's criteria.

17) The Advisors then undertook due diligence and, ultimately, a recommendation was made to the board of the General Partner that the Claim be approved for funding.

18) At its March 2015 meeting in the Cayman Islands, the board of the General Partner approved the Claim for funding.

19) The Sub-Advisor was then instructed to attend to the finalisation of expected timetables and funding amounts and to prepare appropriate documentation for the Fund to record the terms on which funding would be provided to the Claimants.

20) The Sub-Advisor then prepared a draft of the Funding Agreement (the Funding Agreement) that records the terms on which the Fund will make funding available to Claimants for their legal and other costs incurred in relation to the Claim. The Sub-Advisor prepared a draft relationship agreement (Relationship Agreement) to record the various invoicing and reporting requirements that would apply to the legal representative (the Legal Representative) acting for the funded Claimants throughout the proceedings. On entering into the Funding Agreement, the Claimants agree to give the Legal Representative such instructions and authorisations as are contemplated in the Relationship Agreement, to ensure the Fund is kept fully informed as to the legal costs the Claimants are incurring, the work the Legal Representative is doing, and the conduct of the proceedings (Proceedings).

21) The board of the General Partner and Adina Thorn Lawyers as the Legal Representative finalised and entered into the Relationship Agreement on 19 May 2015. At the date of this Ruling, Adina Thorn Lawyers is still the Legal Representative, but the Claimants can appoint a replacement Legal Representative.
22) The Funding Agreement was finalised in late 2015, and the Claimants progressively entered into the Funding Agreement from that time.

Funding Agreement

23) The Funding Agreement records the terms on which the Fund agrees to make funds available to the Claimants (that is, the individuals or groups who have suffered damage within the scope of the Claim) for Claimants Legal Costs. The phrase "Claimants Legal Costs" is defined in cl 20.1 of the Funding Agreement. These costs include legal fees incurred in relation to the Claim and any costs the Claimants incur (subject to certain exclusions) should the Claimants be ordered to pay the legal costs of the defendant or any other party involved in the Claim. Under cl 9 of the Funding Agreement, the Claimants agree that if they are successful, the Fund will receive a proportion of the Proceeds.
24) The Claimants are individuals, groups of individuals and companies (or their respective representatives such as liquidators or administrators) that are home and building owners affected by defects in cladding used in the construction of their homes and buildings. Some of these Claimants are unable to bring a claim under the Weathertight Homes Resolution Services Act 2006 because their buildings were constructed outside the 10-year limitation period imposed by that Act.
25) While members of the Claimant group are in New Zealand and other countries, including Australia and the United Kingdom, it is the Applicant's understanding that all the properties to which the Claim relates are in New Zealand.

Funding process

26) Under the Funding Agreement, funding for Claimants Legal Costs is made available in two stages.
27) The first stage of funding runs from the time the Claim was accepted to the point at which all preconditions for full funding were satisfied and a statement of claim was filed. The second stage runs from that point until the Fund terminates its obligations under the Funding Agreements or the Proceedings are concluded (whether by settlement or court judgment).
28) During the first stage, as the process of confirming claimants for a representative action takes some time, Claimants were confirmed as being part of the Claimant group on a progressive basis. Claimants continued to be confirmed after the statement of claim was filed, so some Claimants entered into the Funding Agreement after the second stage of funding commenced.
29) Claimants were confirmed on a progressive basis. During that period, legal fees were incurred for work for the benefit of all Claimants. Claimants agreed, on entering into the Funding Agreement, that Claimants Legal Costs (as defined in cl 20.1 of the Funding Agreement)(for which each Claimant will receive funding under the Funding Agreement) include each Claimant's proportionate share (by reference to the value of their claim) of such legal fees relating to the Claim as have been incurred during the first stage, regardless of when each Claimant entered into the Funding Agreement.
30) The Claim has satisfied the preconditions for full funding, so the Fund is now funding the second stage of the Claim. Funding will be provided during the second stage of the Claim until the Fund terminates its obligations under the Funding Agreements or the Proceedings are concluded (whether by settlement or court judgment).

Fund's entitlement to Proceeds

31) If the Claim is successful, the Fund is entitled to receive a proportion of the Proceeds. The amount of the Proceeds will be calculated on the basis set out in the Funding Agreement.
32) Clause 9.1(a)(i) to (vi) of the Funding Agreement outlines how the Proceeds will be allocated between the Fund and the Claimants.
33) In accordance with the Funding Agreement, the Legal Representative will receive and hold any damages, costs and settlement sums received in respect of the Claim on bare trust for the Fund and the Claimants in the proportions agreed until the relevant amounts are paid to the Fund and the Claimants. All amounts received from the defendant must first be paid to the Fund, which will be paid in priority to the Claimants, who will each receive such sum as is equal to their share of the remaining damages, costs or settlement sum.
34) Any interest the Fund and the Claimants derive while the Legal Representative holds the Proceeds on bare trust does not form part of the Proceeds for the purposes of this Ruling. This Ruling does not rule on the tax consequences for the Fund of any interest derived while the Legal Representative holds the Proceeds on bare trust.

Control of the Claim

35) Control of the Claim rests with the Claimants. The Fund has no ability to instruct the Legal Representative or dictate how the Proceedings are conducted, subject to the right of the Fund to make decisions which affect any applications or negotiations relating to security for costs, in relation to any financial or other commitments or undertakings proposed to be proffered by the Fund to the defendant or to a court. Clause 5 of the Funding Agreement expressly acknowledges that the Fund has no control over or right to make decisions in the Proceedings. Only the Claimants, through a representative claimant (the Representative Claimant) may instruct the Legal Representative and determine, for example, the claims that will be pursued, actions that will be taken or decisions made on a day-to-day basis in respect of the conduct of the Proceedings.

36) Clause 6.1(f) of the Funding Agreement provides that Claimants are entitled to change the Legal Representative at any time. While the prior written agreement of the Fund is required, this clause provides that the Fund's consent to such a change is not to be unreasonably withheld. However, to continue to receive funding under the Funding Agreement, the Claimants are required to ensure the new Legal Representative executes a deed in favour of the Fund under which the new Legal Representative agrees to be bound by the terms of the Relationship Agreement as if they were the prior Legal Representative.

37) Clauses 5, 6 and 13 of the Funding Agreement outline the Claimants' obligations under the Funding Agreement. Obligations include taking certain actions and providing certain instructions to the Legal Representative in relation to certain expected future events. For example, obligations exist in relation to pursuing an appeal should the Fund wish to provide funding for an appeal and in relation to settlement decisions should the Legal Representative recommend or not recommend (as the case may be) settlement.

38) The Applicant states that because this is a class action, Claimants also agreed on entering into the Funding Agreement the way the Proceedings would be conducted and the Representative Claimant would instruct the Legal Representative. This was to ensure the funded Claimants agreed at the outset how the Proceedings would be conducted, so the Fund could be confident that the Proceedings would be conducted in an optimal manner.

Termination

39) Clause 1 of the Funding Agreement contains an initial cooling off period of 20 days.

40) Clause 12 of the Funding Agreement provides that a Claimant cannot unilaterally terminate their obligations under the Funding Agreement. Claimants are entitled to actively terminate their obligations if a material breach by the Fund has adversely affected the Claimant's interests and the Fund has not remedied that breach within 30 days.

41) Clause 12 of the Funding Agreement enables a Claimant to opt out of the class action if the Claimant gives instructions to the Legal Representative or otherwise exercises a right to opt out of the proceedings. However, if the Claim is subsequently successful, the Fund is still entitled to recover its share of the Proceeds as if the Claimant had not opted out of the class action.

42) Clause 11 of the Funding Agreement provides that the Fund has the right at any time to terminate its obligation to contribute to future legal costs in respect of the Claim.

Key contractual terms relating to process

43) Claimants agreed to take certain actions and provide certain instructions to the Legal Representative in relation to the way the Proceedings would be conducted and in relation to certain potential future events. These obligations are in:

- cl 5 – conduct of Proceedings
- cl 6 – Claimant's obligations
- cl 9 – application of Proceeds.
- cl 13 – settlement decisions
- cl 19 – general provisions.

44) Under clauses 5, 6 and 13 of the Funding Agreement, each Claimant agreed the following:

- The Representative Claimant will determine in consultation with the Legal Representative what claims will be pursued (cl 5.1(a)).
- The Representative Claimant will give day-to-day instructions to the Legal Representative and will make binding decisions on behalf of the Claimants (cl 5.1(b)).
- The Claimant will provide all information and documents the Legal Representative requires, will deal promptly with all requests the Legal Representative makes and will cooperate generally with the Legal Representative (cl 6.1(n)).
- The Claimant will act reasonably and commercially in the prosecution of the Proceedings and in accordance with the Legal Representative's advice (cl 6.1(d)).
- The Claimant will accept and follow the Legal Representative's reasonable legal advice, including in relation to settlement (cl 6.1 (j)).
- The Representative Claimant is authorised to make or take any action constituting a settlement decision provided the Legal Representative has advised such action is reasonable (cl 13.1).
- The Legal Representative is authorised and instructed to accept on the Claimant's behalf any settlement proposed where the Claimant has not initially wanted to act in accordance with the advice of the Legal Representative and the matter has been referred to independent counsel for opinion, with the independent counsel having recommended that the Legal Representative's advice is reasonable in all the circumstances (cl 13.3 and 13.4).

45) In addition, each Claimant agreed under the Funding Agreement that the Fund is entitled to communicate directly with the Legal Representative (cl 5.1.(c)) and is entitled to receive any information that has or may have a material impact on the Claim or the Proceedings (cl 6.1(c)).

Relationship Agreement between the Legal Representative and the Fund

46) The terms and conditions in the Relationship Agreement are consistent with the above provisions in the Funding Agreement. The Relationship Agreement provides that the Legal Representative must:

- act consistently with all authorisations and instructions the Claimant gives and as contemplated in the Funding Agreement subject to having received such instructions or authorisations (cl 2.4);
- enter into a retainer with a Claimant only if the Claimant gives the Legal Representative all the authorisations and instructions contemplated and referred to in the Funding Agreement (cl 2.5);
- ensure the Claimant is given all necessary information to facilitate informed instructions (cl 8.2);
- keep the Fund fully informed by providing a monthly report in the form set out in the Relationship Agreement (cl 8.1(a));
- give the Fund access to and, when requested, provide the Fund with copies of all material documents produced by or for the Claimants in relation to the proceedings (cl 8.1(b));
- inform the Claimant immediately, and in accordance with the Claimant's instructions as contemplated in the retainer and the Funding Agreement, notify the Fund if the Legal Representative becomes aware of any information that has or may have a material impact on the Claim (cl 8.2(b));
- notify the Fund immediately if the Claimant receives a settlement offer, prepare for the Claimant a written recommendation on whether to accept such an offer and provide a copy of that recommendation to the Fund (cl 8.1(e)).

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

(a) None of the General Partner, the Limited Partners of the Fund, the Investment Advisor or the Sub-Advisor is resident in New Zealand for income tax purposes.

(b) None of the General Partner (whether on its own account or on behalf of the Fund), the Investment Advisor or the Sub-Advisor owns or leases any property in New Zealand.

(c) None of the General Partner (whether on its own account or on behalf of the Fund), the Investment Advisor or the Sub-Advisor has any employees based in New Zealand.

How the Taxation Laws apply to the Arrangement

Subject in all respects to any conditions stated above, the Taxation Laws apply to the Arrangement as follows:

(a) Any share of the Proceeds received by the Fund and the Limited Partners under the Arrangement is "non-residents' foreign-sourced income" under s BD 1(4).

(b) Any share of the Proceeds received by the Fund and the Limited Partners under the Arrangement is not assessable income under s BD 1(5).

(c) Any share of the Proceeds received by the Fund and the Limited Partners under the Arrangement is not "interest" as defined in s YA 1.

(d) Section BG 1 does not apply to the Arrangement.

The period or income year for which this Ruling applies

This Ruling applies for the period beginning on 24 October 2020 and ending on 23 October 2025.

This Ruling is signed by me on the 26th day of January 2021.

Dinesh Gupta
Tax Counsel Lead, Tax Counsel Office

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 matter. A Commissioner's Statement is not a consultative document.

CS 21/01: Income tax treatment of facilitation payments to farmers and debt remission on settlement of a loan

This Statement sets out the Commissioner's approach to facilitation payments to farmers and debt remission arising from the settlement of loans to farmers.

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

Summary

1. This Statement sets out the Commissioner's position on the income tax treatment of facilitation payments to farmers – these are payments made by a lender (typically a bank) to a farmer to assist in the sale of the farmer's business or assets in order to settle their debt with the lender.
2. Because of the financially distressed position of the recipient, the settlement may also involve the lender forgiving part of the loan.
3. The Commissioner considers that these facilitation payments are taxable income to the recipient.
4. Furthermore, the forgiveness of the debt by the lender (in full or in part) may also result in remission of debt income to the borrower under that loan agreement.
5. The purpose of this Statement is to alert payers and recipients of these facilitation payments of their income tax implications.
6. The Commissioner has become aware of such payments being made by banks to financially distressed farmers, so this Statement is in response to that specific context. Similar principles (and therefore treatment) could apply to other facilitation payments in other areas. These may be subject to further guidance in the future.

Background

7. To assist a farmer in selling their business and assets in an orderly manner and in settling their debt, a lender may agree to pay a facilitation payment to the farmer. The payment could also act as an incentive to ensure, where the assets in question include land, that the farmer provides vacant possession when the property is sold.
8. This payment may be made in the form of cash, or in kind (such as for example cattle). The payment is not always made directly to the borrower itself (which may be a company or trust that owns the farm or business). It may instead be made to someone associated with the borrower such as a shareholder of the company or beneficiary of the trust.
9. As part of the settlement with the borrower, the lender may also agree to forgive a portion of the debt that would otherwise be payable.

The Commissioner's view of facilitation payments to farmers and remission of debt income

10. The issue that arises is whether a facilitation payment in the context of such debt restructuring is taxable income to the recipient.
11. The taxation consequence of any debt being forgiven or remitted should also be considered.
12. The Commissioner's view is that facilitation payments will be taxable income to the recipient under the financial arrangement rules in the ITA07. Any debt forgiveness or remission under the settlement with the lender will also be income to the borrower under the financial arrangement rules.[1]
13. The reasons for this view are explained in the following section of this Statement.

[1] Strictly speaking the facilitation payments are "consideration" for the purposes of determining whether there will be income under the financial arrangement rules. Debt forgiveness or remission is also taken into account as part of that process.

Analysis

14. A loan is a common financial arrangement between a lender and a borrower. As a result, the financial arrangement rules must be applied to work out the income and expenditure from the financial arrangement for the lender and the borrower.
15. The financial arrangement rules require the parties to identify all consideration paid to a person or by a person "for or under" the loan. The definition of "consideration" in the financial arrangement rules is wide.
16. If the borrower is the person who receives the facilitation payment, the Commissioner considers that the payment will be part of the consideration "for or under" the loan. This is because the facilitation payment is made with regard to or in accordance with the financial arrangement - the facilitation would not be made without the loan's existence and ensures that the loan is settled promptly.
17. The financial arrangement rules will apply to include the facilitation payment as income to the borrower.[2] The borrower will need to complete a calculation (referred to as a base price adjustment or BPA) in the income year that the loan is settled between the lender and the borrower – the formula for this calculation is set out in section EW 31.
18. A facilitation payment can also be made to someone other than the borrower – for example if the borrower is a company or trust and the payment is made to the shareholder or beneficiary respectively. The Commissioner still considers that the financial arrangement rules apply as the payment will likely be part of a composite or wider financial arrangement because it is interdependent and interconnected to the repayment of the loan.
19. The payment has sufficient connection with the wider financial arrangement to be consideration "for or under" a financial arrangement for similar reasons set out above.
20. This means that the recipient of the facilitation payment will also need to complete a BPA. The recipient derives income from a financial arrangement that must be allocated to the relevant income year.
21. In addition to the above, any forgiveness or remission of debt by the lender will result in income from the loan for the borrower. This is because the amount of debt forgiven or remitted by the lender must be taken into account by the borrower in completing the BPA.
22. The result will be tax to pay unless there are enough deductible expenses or losses to offset against the income arising from the facilitation payment and the debt forgiveness or remission. Where the BPA results in tax to pay, the recipient should include that amount in their income tax return.

Financial Relief

23. When they file their income tax return, recipients of facilitation payments may have income tax to pay. Recipients of these payments may be in a position of financial distress, so it is important that they contact a tax professional or Inland Revenue as soon as possible to discuss the situation. The Commissioner may be able to provide assistance if they are not able to pay on time, such as entering into an instalment arrangement for the amount to be paid off over time and may (depending on the circumstances) be able to write off or remit amounts owing so that they don't need to be paid.

Application

24. This Statement sets out the Commissioner's position on facilitation payments made to a farmer and remission of debt income upon settlement of a loan, including where these took place prior to the release of this Statement.
25. The Commissioner will continue to apply this position to all cases.
26. 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.

Tony Munt
National Advisor, Technical Standards

Date of Issue: 18 February 2021

[2] Under section CC 3 of the ITA07.

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.

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