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

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

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

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

Your opportunity to comment

Ref	Draft type	Title	Comment deadline
PUB00401	Determination	Foreign exchange rates	11 October 2021
ED0235	Operational statement	Reporting requirements for domestic trusts	30 November 2021

IN SUMMARY

IN SUMMARY (continued)

NEW LEGISLATION

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

Child Support Amendment Act 2021

Overview

The child support scheme helps to provide important financial support for over 185,000 New Zealand children.

Since its introduction in 1992, the scheme has been progressively adjusted to increase simplicity, to encourage greater compliance and reflect societal changes. For example, following the Child Support Amendment Act 2013 the child support formula now takes into account both parents' income, up-to-date costs of raising children and a greater range of care levels.

Child support moved to Inland Revenue's new systems and processes in October 2021. This move allows a greater degree of efficiency and simplicity, and also creates opportunities for legislative changes to further improve the administration of the child support scheme.

The 2017 discussion document *Making Tax Simpler: Better administration of social policy*[1] contained proposals aimed at improving the way social policy entitlements and obligations, including child support, are administered by Inland Revenue. The focus of the discussion document was not on changing the fundamental policy settings, but rather improving the administration of the scheme by taking advantage of the opportunity offered by the modernisation of Inland Revenue's systems.

Following public consultation, the finalised proposals were included in the Child Support Amendment Bill introduced in 2020. Collectively, the contents of that Bill aimed to improve the administration of the scheme and increase compliance with the scheme by reducing complexity and improving fairness

The Bill covered four important aspects of the child support scheme:

- simplifying the penalty rules
- introducing compulsory employer deductions
- limiting retrospective reassessments by introducing a time bar; and
- amending the definition of "income".

A number of technical amendments were also made to assist the administration of the scheme, including to work better with customers with unusual circumstances. Parliament passed the new legislation and the Child Support Amendment Act 2021 passed into law on 24 March 2021.

The amendments apply to financial support – that is, both child support and domestic maintenance.[2] The term "child support" is used for readability purposes.

All section references are to the Child Support Act 1991 unless otherwise stated.

Application dates

The application dates for the various measures in the Bill as introduced were intended to align with the transition of the administration of child support from Inland Revenue's old technology platform to its new one in April 2021. This was because the move to the new technology platform provided the opportunity for the changes. However, due to COVID-19, this move was delayed until the second half of 2021.

[1] Available at **taxpolicy.ird.govt.nz/publications/2017-dd-mts-9-social-policy/overview**

[2] Domestic maintenance refers to payments made by a person to a former partner. Inland Revenue administers domestic maintenance under Court orders registered in the New Zealand Family Courts and voluntary agreements.

Commencement dates for various measures in the new legislation have now been set by the Child Support Amendment Act 2021 Commencement Order 2021 and the Taxation (Budget 2021 and Remedial Measures) Act Commencement Order 2021.

Generally the changes relating to administration of the scheme apply from 26 October or 1 November, and for amendments that change the amount of child support apply from 1 April 2022. For example, the introduction of compulsory deductions of child support from salary and wages, have been brought forward from 1 April 2022 to 26 October 2021. Whereas the commencement dates for penalty changes, such as the introduction of a grace period and removing the rule that required that the penalty be at least $5, is 1 November 2021, as the system requires a full month for calculations. Incremental penalties have been removed from 1 April 2021. The commencement date for amendments that relate to the amount of child support assessed will remain as 1 April 2022, as that is the start of the next child support year.

The Act contains a number of minor remedial amendments, including corrections to cross references, which have a commencement date of 1 April 2021.

Child support penalties

Sections 134, 134AAA, 134B, 135, 135A, 135AB, 135DA, 135FA, 135G to 135O and 137

The child support penalty provisions have been amended with the following effects:

- For people new or returning to the child support scheme, a grace period will apply during which late payment penalties will not be charged.
- The timing of the initial penalty has been shifted so that the second stage of the penalty is imposed 28 days after the due date, rather than the current eight days.
- Incremental penalties have been repealed and will no longer be imposed each month.
- The rule that the penalty be at least $5 has been repealed.
- The penalty write-off rules have been simplified.

Background

If a person does not pay their child support on time, penalties apply.

Before the Child Support Amendment Act an initial penalty of 2% was imposed the day after the due date and, if payment is not made, a further 8% initial penalty was applied eight days after the due date. Incremental penalties were also applied as follows:

- from one month after the due date and for the next 11 months, an incremental penalty of 2% of the outstanding amount including penalties was imposed; and
- from 13 months after the due date, further incremental penalties were applied at 1% of the outstanding amount including penalties each month.

The objective of child support penalties is to provide an incentive for parents to meet their obligations. However, an overly punitive and complex penalty regime can have the reverse effect.

Research undertaken by Inland Revenue showed that customers felt that the penalty rules were overly harsh. The compounding nature of incremental penalties and the accruing debt could result in liable parents disengaging with their child support obligations.

Some of the penalty rules were also unfair. The $5 minimum penalty rule for instance meant that some people were disproportionately penalised as the penalty imposed was more than 2%. For example, if the amount not paid was $100, rather than $2 the penalty imposed would have been $5.

In addition, write-off provisions were available but were difficult to understand and to apply. Most of the penalties imposed could be written off.[3]

[3] A table outlining the former write off provisions and their application can be found on pages 9 and 10 of the supplementary commentary on the Child Support Amendment Bill **taxpolicy.ird.govt.nz/publications/2020/2020-commentary-child-support-bill-supplementary**

Key features

Grace period

When parents separate and the child support process is started, peoples' situations are often in flux and many feel unprepared to make payments immediately. A grace period has therefore been introduced so that late payment penalties will not be applied for people new or returning to the child support scheme. This will apply to periods starting on or after 1 November 2021. The grace period will start on the first due date and will apply for the following 60 days.

The grace period will apply:

- when a person is first made liable for child support under the child support scheme
- at any time during a child support assessment when a person first becomes a liable parent after a period of being a receiving carer; or
- if after a period of not having an ongoing child support assessment, a person re-joins the scheme and is made liable for payments.

If the person is assessed as the liable parent but has no child support payable, the grace period will begin from the date of assessment. This may happen when parents have shared care of their child and the formula determines that neither parent needs to pay the other.

The grace period will not apply if:

- a person is currently a receiving carer but is, for example, reassessed to pay an increased amount for a past period when they were a liable parent; or
- a parent is already liable to pay child support and is made liable to pay child support for another child, either within, or outside of, the existing assessment.

Late payment penalties will start being charged on a person's child support obligations that become due after the expiry of the grace period. Penalties will not be charged on an outstanding amount that was due to be paid during the grace period.

A person may qualify for more than one grace period – for example, if they join the scheme, leave and then re-join the scheme.

The aim of the grace period is to provide an opportunity to work with customers to help get them on track with their payments. However, it does not prevent Inland Revenue from taking enforcement action (such as deductions from bank accounts) if appropriate.

Timing of the second stage of the late payment penalty

The amendment shifts the second stage of the penalty to 28 days after the due date, rather than the current eight days after the due date.

Providing more time before the second stage of the initial penalty is imposed gives Inland Revenue time to contact the customer and explain payment options (for example, deductions from a bank account or a payment arrangement involving deductions from salary and wages) and the consequences of not paying (the imposition of the 8% penalty and possible recovery action), with the aim of working with the person to get them back on track.

Repeal of child support incremental penalties

Incremental penalties will no longer be charged each month that amounts are not paid. The change applies to unpaid amounts due on or after 1 April 2021. That is, penalties will not be applied to:

- new debt arising on or after 1 April 2021; and
- existing unpaid amounts due before 1 April 2021.

Penalties imposed before 1 April 2021 will remain.

The 2% and 8% penalties (formerly initial penalties) have been retained. As child support is due each month, if a person is late paying month-after-month, Inland Revenue is able to take appropriate follow up action with the person when initial penalties are imposed.

Repeal of the $5 rule

Penalties play an important role in encouraging parents to meet their child support obligations. However, excessive penalties can discourage the payment of child support to the detriment of the children concerned.

The rule that required that the penalty charged by at least $5 meant that some penalties imposed were disproportionate to the amount unpaid.

The $5 minimum penalty rule has been repealed. This means that the penalty charged the day after the due date will be 2% of the unpaid obligation.

Simplification of the penalty write off rules

The child support penalty write-off rules have been simplified to allow for the write-off of penalties when:

- there was a reasonable cause for the late payment
- the late payment was due to the failure of another person to make a deduction
- the late payment was due to an honest mistake by the liable parent
- an error was made by Inland Revenue
- a person is in serous hardship
- it is an inefficient use of Inland Revenue's resources to collect the penalty when the child support assessed has been written off under section 180A; or
- the receiving carer has uplifted the debt, or waived the right to the payment, to which the penalty relates and a write-off is fair and reasonable.

To ensure parents who are charged penalties on or before 31 March 2021 are not worse off under the new rules, a "fair and reasonable" penalty write-off provision has been retained that can only be used to write off penalties charged on or before 31 March 2021.

Application date

The repeal of incremental penalties and the simplification of the penalty write off rules apply from 1 April 2021.

The other changes to the penalty rules (being the introduction of the grace period, moving the timing of the second phase of the penalty and the repeal of the rule that the penalty be at least $5) apply from 1 November 2021.

Compulsory deductions for newly liable parents

Sections 129 and 129A

A newly liable person, who earns salary or wages, will pay their child support by automatic deduction from the source deduction payments made by their employer. There is a discretion to allow payments by another method, if source deduction is not appropriate for a person.

Background

Previously, employers made deductions of child support from salary or wages when a liable person was in debt or a customer chose this payment option. Deductions were also compulsory for liable parents on a benefit.[4]

Compulsory employer deductions of child support from source deduction payments (salary, wages and schedular payments) were proposed and then removed from the 2013 child support reforms – largely because at that time the monthly PAYE system meant they could not be effectively administered.

However, recently Inland Revenue implemented pay day reporting which allows compulsory deductions for a person newly liable for child support to be administered effectively.

Compulsory deductions will assist liable parents first entering the scheme by helping them get their payments right from the start and avoid them going into debt. Compliance for newly liable parents in the first few months is currently very low – less than a third pay on time.

[4] A benefit includes a Veteran's Pension or New Zealand Super.

NEW LEGISLATION

The discretion to allow payment by another method will provide flexibility to consider other options for payment, when source deduction is not appropriate for a person.

Key features

Employers will make child support deductions from the pay of a liable person.

A person will be required to pay their child support by source deductions if:

- they are first made liable for child support under the child support scheme on or after 26 October 2021
- at any time during the course of a child support assessment they become a liable parent after a period of being a receiving carer (as long as this is on or after 26 October 2021); or
- if after a period of not having an ongoing child support assessment they re-join the scheme (after 1 April 2021) and are made liable for payments.

People who were liable to pay child support before 1 April 2021 and who are compliant with their obligations may continue to choose to pay by another method.

In some cases it may not be appropriate for the deduction to be made – for example, if the person has multiple employers or for privacy reasons. Therefore, Inland Revenue has the discretion to determine that the compulsory deduction rules do not apply (and alternative arrangements will be made to collect child support). If the person subsequently defaults, compulsory deductions will then be applied.

Application date

The amendment applies from 26 October 2021.

Time bar for reassessing child support

Sections 87, 87A and 96BA

Reassessments of child support have been restricted to four years from the end of a relevant child support year. This will be subject to legislative exceptions.

Background

Previously, if relevant information was provided Inland Revenue could amend an assessment as far back as 1992 (when the Child Support Act came into force). Reassessments can occur for a variety of reasons – for example, changes in income, changes in care arrangements and parents reconciling. This unrestricted ability to amend assessments created uncertainty for parents. It also resulted in additional administrative costs. In some cases, there was no change in the amount to be paid as a result of the reassessment because, for example, the liable person had been assessed to pay the minimum child support amount.

Key features

Reassessments of child support are now restricted to a four-year period. The four-year period will start from the end of the relevant child support year. Beyond the four-year period, reassessments will not occur – that is, the year will be time barred, subject to specified exceptions. A time bar for reassessing child support provides more certainty for parents and reduces administration costs, while balancing equity concerns through specified exceptions.

Reassessments for a year could still occur after the end of the four-year period if one of the following exceptions apply:

- information provided by a person in the child support assessment is fraudulent or wilfully misleading
- if types of income, for example, rental income, have not been included in a person's child support assessment
- a person who is part of the child support assessment has died
- a person should never have been made liable – for example, a person is subsequently found not to be the parent of a child
- an amendment is required for the purpose of avoiding a double liability (for the same child at the same time) with an overseas jurisdiction
- Inland Revenue has not met the notification requirements
- a Court order is received that applies to an earlier time-barred period
- a new child support assessment should result in the reassessment of an existing assessment that is time barred; or

- the exemption from paying child support for victims of sex offences should otherwise apply.

The rights to object to a decision or an assessment that Inland Revenue has made and to appeal to the Family Court also still apply.

The time bar will also restrict administrative, and Commissioner initiated administrative reviews[5] – that is, there is a four-year period in which to seek an administrative review.

Once the time bar is in effect, a person will be largely unable to apply for an administrative review for the time-barred period. However, there is also a four-month limit to apply for an administrative review of an assessment that relates to a period that is time barred. The application must be made within four months of the date of the latest notice of assessment.

The four-month limit will not apply to administrative reviews applied for within the non-time-barred four years. But, when the time bar will otherwise be in effect, parents will be permitted a small window to apply for an administrative review when appropriate.

This will ensure that the policy intent of the time bar is achieved, that is, to provide a limited time period for reassessments, which results in more certainty for parents.

Example 1

On 1 January 2024 Inland Revenue notifies Jane of an assessment for the child support year 1 April 2017 to 31 March 2020. The assessment is dated three months before the period will become time barred (1 April 2024).

Jane has four months from 1 January (the date she was notified by Inland Revenue) to apply for an administrative review. That is, she could apply for an administrative review up until 30 April 2024 (one month after the period has become subject to the time bar).

Example 2

On 1 December 2023, Inland Revenue notifies Hector of a reassessment for the child support year 1 April 2014 to 31 March 2015. The reassessment arises following an audit where it was identified that none of Hector's rental income had been included in his income tax assessment. Therefore, one of the exceptions to the time bar applies.

The assessment relates to a time-barred period. Hector has four months, starting from 1 December 2023 (the date of notification) to apply for an administrative review for the time barred child support year.

The time bar is broadly consistent with the time bar for income tax which restricts reassessments to four years after a person has provided their income tax return.

Application date

The amendment applies from 26 October 2021.

Definition of income

Sections 2, 34, 35, 35B, 36, 37, 38, 39, 40AA, 40 to 43, 44A, 88A, 105, 106 and 106A

The definition of "income" used for child support purposes has been amended to better reflect a parent's financial capacity by incorporating investment income for all parents and no longer offsetting losses from earlier years.

Background

Previously, for parents whose only income is from income that has had tax deducted at source, only their employment income was included in their child support assessment. That is, interest and dividends subject to resident withholding tax were excluded. This is because, in the past, interest and dividend income was not generally known until the end of the tax year. However, from 1 April 2020 interest and dividend income information has been reported to Inland Revenue on a monthly basis. This means interest and dividends can now be taken into account.

[5] "Administrative review" is the term used to describe the process when a person makes an application for a departure from the formula under the Child Support Act 1991.

Under the previous rules tax losses from prior periods were taken into account which could a reduce a person's income for child support purposes.

One of the objectives of child support is that the level of financial support that parents provide for their children is determined according to their relative financial capacity. Reducing a person's income by deducting tax losses that have been occurred in earlier periods was at odds with that objective.

The amendments also more closely align the definition of "income" used for child support purposes with that used in other social policies such as Working for Families tax credits.

Key features

The definition of income used for child support purposes has been amended to better reflect a parent's financial capacity.

If a person's income in the tax year before the child support year is only from income that has had tax deducted at source, the income used to determine their child support obligation or entitlement will be their employment income plus any interest and dividend income (subject to resident withholding tax) from the calendar year immediately preceding the child support year.

For parents whose income is from other sources (for example, they are self-employed), any losses carried forward from an earlier year will be ignored for the purposes of determining the income to be used to calculate child support obligations.

Application date

The amendment applies from 1 April 2022.

Accepting an estimation

Section 40

When a person joins the child support scheme, an estimation will be able to be backdated to the start of the new assessment, if Inland Revenue receives the estimation within 28 days of the notification of the assessment. This means that a person (a liable parent or receiving parent) will have at least 28 days to estimate their income when child support is first assessed.

Background

The child support formula assessment uses both parents' income, based on the previous year's income. However, if a parent's income is eighty-five percent or less than what they have been assessed on, they may estimate the amount they expect to earn for the remainder of the year.

Previously, if an estimate was given before the start of the child support year, it applied from the beginning of that year. Otherwise, it applied from the beginning of the month in which the estimate was given.

In some circumstances, a person new to the child support scheme may have lost the opportunity to estimate for periods (generally the previous month), because they received their first notice of assessment or entitlement after their first month of liability or entitlement had already ended.

The amendment will mean that a person (a liable parent or a receiving parent) has at least 28 days to estimate their income when child support is first assessed.

Key features

When a person joins (or re-joins) the child support scheme an estimation will be able to be backdated to the start of the new assessment if Inland Revenue receives the estimation within 28 days of the notification of the assessment. This means that a person (whether a liable parent or receiving parent) will have at least 28 days to estimate their income when child support is first assessed.

Once 28 days has passed the normal rules will apply and the estimate will only be able to be backdated to the beginning of the month in which the estimate is given.

Application date

The amendment applies from 1 April 2022.

Reconciling an estimation at the end of the year

Section 44

The amendment introduces a "reconciliation period" to ensure that if a parent has estimated their income for child support, the income used for the end of year reconciliation will reflect what was earned over the period the estimate applies to.

Background

The child support formula assessment uses both parents' income, based on the previous year's income. However, if a parent expects their income to reduce by fifteen percent or more for the year, they may estimate the amount they expect to earn for the remainder of the year. A parent may estimate more than once during the year. At the end of the year there is a reconciliation of the estimate and the actual income earned in that period.

Key features

When a parent has estimated their income for child support, the reconciliation will be completed on the basis of a "reconciliation period" rather than an "election period". This will ensure that the period being squared up reflects the number of days for which the estimation is in effect.

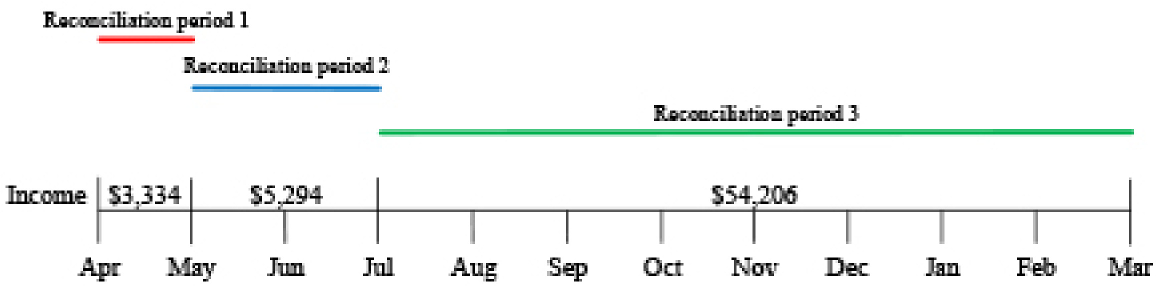
The reconciliation period will be from the start of the month in which the estimate was received until the day before the next estimate. If there is only one estimate, or it is the last estimate in a year, the reconciliation period will be from the start of the month in which the estimate was received until the end of the child support year.

The formula for reconciliation has been changed so that the income used reflects the amount received over the reconciliation period (rather than considering income received after the reconciliation period has ended, as can currently occur). The amended formula will divide income received over the reconciliation period by the number of days within the reconciliation period and then multiplied by 365 to achieve an annualised income.

If the actual income a parent earned at the end of the year is more than what they were originally assessed on (before they chose to estimate), the reconciliation income will still be that from the original assessment.

This outcome is illustrated in figure 1.

Figure 1: Outcome of the proposed reconciliation period



	Reconciliation period 1	Reconciliation period 2	Reconciliation period 3
Length of period	30 days	61 days	274 days
Income derived in period	$3,334	$5,294	$54,206
Year to date income	$0	$3,334	$5,294
Formula used	((a – z) ÷ b) × 365	((a – z) ÷ b) × 365	(a – b) × 365
	((3,334 – 0) ÷ 30) × 365	((5,294 – 3,334) ÷ 61) × 365	(54,206 ÷ 274) × 365
Annualised income	$40,563.67	$11,727.87	$72,208

Detailed analysis

If a person elects to estimate their income, the estimate is reconciled at the end of the year to determine if child support has been under or overpaid. The reconciliation was completed on the basis of an "election period".

An election period for an estimate meant either:

- the child support year – if the estimate was submitted before the start of the child year or in the first month of the child support year; or
- the period starting on the first day of the month in which an estimation was submitted to the last day of the child support year.

The income to be used in the reconciliation is the income received over the election period.

Once the income for the election period is identified, the amount is divided by the number of days within the election period and then multiplied by 365 to achieve an annualised income.

The election period was appropriate when a person estimates once in a child support year. However, if there had been multiple estimations in the year, all but the final election period extended for a longer period than the estimation relates to. Therefore, this did not reflect what was earned in the period the estimate relates to.

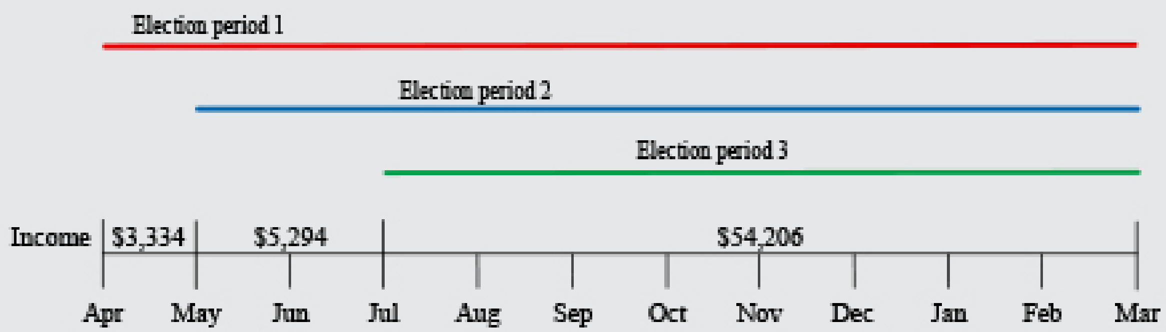
This meant that a person's income used in the reconciliation could reflect more income or less income than was actually earned in the period the estimate relates to.

Example 3 demonstrates this.

Example 3: Current reconciliation rules with multiple election periods

Jorge has estimated three times in a given year: Estimate 1 begins on 1 April, Estimate 2 beings on 1 May and Estimate 3 begins on 1 July. At the end of the year Jorge has earned $62,834; the amount earnt in each election period is shown in figure 2.

Figure 2



In practice, Estimate 1 is only in force until Estimate 2 begins. However, the election period used when reconciling Estimate 1 is the full child support year. As such, Estimate 1 is reconciled on the whole year's actual income, not the $3,334 earned in April which annualised would be $40,563.

Application date

The amendment applies from 1 April 2022.

Commissioner-initiated debt offsetting between people

Sections 105, 106B and 152B

The current administrative review ground which allows for child support amounts to be offset, has been replaced by a provision permitting Inland Revenue to complete an offset without the person having to apply for an administrative review, when two people owe each other child support (whether or not the amounts have become due and payable).

Background

Previously, a parent needed to apply for an administrative review to request that a child support amount they owe another parent be offset by the amount that parent owes to them. Administrative review is a process when a person's formula assessment can be changed, on application by the parent to better fit a person's specific situation, through determination by Inland Revenue.

The ground was introduced in 2016 but had been largely unused.

Permitting Inland Revenue to initiate an offset of the debts will be simpler to administer, easier for customers to understand, and be more effective at reducing debt.

Key features

The current administrative review ground, which allows for child support amounts to be offset, has been replaced by a provision permitting Inland Revenue to complete an offset when two people owe each other child support (whether or not the amounts have become due and payable). The offset will net out child support amounts two people owe each other rather than require an adjustment to any formula assessment (as is required with an administrative review). The person owing the greater amount will be required to pay the difference.

As with the previous legislative settings, an offset will not be able to be exercised for any payments that are to be retained by the Government to cover the costs of benefits paid to carers.

Application date

The amendment applies from 1 April 2022.

Repeal of redundant provision for urgent maintenance orders

Section 116

The provision which allows a person to apply to the Family Court for an urgent maintenance order if they have made an application for child support to Inland Revenue, but child support has not yet been assessed has been repealed.

Background

In 1992, the urgent maintenance provision was included in the Child Support Act to cover the period of transition when child support moved to Inland Revenue in case there were any unforeseen circumstances that meant Inland Revenue was unable to assess child support. An order under this provision has never been granted.

Repealing the provision simplifies the legislation.

Key features

The current provision for a carer to be granted an urgent maintenance order for a child if the Family Court rules that a child is in urgent need of assistance has been repealed, as it is redundant. Repealing the provision simplifies the legislation.

Application date

The amendment applies from 1 April 2021.

Changes to temporary exemptions

Sections 89A to 89D and 89F to 89H

Amendments have been made to the hospital patient and prisoner exemptions so that the exemptions will be available to liable persons who are overseas.

A new exemption has been introduced for people who have a long-term illness or injury who are unable to work, with similar income criteria to the existing exemptions.

These changes will make the exemptions more consistent and make the scheme simpler to understand.

Background

There are temporary exemptions from paying child support for hospital patients and long-term prisoners. These are on the grounds that a person has limited income and limited capacity to earn an income.

Previously, the exemptions for a person either in a prison or hospital for more than 13 weeks or more were only available to a liable person living in New Zealand.

To qualify for an exemption, a liable person who is a long-term hospital patient needs to have:

- nil income, or
- income only from investments (not exceeding the weekly average of the minimum weekly child support liability (currently $18)); or
- only income from the benefit payable to long-term hospital patients (currently $45.28 per week).

A liable person who is a prisoner needs to have:

- nil income
- income only from investments (not exceeding the weekly average of the minimum weekly child support liability (currently $18)); or
- only income payable under section 66 of the Corrections Act 2004.

Key features

The hospital patient and prisoner exemptions will be extended to qualifying liable persons who are overseas. The exemption will only be available if the liable person earns the equivalent of (or less than) the income currently allowed for New Zealand-based hospital patients or prisoners.

A new exemption has been introduced for liable persons who have a long-term illness or injury who cannot work (for 13 weeks or more) and who meet specific income thresholds. To be eligible for the exemption they must either have:

- nil income; or
- income only from investments (not exceeding the weekly average of the minimum weekly child support liability – currently $18).

As with the existing exemptions, the exemptions will not be available to liable persons who have any other income such as a main benefit (including a Jobseekers Allowance, Sole Parent Benefit, or Supported Living Payment).

Example 4

George receives a main benefit (supported living payment) of $308.91 per week. Because this amount is more than the minimum child support obligation per week, George does not qualify for the exemption for persons suffering from a long-term illness or injury.

A receiving carer can make an application requesting an exemption be overturned on the basis of the financial capacity of the exempted person. Inland Revenue can make a determination that an exemption should not apply, if the exemption would be inequitable because of the earning capacity, or financial resources of the liable person. This will also apply to the changes outlined above.

Application date

The amendment will apply from 26 October 2021.

Removal of mixed age expenditure

Sections 30(3), 30(4) and Schedule 3

The mixed age component of the expenditure table has been removed. This will ensure that costs of children are allocated appropriately between younger and older children.

Background

Child support obligations are based on various factors including the estimated costs of raising children. These estimated costs are reflected in schedule 3 of the Child Support Act. The table provides for expenditure for children aged 12 and younger or 13 and older.

The table provided expenditure for when a child support calculation included children from both age brackets, which was an average of the expenditure for the children in the other age brackets.

If a child support calculation included at least two children in the same child support calculation and they fell into different age brackets, the use of the mixed age table could have led to an inequitable outcome. For example, if the children did not live in the same household (for example, one child lived with the mother and the other with the father), the use of the mixed age table did not allocate costs appropriately to each child (although the total expenditure for all children was correct), with the result that the parent with the older child was not receiving the appropriate amount of child support.

The amendment will ensure that the costs are calculated appropriately for each child, based on their age, and will better reflect that costs are higher for older children. In cases when children live in different households, it will ensure that the household with the younger child does not benefit from being allocated some of the expenditure intended for the older child.

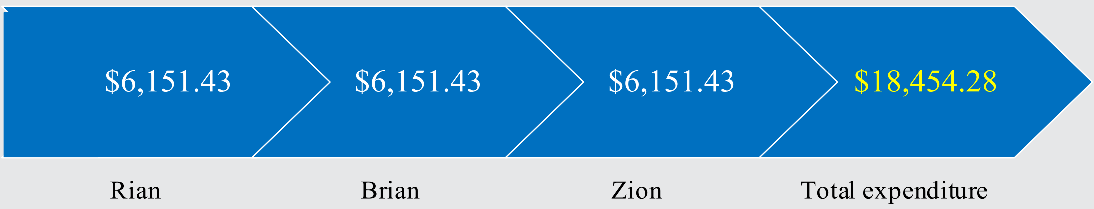
Example 5

Ioane and Krystal have three children together: Rian (aged 15), Brian (aged 14) and Zion (aged 10). Rian and Brian live with Ioane 100% of the time, and Zion lives with Krystal 100% of the time. Since all three children share the same parents, they form a child support group. Child expenditure would have been calculated as a total figure for the group. When determining child expenditure for the group, the mixed age expenditure table would have applied. Ioane and Krystal have a combined child support income of $63,634.

For the child support year 1 April 2020 – 31 March 2021, child expenditure for the group was **$18,454.28**.

This figure would have been divided by three to find individual expenditure figures for each child, as shown in figure 3.

Figure 3



As Zion lives with his mother Krystal, the individual figure $6,151.76 would have been used in the formula to determine the amount of child support payable for him. This amount was greater than would have been reached using the table for children aged 12 or younger, which would have been **$5,620.75**.

The reason this figure is lower than the amount reached under the mixed age expenditure table is because expenditure figures in the mixed age table were higher than the table for children aged 12 or younger to account for the costs of children aged over 13. This meant that when the total figure is divided between the number of children in the child support group, children 12 or younger were allocated greater expenditure than their age would have normally entitled them to.

Conversely, Rian and Brian are allocated expenditure of $12,303.52, which is less than would have been allocated if the table for children aged 13 or older were used. That figure would have been **$13,362.87** (this figure includes expenditure for both Rian and Brian).

This meant that Krystal's higher expenditure figure for Zion would have resulted in a higher entitlement, and Ioane's lower expenditure figure for Rian and Brian would mean a lower entitlement.

This outcome was not a problem when a parent cared for all children in a child support group, as that parent incurred the costs associated with all children. However, when children live with different parents, a parent who cared for children 12 or younger would have benefitted from higher expenditure because of the costs associated with children they do not care for, and the parent who cares for children 13 or older would have been disadvantaged.

Key features

The mixed age component of the expenditure table has been removed.

Costs will be calculated for each child based on their age, using the applicable expenditure table for their age.

Application date

The amendment applies from 1 April 2022.

Discretion to adjust child expenditure calculations

Sections 35B(2A) and (2B)

Inland Revenue has been given the discretion to adjust child expenditure calculations when children live in different care arrangements which result in the formula not achieving the intended outcome.

Background

In several places, the child support formula uses a child expenditure figure to account for the cost of raising children. Child expenditure is derived from the child expenditure table set out in the Act. Child expenditure increases as the number of children in a parent's care increases. However, the amount is based on economies of scale, so each subsequent child increases child expenditure by a progressively smaller amount.

Example 6

In the 2020 child support year, a parent earning $61,351.00 per annum caring for dependent children aged under 12 would be permitted a dependent child allowance of:

- $9,816.12 for one child
- $14,417.20 for two children; and
- $16,257.25 for three or more children.

The expenditure table does not provide individual child expenditure figures. However, these can be calculated from the difference between total figures:

Figure 4

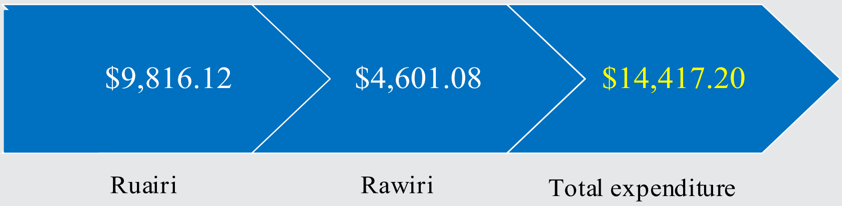
Although expenditure calculations serve the majority of cases, in some complex situations these calculations produced unintended outcomes. This can occur in situations when the care arrangements for children are particularly complex. For example, if a parent has two dependent children in their care full time, and a third dependent child enters their care on a shared care basis, that parent's dependent child allowance can decrease, when it might otherwise be expected to increase or at least stay the same.

This occurred because of how the formula for calculating the dependent child allowance apportions total expenditure amongst the children concerned. The formula divides expenditure equally between each child. Expenditure is granted to the parent as a dependent child allowance in proportion to the amount of time they care for each relevant child. However, because subsequent children increase child expenditure by a progressively smaller amount, the formula deducts the proportion of time from a greater share of total expenditure than the child has contributed.

Example 7

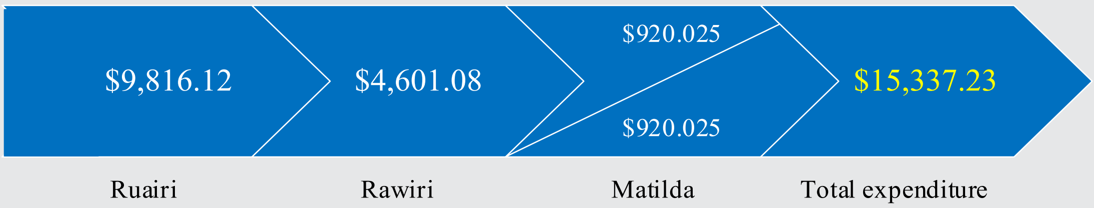
Carol earns $61,351 and has two dependent children in her care, Ruairi and Rawiri. Carol has a dependent child allowance of $14,417.20.

Figure 5



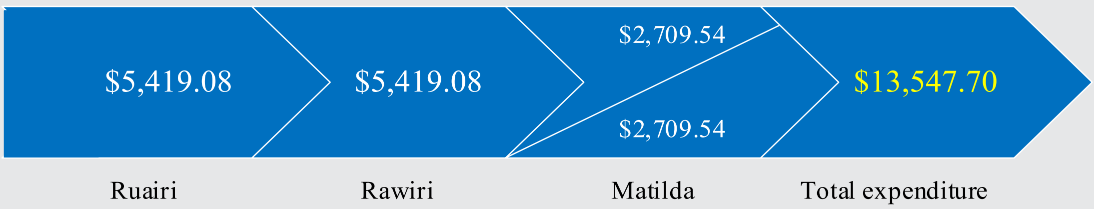
Carol's daughter Matilda comes to live with her fifty percent of the time. It could be reasonably expected that Carol's dependent child allowance would have increased by fifty percent of the expenditure permitted for Matilda (in this instance, around $920).

Figure 6



However, this was not the outcome reached. Since the formula for the dependent child allowance divided expenditure equally amongst the children, Matilda was allocated an equal third of total expenditure, of which Carol is permitted only fifty percent (in this instance, $2,709.54). As such, Carol's dependent child allowance decreased from $14,417.20 to $13,547.70, even though there is an additional child in her care.

Figure 7



The administrative review process is not a suitable mechanism to address this problem because administrative reviews enable factors outside of the standard child support formula to be taken into account. This problem is not the result of a factor beyond what the formula ordinarily considers but is the result of complex interactions within the current formula.

The discretion allows Inland Revenue, in certain situations, to modify the expenditure amount used in child expenditure calculations. The discretion is designed to address situations in which the application of expenditure calculations results in an unintended and unjust outcome.

Key features

The amendment will allow discretion for Inland Revenue to adjust child expenditure calculations in situations when complex care arrangements for children in the same calculation are not adequately accounted for.

This discretion will only be applied when there are exceptional circumstances and the outcome would be unjust or inequitable if the calculations were not modified.

Application date

The amendment applies from 1 April 2022.

Clarifying that child support ends when a child leaves state care

Section 25(1)(c)

The amendment clarifies that child support will stop for a qualifying child when the child leaves State care.

Background

The Child Support Act provides that in situations when a child's care arrangement is changed, the new care arrangement should be updated and the child support should continue – taking into account the change in care. Notifications of the child support assessment based on the child's new care arrangement are issued to the parents.

However, when a child leaves State care and is placed with one of the parents, Inland Revenue practice is to stop the child support that parents are paying to the State (the receiving carer in these cases). This practice is followed due to potential safety concerns for the child and their carer that may arise out of the need to notify the change in the child's care arrangements.

If the parent with the child in their care would like to receive child support, they are able to apply.

However, Inland Revenue's approach was not consistent with the legislative provisions.

Clarifying that child support should end when a child leaves State care reinforces the current practice and protects the safety of the child.

Key features

The clarification confirms that child support stops for a qualifying child when they leave State care.

If the child is subsequently going to be cared for by one of the parents, that parent is able to apply for child support if they wish to receive payments. Clarifying that child support should end when a child leaves State care reinforces the current practice and protects the safety of the child.

Application date

The amendment applies from 1 April 2021.

Timeframes for providing orders of parentage

Sections 19(3) to 19(7)

Court declarations of parentage will be required to be provided to Inland Revenue in a timely manner.

Background

A person cannot be made liable to pay child support unless Inland Revenue has received proof that the person is a parent as defined in section 7 of the Child Support Act.

In some cases, a person is named on the child support application but not initially considered liable, then through a subsequent Court order is declared the parent. That person's child support liability can be backdated to the date the child support application was received. This is regardless of how long it takes for the Court declaration to be given to Inland Revenue. This can lead to delays of many years and can create large debts for the liable parent.

The amendment removes the ability for the carer to delay giving Inland Revenue a parentage order in a timely manner knowing that child support can be backdated.

Introducing timeframes for parents and carers to provide orders of parentage addresses this and improves equity for parents.

Key features

The amendment means child support will only be backdated on receipt of a declaration of parentage if:

- the carer applied for the order either before or within two months of submitting their child support application; and
- having been granted, the order is given to Inland Revenue within two months.

Inland Revenue will have discretion to accept the orders outside the two-month period if there was reasonable cause for the delay – for example, if the applicant was seriously ill.

These rules will also apply to an order or declaration made by an overseas court or a public authority in an overseas jurisdiction.

If the two-month period is not met, child support will start from the date the Court order is given to Inland Revenue. Introducing timeframes for parents and carers to provide orders of parentage addresses this and improves equity for parents.

Application date

The amendments apply from 26 October 2021.

Introducing timeframes to advise of circumstances when child support first assessed

Section 81A and 88(3A)

A time limit for advising Inland Revenue of a person's circumstances that exist when they apply for child support has been introduced.

Background

When Inland Revenue is satisfied that a relevant change of circumstance has occurred (for example, the birth of a new dependent child or a change in care arrangements) the Child Support Act determines when the change is to be treated as having occurred. If a change is notified within 28 days of it occurring, it is recognised from the date it occurred.

However, this was not the case when the circumstance existed at the time child support was assessed for a person for the first time. In these situations, the assessment was considered incorrect and therefore was corrected from the start of the child support assessment. This could have caused overpayments to carers (for example, if a liable parent notified Inland Revenue that they are the carer of a dependent child that reduced their payments) or retrospectively increased obligations owed by liable parents (if a receiving parent likewise notified that they have always been the carer of a dependent child).

The amendment ensures consistency with the rules governing changes of circumstances that occur after the initial child support assessment. It also encourages parents to notify circumstances in a timely manner and improves certainty for parents and carers.

Key features

A liable parent or receiving carer has 28 days from the date of their notice of assessment to advise Inland Revenue of any existing circumstances that could affect their assessment for it to be back dated to the start of their assessment.

If notification is received after 28 days, it will only take effect from the date the notification is received by Inland Revenue.

The amendment ensures consistency with the rules governing changes of circumstances that occur after the initial child support assessment. It also encourages parents to notify circumstances in a timely manner and improves certainty for parents and carers.

Application date

The amendment applies from 26 October 2021.

Minimum age at which a child can be considered financially independent

Section 5(1)(c)

The minimum age at which a child can be considered financially independent has been aligned with similar rules in the Working for Families legislation.

There was no minimum age for when a child can be considered financially independent.

The amendment ensures that parents support their children financially until they are at least 16 years old.

Key features

A child will only be able to be considered financially independent for child support purposes when they have reached 16 years of age. This aligns with similar rules in the Working for Families legislation.

The amendment ensures that parents support their children financially until they are at least 16 years old.

Application date

The amendment applies from 26 October 2021.

Maximum age of qualifying child

Section 5(4)

The "maximum qualifying age" of a child for child support purposes has been more aligned with similar tests for Working for Families and main benefit recipients.

Background

A child ceased to qualify for child support when they turned 18 unless they were still at school. Once a child turns 18, child support ends the earlier of:

- when they leave school if they do not finish the school year
- 31 December of the year the child turns 18, if they finish the school year and they are not attending school the following year; or
- the day before the child turns 19, if the child is still in school until their 19th birthday.

Key features

If a child is aged 18 and enrolled at school, child support will stop on the earlier of:

- the day before the day they are no longer enrolled and attending school; or
- 31 December of the year in which the child turns 18, if they attend school until the end of the academic year.

This better aligns the child support "maximum qualifying age" of a child with similar tests for Working for Families and main benefit recipients.

Application date

The amendment applies from 26 October 2021.

Clarifying residence rules

Sections 218(6) to (10)

The child support residence rules have been clarified so that Inland Revenue can determine whether a person is ordinarily resident in New Zealand based on whether a person intends to be ordinarily resident or not.

Background

Inland Revenue's practice is that child support residency decisions are usually based on a person's intended movements. This is because residency for child support purposes needs to be determined in order to accept a child support application or end a child support assessment in a timely manner.

If this approach is not taken, a carer could have to wait up to 325 days before Inland Revenue could determine their residency status and then accept their application for support.

The amendment better reflects the current operational practice that a person's intention to be ordinarily resident (or not) should be taken into account.

Key features

Determinations of whether a person is ordinarily resident in New Zealand or not for the purposes of child support can be made if Inland Revenue is satisfied that a person intends to be ordinarily resident or not.

To determine whether a child is ordinarily resident in New Zealand, Inland Revenue will consider where the child is more likely to be living.

Application date

The amendment applies from 1 April 2021.

Minor remedial proposals

Sections 2(1), 35A, 89B, 89Z and 135JA

A number of minor remedial amendments have been made, including corrections to cross references.

Key features

- The definition of "social security beneficiary" had been repealed from section 2 of the Child Support Act. However, it is still referred to as being specifically defined in section 2(1) in sections 152B(2), 180(2)(a), 180(2)(b), 180(2)(c) and 180A(1)(a) of the Child Support Act. The Act has clarified that a social security beneficiary is a person in receipt of a social security benefit.
- The Child Support Amendment Act 2013 inadvertently removed a stipulation in the Child Support Act that the tax rate at which to gross the benefit rate for each year be the rate in force on 1 January of the preceding year. A clarification has been made so that the rate at which to gross up the appropriate benefit rate for the coming child support year will be the rate in force on 1 January of the preceding year.
- Section 35A(2) of the Child Support Act was updated as a consequence of the Social Security Act rewrite. However, that amendment inadvertently widened who qualifies for the higher rate of living allowance (which is based on the benefit payable under clause 1(c) of Part 3 of Schedule 4 of the Social Security Act 2018), so that it was payable to any beneficiary granted a supported living payment. It has been clarified that the higher rate of living allowance is limited to a single beneficiary with at least one dependent child, as intended.
- The Alcoholism and Drug Addiction Act 1966 was repealed and replaced by the Substance Addiction (Compulsory Assessment and Treatment) Act 2017. Consequentially, part (b) of the definition of "hospital patient" in section 89B of the Child Support Act was amended to "a patient within the meaning of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017" which has widened the definition. Part (b) of the definition of "hospital patient" has been amended to refer to a person who is "a resident in a treatment centre" under the Substance Addiction (Compulsory Assessment and Treatment) Act 2017.
- As a result of the repeal of sections 81 to 88 of the Tax Administration Act 1994 in 2019 and insertion of new provisions to deal with collection, use and disclosure of revenue information, some cross references in the Child Support Act were no longer correct:
  - Section 89Z(4) of the Child Support Act referred to the repealed section 85K of the Tax Administration Act 1994. The cross reference has been amended to refer to the new section 18H of the Tax Administration Act 1994 (which refers to schedule 7, part C of that Act).
  - The definition of "relevant payments" in section 135JA(1) of the Child Support Act referred to the repealed section 82(9) of the Tax Administration Act 1994 for the definition of "earnings related compensation". It has been amended to refer to schedule 7, part C, subpart 2, clause 41(9) of schedule 7 of the Tax Administration Act 1994.

Child Support (Reciprocal Agreement with Hague Convention Countries) Order 2021

The Order gives effect in New Zealand to the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (the Convention).

Background

The Convention is a multilateral treaty that provides for the recovery of child support and other forms of maintenance (such as spousal support) when the liable person resides in a different country to where the maintenance payment was raised. It:

- enables the recognition and collection of both administrative and court-ordered maintenance between member countries
- includes rules on judicial and administrative co-operation that should improve New Zealand's ability to assess and collect child support when liable parents are residing in member countries, and
- enables Inland Revenue to assess child support for New Zealand children whose liable parent is not a New Zealand citizen or resident and who lives in a member country.

The Convention was concluded in 2007 and was signed by New Zealand on 26 November 2019. The New Zealand international treaty examination of the Convention took place in early 2020.

Key features

The order declares that the provisions contained in the Convention have force and effect so far as they relate to New Zealand, and that the provisions of the Child Support Act 1991 (the Act) and of the regulations and orders in force under the Act have effect subject to modifications that are required for the purpose of giving effect to the Convention. It modifies the application of the Child Support Act 1991 for cases administered under the Convention to ensure reciprocity in respect of matters relating to child support and domestic maintenance.

Application date

The Order comes into force on 1 November 2021.

COVID-19 Resurgence Support Payments Scheme (August 2021) Amendment Order (No 2) 2021

The COVID-19 Resurgence Support Payments Scheme (August 2021) Amendment Order (No 2) 2021 came into force on 17 September 2021. This Order amended the COVID-19 Resurgence Support Payments Scheme (August 2021) Order 2021 (the **August Order**) to allow a second payment under the scheme.

Background

The August Order came into force on 24 August 2021 and activated the COVID-19 Resurgence Payments Support (RSP) scheme to provide grants to support businesses affected by the 17 August 2021 escalation in COVID-19 alert levels.

The COVID-19 Resurgence Support Payments Scheme (August 2021) Amendment Order 2021 came into force on 9 September 2021 and amended the August Order to expand the eligibility criteria of the RSP scheme to better support new businesses.

Refer to Tax Information Bulletin Vol 33 No 9 October 2021 for items on the August Order and the COVID-19 Resurgence Support Payments Scheme (August 2021) Amendment Order 2021.

Amendment

This Order amends the August Order to provide that a person is eligible for a second grant under the RSP scheme if the person experienced a minimum 30% decline in revenue in relation to a business or organisation during a second nominated 7-day period. The second period must be during the period beginning on 8 September 2021 and ending immediately before all areas of New Zealand return to COVID-19 Alert Level 1.

The nominated 7-day period for each payment may overlap.

Applications

Applications for the second payment opened on 17 September 2021 and may be submitted via myIR.

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

COVID-19 Resurgence Support Payments Scheme (August 2021) Order (No 3) 2021

The COVID-19 Resurgence Support Payments Scheme (August 2021) Amendment Order (No 3) 2021 came into force on 8 October 2021. This Order amended the COVID-19 Resurgence Support Payments Scheme (August 2021) Order 2021 (the **August Order**) to allow further payments under the scheme and amend the rules for commonly owned groups.

Background

The August Order came into force on 24 August 2021 and activated the COVID-19 Resurgence Payments Support (RSP) scheme to provide grants to support businesses affected by the 17 August 2021 escalation in COVID-19 alert levels.

The COVID-19 Resurgence Support Payments Scheme (August 2021) Amendment Order 2021 came into force on 9 September 2021 and amended the August Order to expand the eligibility criteria of the RSP scheme to better support new businesses.

Refer to *Tax Information Bulletin Vol 33 No 9 October 2021*, pp 2-3, for items on the August Order and the COVID-19 Resurgence Support Payments Scheme (August 2021) Amendment Order 2021.

The COVID-19 Resurgence Support Payments Scheme (August 2021) Amendment (No 2) Order 2021 came into force on 17 September 2021 and amended the August Order to allow a second payment under the scheme. Refer to the above TIB item for more information.

Additional payments

This Order amends the August Order to allow further payments to be made under the COVID-19 Resurgence Support Payment (RSP) scheme, subject to the following COVID-19 Alert Level conditions being met.

The clauses relating to the third grant come into force on 8 October 2021 and the clauses relating to the fourth grant come into force on 29 October 2021.

Activation triggers

A third grant under the RSP scheme will be activated if:

- at least part of New Zealand is at Alert Level 2 or higher on 8 October 2021, and
- there has been a continuous and uninterrupted escalation in Alert Levels since the 11.59pm, 17 August 2021 escalation.

A fourth grant under the RSP scheme will be activated if:

- at least part of New Zealand is at Alert Level 2 or higher on 29 October 2021, and
- there has been a continuous and uninterrupted escalation in Alert Levels since the 11.59pm, 17 August 2021 escalation.

No further grants will be activated under the August activation if there is a nationwide return to Alert Level 1.

Affected revenue periods

A person is eligible for a grant under the RSP scheme if the person experienced a minimum 30% decline in revenue in relation to a business or organisation during a nominated 7-day period. A person must nominate a 7-day period within the affected revenue period for each payment. The nominated 7-day period for each payment may overlap with the nominated periods for other payments.

The affected revenue period for each payment is set out below:

Payment number	Applications open	Start of affected revenue period	End of affected revenue period
1	24 August 2021	17 August 2021	Immediately before all areas of New Zealand return to COVID-19 Alert Level 1
2	17 September 2021	8 September 2021	
3	8 October 2021	1 October 2021	
4	29 October 2021	22 October 2021	

Commonly owned groups

Some commonly owned groups have structures where all employees for the group are employed by one member of the group but work for other members. The member who is the main employer often does not suffer the revenue decline required to qualify for a payment under the RSP scheme.

The amount that an eligible person can receive under the RSP is the lesser of:

- $1,500 plus $400 per full-time equivalent worker *employed by the person* (up to a maximum of 50 FTE), or
- Four times the amount by which the eligible person's revenue has declined.

The other members of the commonly owned group that suffer a revenue decline are not able to include the employees within their application. Therefore, these members often only qualify for the base $1,500 amount.

Amendment

This Order amends the August Order to modify the method of calculating payments for persons who are members of a commonly owned group. The amendment allows a person to count employees of other members of the same commonly owned group if those employees *regularly work for them*. This change comes into force on 8 October 2021.

Guidance on how a member of a commonly owned group can calculate grant payments and determine whether an employee regularly works for the member is available on the Inland Revenue website: **ird.govt.nz/covid-19/business-and-organisations/resurgence-support-payment/eligibility**.

Applications

Applications for the third payment opened on 8 October 2021 and can be submitted via myIR. Applications for the fourth payment will open on 29 October 2021, provided that the activation trigger is met.

Members of commonly owned groups can submit amended applications to receive a top-up for previous payments under the August RSP scheme from 8 October via myIR.

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

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 21/05: Bank of New Zealand

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

Name of person who applied for the Ruling

This Ruling has been applied for by Bank of New Zealand.

Taxation Laws

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

This Ruling applies in respect of sections BG 1, CA 1(2), CB 4, CC 3, CE 1 and CP 1.

This Ruling does not apply if there is an employment relationship between the Flybuys member who redeems their Flybuys Points for a contribution and the BNZ KiwiSaver member who receives the contribution.

This Ruling does not apply if there is a contract for services (i.e. independent contractor relationship) between the Flybuys member who redeems their Flybuys Points for a contribution and the BNZ KiwiSaver member who receives the contribution.

This Ruling does not apply to a Flybuys member who accrues Flybuys to a Flybuys business account.

The Arrangement to which this Ruling applies

The Arrangement is the redemption of Flybuys Points for a contribution to a KiwiSaver account in a KiwiSaver scheme that Bank of New Zealand (*BNZ*) has established (*the BNZ KiwiSaver Scheme*). Under an agreement between BNZ and Loyalty New Zealand Limited (*Loyalty NZ*), persons who are members of the Flybuys loyalty programme can request the redemption of their Flybuys Points for a contribution to their own, or another person's, account in the BNZ KiwiSaver Scheme. To request the redemption of Flybuys Points a person does not have to be a customer of BNZ. As a separate and independent obligation under an agreement between BNZ and Loyalty NZ, BNZ will make a payment to Loyalty NZ for each contribution Loyalty NZ makes to a member's account in the BNZ KiwiSaver Scheme.

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

KiwiSaver Act 2006

1. The KiwiSaver regime, which started on 1 July 2007, is a voluntary work-based saving scheme established to facilitate individuals' savings habits, principally through the workplace. Savings are primarily for retirement and are "locked in" until the age of eligibility for New Zealand superannuation (which is currently 65 years old), although exceptions can be made in certain cases such as financial hardship.
2. As stated in section 3 of the KiwiSaver Act 2006, the purpose of KiwiSaver is to:
   (a) encourage long-term savings habits and asset accumulation by individuals who may not otherwise enjoy standards of living in retirement similar to those enjoyed before retirement; and
   (b) increase individuals' well-being and financial independence particularly in retirement and provide retirement benefits.
3. Inland Revenue administers Parts 1 to 3 of the KiwiSaver Act 2006. The Commissioner of Inland Revenue oversees the provisions of the KiwiSaver Act 2006 that Inland Revenue administers. Among other administrative functions, Inland Revenue collects contributions from employers as part of the PAYE rules, and pays contributions to providers of KiwiSaver schemes.

BINDING RULINGS

The Bank's KiwiSaver Scheme

4. BNZ operates the BNZ KiwiSaver Scheme.
5. The BNZ KiwiSaver Scheme was established by trust deed, and set up as a portfolio investment entity (*PIE*). The manager/issuer of the BNZ KiwiSaver Scheme is BNZ Investment Services Limited (which is a wholly owned subsidiary of BNZ). As at the date of this application, the registrar, supervisor and custodian, and scheme accountant are Trustees Executors Limited, The New Zealand Guardian Trust Limited and MMC Limited respectively. The BNZ KiwiSaver Scheme is registered with the Financial Markets Authority, and is open to customers who are natural persons who may join the Scheme by filling out the relevant application form.
6. Customers can elect for employee and employer contributions to be made to any one of the six funds within the Scheme, being:
   - the Cash Fund (comprising 100% income assets);
   - the First Home Buyer Fund (comprising 85% income assets and 15% growth assets);
   - the Conservative Fund (comprising 80% income assets and 20% growth assets);
   - the Moderate Fund (comprising 60% income assets and 40% growth assets); and
   - the Balanced Fund (comprising 40% income assets and 60% growth assets);
   - the Growth Fund (comprising 20% income assets and 80% growth assets).
7. It is possible that additional funds could be established within the BNZ KiwiSaver Scheme from time to time, pursuant to and in accordance with the terms of the Governing Document.

Flybuys programme

8. Flybuys is administered by Loyalty NZ, which is owned in equal shares by BNZ, Foodstuffs Ventures (NZ) Limited, IAG New Zealand Limited, and Z Energy Limited.
9. Any person can become a Flybuys account owner by completing an appropriate application form. Membership is free. Under the terms and conditions established by Loyalty NZ, Flybuys Points are agreed to have no value and cannot be sold, transferred, or assigned for cash or other consideration. Additionally, Flybuys Points cannot be redeemed for or refunded in cash. Any Flybuys Points that are awarded but unused expire after 36 months. The terms and conditions of the Flybuys loyalty programme do not prohibit the points being redeemed for any particular reward or class of rewards. Once redeemed, a reward could (as a subsequent and separate transaction) be sold, transferred or assigned for cash or other consideration.
10. Once a person is a Flybuys account owner, they "collect" Flybuys by purchasing goods or services from participating reward partners (Partners). Loyalty NZ and Partners agree on the number of Flybuys that may be awarded to account owners by Loyalty NZ. For example, 1 Flybuys may be awarded to an account owner for every $25 (or some other amount) spent with the Partner.
11. Members can choose to be rewarded in one of three ways, referred to as "reward currency":
    (a) Flybuys Points;
    (b) Z & Caltex Fuel Discounts; and
    (c) New World "Dollars".
12. For a member who has chosen Flybuys Points as the reward currency, once sufficient Flybuys Points have been collected the account owner may redeem the Flybuys Points for specified rewards, being goods and services provided by Partners or other third parties that have entered into an agreement with Loyalty NZ to provide such rewards. The account owner contacts Loyalty NZ to request a redemption of their Flybuys Points, and Loyalty NZ contacts the relevant Partner or other reward provider to arrange the reward to be provided to the account owner. At Loyalty NZ's option, rewards are posted or delivered to the address of the account owner, or made available for collection at a location notified to the account owner.
13. For members choosing Z & Caltex Fuel Discounts or New World Dollars as their reward currency, Flybuys convert into the relevant discounts/dollars and are used when purchasing fuel or groceries as relevant.

Flybuys and contributions to the BNZ KiwiSaver Scheme

14. BNZ has integrated a Flybuys feature into the BNZ KiwiSaver Scheme.
15. Under an agreement between BNZ and Loyalty NZ, members in the Flybuys programme (Flybuys member) can redeem their Flybuys Points for a contribution to their own, or another person's, account in the BNZ KiwiSaver Scheme (BNZ KiwiSaver member). Where Flybuys members redeem their Flybuys Points for a contribution to another person's BNZ KiwiSaver account, the contribution will be a gift from the Flybuys members to the other persons.
16. In the case of a request to redeem Flybuys Points for a BNZ KiwiSaver contribution, the Flybuys account owner contacts Loyalty NZ and requests the redemption of a specified number of Flybuys Points for a contribution of a specified amount to a nominated BNZ KiwiSaver account.
17. Loyalty NZ then provides details of the BNZ KiwiSaver member that is receiving the contribution reward and the dollar amount of the reward to BNZ. Loyalty NZ pays the money into the BNZ KiwiSaver Scheme subscriptions account. This is in turn applied to the member's KiwiSaver account and to the fund they have selected.
18. As a separate and independent obligation, BNZ will make a payment to Loyalty NZ in relation to each contribution made by Loyalty NZ to a member's account with the BNZ KiwiSaver Scheme. The contributions to the BNZ KiwiSaver account arising from the redemption of Flybuys Points are treated no differently to any other employee or employer KiwiSaver contribution.
19. A BNZ customer's membership of the Flybuys programme is contractually separate to their agreement (if any) relating to their investment in the relevant KiwiSaver fund, and each arrangement exists independently of the other.

BNZ's objectives

20. BNZ's goals and objectives in integrating the Flybuys feature into the BNZ KiwiSaver scheme are to:
    - increase customer benefits, satisfaction and customer retention;
    - encourage retirement savings by providing an innovative savings solution to its customers; and
    - improve BNZ's brand awareness among the public, so BNZ is seen as a market leader.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

(a) No income arises under section CA 1(2) for a BNZ KiwiSaver member in relation to the Arrangement.

(b) No income arises under section CB 4 for a Flybuys member or for a BNZ KiwiSaver member in relation to the Arrangement.

(c) No income arises under section CC 3 for a BNZ KiwiSaver member in relation to the Arrangement.

(d) No income arises under section CE 1 for a BNZ employee in relation to the Arrangement.

(e) No income arises under section CP 1 for a BNZ KiwiSaver member in relation to the Arrangement.

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

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 1 April 2021 and ending on 31 March 2026.

This Ruling is signed by me on the 11th day of August 2021.

Jessica Griffin
Group Lead,
Customer Compliance (Significant Enterprises)

BR Prd 21/07: Kāinga Ora – Homes and Communities

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

Name of person who applied for the Ruling

This Ruling has been applied for by Kāinga Ora – Homes and Communities (the Applicant).

Taxation Laws

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

This Ruling applies in respect of ss 8(1), 11(1)(mb) and 20(3).

The Arrangement to which this Ruling applies

The Arrangement is the First Home Partner scheme entered into between the Applicant and eligible home buyers (Home Buyers), which involves (amongst other things):

- the Applicant buying properties with the Home Buyers as tenants in common; and
- in some cases, the Applicant and Home Buyers selling a property to third-party purchasers.

Further details of the Arrangement are set out below.

First Home Partner scheme

1. The purpose of the First Home Partner scheme is to increase opportunities for people to access home ownership who would not have otherwise been able to. The Applicant does this by buying part of a property with a Home Buyer and providing a pathway for the Home Buyer to later buy the Applicant's share in the property so the Home Buyer can move into full home ownership.
2. Under the Arrangement, the Applicant's interest in the property will be a maximum of the lesser of a 25% interest in the property or $200,000.
3. The Home Buyer will occupy the property as their (and/or their family's) principal place of residence.
4. The Applicant will be carrying on a taxable activity for GST purposes in relation to the acquisition and sale of interests in properties as part of this scheme.

Purchasing properties from GST-registered vendors

5. The Applicant has a largely passive role in the property selection process. Generally, the properties subject to the scheme will require a code of completion certificate that is less than one year old.
6. Under a Shared Ownership Agreement between the Applicant and a Home Buyer, the following factors will exist:
   - The Home Buyer will initiate the purchase of a property by selecting a property and applying to the Applicant.
   - Provided the Home Buyer has complied with the relevant requirements, the Applicant will agree to purchase a share in the property along with the Home Buyer from the vendor on the day set out in the purchase agreement.
   - The Applicant and the Home Buyer will acquire and own the property as tenants in common.
   - The Applicant will be a named purchaser on the Sale and Purchase Agreement and will not be a nominated person.
   - The Applicant will be named on a "tax invoice" (for GST purposes) issued in respect of the supply, but its interest in a property does not need to be recorded on the tax invoice; instead, the Applicant's proportional interest in a property will be recorded on a separate Ownership Share Register between the Applicant and a Home Buyer.
7. The Applicant or a Home Buyer is not expected to be an "associated person" as defined in s 2A with the vendor of a property. If either party is associated with a vendor, the consideration for the supply of the property must be market value.

Sales of properties to GST-registered purchasers

8. Generally, the Applicant's interests in a property will be sold over time to the Home Buyer. However, the Applicant and a Home Buyer together may sell the property to a third party.
9. This Ruling applies where a purchaser of such a property is GST registered and acquires the property for use in making taxable supplies.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

(a) Where a GST-registered person supplies a property in the course or furtherance of their taxable activity to a Home Buyer and the Applicant, that supply of the property will not be zero-rated under s 11(1)(mb) and will be standard rated under s 8(1).

(b) Where a GST-registered person acquires a property from the Applicant and a Home Buyer:

 (i) the Home Buyer's interest in the property will not be a taxable supply under s 8(1) and will be a "secondhand good" for the purposes of s 20(3)(a)(ia); and

 (ii) the Applicant's interest in the property is a taxable supply under s 8(1) that will be:

  (A) zero-rated under s 11(1)(mb) where the person acquires the property to make taxable supplies and is not acquiring the property as a principal place of residence for itself or an "associated person" as defined in s 2A; or

  (B) standard rated under s 8(1) in other cases.

The period or income year for which this Ruling applies

This Ruling will apply for the period beginning on 5 October 2021 and ending on 5 October 2026.

This Ruling is signed by me on the 5th day of October 2021.

Howard Davis
Group Leader, Tax Counsel Office

COV 21/03: Variation of section 15D(2) of the Goods and Services Tax Act 1985 for applications to change GST taxable period

Determination

The Commissioner of Inland Revenue has, under the discretion provided under section 6I of the Tax Administration Act 1994, made the following statutory variation:

> *Section 15D(2) of the Goods and Services Tax Act 1985 is varied to state that a change in taxable period takes effect at the* ***commencement*** *of the [6-month] taxable period in which the person applies to change the basis on which the person's taxable period is set.*
>
> *This variation applies to a registered person who wishes to change from a 6-month to a 1-month taxable period, and for a 6-month taxable period commencing between 1 April 2021 and 31 March 2022.*

The variation is subject to the following conditions:

- *The person notifies the CIR before 31 March 2022 that they wish their election to have this effect; and*
- *The person does not elect to change back from a 1-month taxable period before 30 September 2022.*
- *The person expects that applying this variation will, given the impacts of COVID-19 (including uncertainty as to its financial impacts), materially assist the sustainability of their business.*

Application date

This variation applies from 1 October 2021 to 31 March 2022

Dated at Wellington on 29 September 2021

Jonathan Rodgers
Group Leader – Tax Counsel Office
Inland Revenue

Background (material under this heading does not form part of the variation)

Summary of effect

1. Section 15(3) of the Goods and Services Tax Act 1985 allows a person to apply to the Commissioner to have a one-month taxable period for GST. Under s 15D(2) of the GST Act, the change in taxable period takes effect at the end of the taxable period in which the person applies. The effective date of the change has been modified to the start of the taxable period using s 6I of the TAA.

Provisions affected

2. Section 15D(2) of the Goods and Services Tax Act 1985.

Application of variation:

3. This variation applies to a person who wishes to change from a six-month taxable period to a one-month taxable period for GST. A person is permitted to do so under s 15(3) of the GST Act, but the change will take effect from the end of the taxable period in which they apply. This variation allows that change to be effective from the start of the taxable period in which a person applies. The variation recognises that the impact of COVID-19 means that some taxpayers may now wish to file on a one-monthly basis to provide earlier access to any GST refunds. It allows the change of taxable period to take effect much sooner than would otherwise be the case.

4. The variation may apply to a person with a standard balance date who applies on or after 1 October 2021 and would otherwise have to wait until 1 April 2022 for a change of taxable period to take effect. The variation may also apply to a person with a non-standard balance date who applies in a taxable period that commenced before 1 October 2021 and is still in progress.

Associated variations: COV 20/03 and COV 20/11

5. See also "Variation of the application of s 15D(2) of the Goods and Services Tax Act 1985 to extend time to make an application to change GST taxable period" issued 6 June 2020, and "Variation of section 15D(2) of the Goods and Services Tax Act 1985 for applications to change GST taxable period" issued 4 November 2020.

Legislative References

Tax Administration Act 1994: ss 6H and 6I

Goods and Services Tax Act 1985: ss 15(3) and 15D

COV 21/04: Variation to section 68CB(2) of the Tax Administration Act 1994

Variation

The Commissioner of Inland Revenue has, under the discretion provided under section 6I of the Tax Administration Act 1994, made the following statutory variation:

> *For a general approval application in relation to the research and development tax credit for the 2020-2021 income tax year under section 68CB(2) of the Tax Administration Act 1994, for applicants whose 2020-2021 income year ends on 31 May 2021 or later, the date by which that application must be filed with the Commissioner is amended to be the 7th day of the fifth month after the end of the income year.*
>
> *This applies in circumstances where the planning or conduct of eligible research and development or the ability to appropriately obtain necessary information, seek advice and formulate an application under section 68CB of the Tax Administration Act 1994 on time has been materially delayed or disrupted by the COVID-19 outbreak and its effects.*

Application date

This variation applies from 1 October 2021 to 31 March 2022.

Dated at Wellington on 15 October 2021.

Jonathan Rodgers
Group Leader – Tax Counsel Office
Inland Revenue

Background (material under this heading does not form part of the variation)

Summary of effect

1. Section 68CB of the TAA requires a person to file a general approval application in relation to their research and development activities on or before the 7th day of the 2nd month after the end of the relevant income year. For the 2020-21 income tax year, the time by which an application must be filed has been extended by three months using s 6I of the TAA in COV 20/10 "Variation to section 68CB(2) of the Tax Administration Act 1994". That variation did not however provide the same level of extension to applicants with balance dates of 31 May 2021 or later, because the power in s 6I was to expire at 30 September 2021. The application of s 6I has now been extended to 30 September 2022, and the Commissioner has concluded that the same extension should be provided to these applicants.
2. Accordingly, this variation has the same effect as COV 20/10 for those applicants. It applies to ensure that applicants with balance dates of 31 May 2021 or later may be entitled to the full three months extension of time, on the same conditions. Those applicants to whom COV 20/10 already provides an additional three months are not affected by this variation.

Provisions affected

3. Section 68CB(2) of the Tax Administration Act 1994.

Application of variation:

4. This variation applies to a person with a balance date of 30 May 2021 or later, for the 2020/21 income year, who is seeking the Commissioner's approval of their research and development activities by filing a general approval application under s 68CB of the Tax Administration Act 1994. The variation recognises that the impact of COVID-19 means that the planning or conduct of research and development or the ability to obtain information, seek advice and formulate an application may have been delayed.

BINDING RULINGS

5. This variation effectively extends the existing COV 2020/10, by ensuring that persons with a balance date of 30 May 2021 or later, for the 2020/21 income year, can gain the full advantage of the additional three months by which the relevant date has been extended. Other persons rights are not affected.

Associated variations:

6. See also COV 20/10 "Variation to section 68CB(2) of the Tax Administration Act 1994" dated 1 September 2020.

Legislative References

Tax Administration Act 1994: ss 6H and 6I, s 68CB

INTERPRETATION STATEMENT

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

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

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

IS 21/08: Content creators – tax issues

Introduction

1. This Interpretation Statement provides guidance to people who make money from creating online content. It covers a variety of activities, including:
   - posting videos, images or text on social media platforms such as YouTube, Instagram and Facebook;
   - blogging;
   - influencing;
   - competing in online gaming competitions; and
   - streaming game play on platforms such as Twitch, Facebook gaming and YouTube gaming.
2. In this Interpretation Statement, people who make money from online content-creation activities are referred to as **content creators**.
3. A content creator may have a wide variety of income sources, including:
   - payments from platforms based on the number of times content is viewed;
   - payments from platforms when viewers subscribe to channels created by the content creator;
   - payments for promoting products or brands in the content creator's online content;
   - payments for advertisements embedded in the online content;
   - commissions earned from affiliate marketing and links;
   - sales of merchandise or other products or services through platforms such as Shopify or Gumroad;
   - donations or gifts; and
   - prize money (eg, from e-sports competitions).
4. Content creators and their tax agents have asked for guidance to help understand and comply with their tax obligations.
5. This Interpretation Statement expands on an earlier Question We've Been Asked, *QB 17/05: Income Tax – whether YouTube receipts are taxable* (Inland Revenue, 2017).
6. The following guidance addresses difficulties that can arise for content creators when attempting to comply with their tax obligations.
7. Two topics may be relevant for younger people and people earning very low amounts, so content creators may wish to consider them first:
   - Income derived by young people who are still at school, which may be exempt from tax (see from [66]).
   - The $200 threshold for income other than reportable income (see from [72].
8. The general topics covered in this statement include:
   - important factors in working out whether amounts are income (see from [9]);
   - "gifts" or "donations" can be income (see from [31]);
   - non-monetary items (or contra) can be income (see from [43]);
   - deductions for expenses and depreciation losses (see from [80]);

- income earned by a New Zealand resident overseas (see from [113]);
- tax withheld by a payer (see from [121]);
- GST (see from [126]); and
- keeping good records (see from [130]).

Guidance

Important factors in working out whether amounts are income

9. In working out whether an amount received by a person is income, key factors to consider are the:[1]
    - regularity of receipts;
    - relationship between the recipient and the payer; and
    - reason for the payment of the amount.

10 Clear relationships exist between content creators (recipients) and payers. Generally, content creators receive amounts from people who view the creator's content, online platforms that facilitate the posting and streaming of content, businesses that want exposure for their products, or competition organisers.

11. Further, the recipient's content-creation activity will generally be the reason for the payment; the payments being made to support or reward the content creator.

12. The relationships between the recipient and the payer and the reasons for the payment are factors that will generally point to the amounts received by content creators being income.

13. However, in many cases, whether an amount received by a content creator is income will depend on the regularity with which a content creator receives such amounts (see from [14]).

Regularity of receipts

14. In many cases, regularity is the main reason why amounts are income. Amounts that are received regularly by a person may become part of the receipts upon which the person depends for their living expenses.

15. In some cases, an amount can be income even if it is not a regular receipt (even a single receipt can be income in some cases). However, generally, if regularity is not present, an amount is less likely to be income. See Example 1.

16. To be regular, an amount does not need to be received every fortnight or every month like a salary or wage. For example, if a content creator receives payments from YouTube or Twitch in some months but not in others (because they do not always reach the payment thresholds), the payments will nevertheless be regarded as regular.

17. Some content creators may derive amounts from multiple sources. These amounts should be considered together when determining whether the amounts are received regularly.

Example 1 – Amounts not received regularly

Jack administers and creates content for a community Facebook page. Jack attends a community event and receives $50 cash from a member of the page in appreciation of Jack's efforts. Jack does not normally receive payments of this kind, and he does not derive any other type of income for the work he does on the page.

It is relevant to consider the relationship between the payer and the recipient. Jack, the recipient, receives a payment from a member of the Facebook page. The reason for the payment is Jack's work on the page. This relationship and the reason for the payment points to the cash gift being income in Jack's hands. Essentially, Jack is being rewarded for his efforts by a person who has benefitted from those efforts.

However, Jack does not receive amounts regularly as a result of the work he does on the Facebook page. The cash gift received is not the type of receipt on which Jack can rely to meet his living expenses. Therefore, the cash gift is not income.

Note the fact the amount was a voluntary payment would not prevent the amount from being income (see the discussion from [31]).

[1] *Reid v CIR* (1985) 7 NZTC 5,176 (CA).

Costs of the activity are greater than the revenue

18. There are different tests to identify income. In broad terms, income is generally something on which a person can rely to help pay for their living expenses. If the revenue from a content-creation activity does not normally cover the cost of the activity, this would indicate the activity is not a business and suggests the amount will not be income.
19. This doesn't mean an activity must always make a profit for the revenue to be income. If a person has a business that involves having an intention of making a profit, then amounts derived by the business can be income even if the business sometimes makes a loss or has only made losses to date.
20. The word "hobby" might be used to describe an activity that does not normally make a profit or where the person does not have an intention of making a profit. However, the Act does not use the word "hobby", and whether an amount is income does not depend on the ordinary meaning of the word "hobby". In case law, the courts' focus is on whether an intention to make a profit exists (which is relevant to whether there is income from a business).[2] See Example 2.

Example 2 – Costs of activity greater than revenue

Emma enjoys posting the occasional photo on Facebook and Instagram.

Her social media accounts include a link where people can make a monetary contribution to support her activity. Emma doesn't expect to receive much, but it was easy to set up, so she thought why not.

Emma receives five one-off payments during the income year totalling $25. The only other income Emma derives in the income year is employment income.

It is likely Emma has expenses associated with taking her photos (for example, travel costs and depreciation loss on her camera) that are greater than the income she derives. Therefore, Emma is not likely to be making, or be intending to make, a profit that could help her to meet her living expenses, so the $25 is unlikely to be income for Emma.

Even if the $25 were income, because Emma receives less than $200 of "income other than reportable income", she would not need to include the $25 in her tax return (see the discussion from [72]).

Reinvesting profits into an income-earning activity

21. A person's profit (or net income as it is called in the Act) is calculated as a person's total assessable income for the year less total allowable deductions. Allowable deductions are discussed further from [79], but capital expenditure (that is, money spent on an asset) is not an allowable deduction. This means the calculation of a person's profit or net income does not include any deduction for assets they purchase during the year. Therefore, a person could have a profit even if they reinvest in their income-earning activity by purchasing new assets. See Example 3.

Example 3 – Profit reinvested into the business

Kenya is working hard to build up her online content-creation business. She and her helpers create short comedy skits based on role-playing games they play, which they post on YouTube.

During the income year, Kenya purchased a van, so she could transport equipment and her helpers to filming locations.

Kenya cannot claim a deduction for the full cost of the van in the income year because it is capital expenditure. However, Kenya could claim a deduction for depreciation loss on the van in the current income year and, if her business continues, she can continue to claim depreciation on the van in future income years. (Note that an adjustment might be needed for any private use of the van.)

During the income year, the business made a profit for the first time of $1,500 (including the deduction for depreciation on the van).

Kenya doesn't consider she has made a profit because all the income she derived was reinvested back into her business (that is, through the purchase of the van). However, the $1,500 is profit. The full cost of the van is not included in the calculation of profit.

[2] *Grieve v CIR* (1984) 6 NZTC 61,682 (CA).

Side activity

22. An amount derived by a person from a secondary or side activity (sometimes called "side hustles") can be taxable even if they have a job or other business from which they derive most of their income (assuming the amount has the characteristics of income and is not exempt, as discussed above). See Example 4.

Example 4 – Side activities

Liam is employed full time as a high school music teacher. He also has a couple of side activities:

- Liam fills in for a local band a few times a year when they need a guitarist.
- Liam creates content for a YouTube music channel in which he interviews musicians over drinks.

The YouTube channel has been doing well, and Liam has recently become a YouTube partner. Liam has a collection of 20 10-minute videos in his channel that he has created over the last two years. He intends to add to this content by adding a new video every couple of months. Liam receives a YouTube payment of approximately $130 every 3 to 4 months. His total income from the channel for the income year just ended is $480.

Although Liam has only earned income of $480, the amounts are received on a regular basis. The payments are also a product of the effort that Liam puts into creating his videos. Therefore, the payments are income under ordinary concepts. It does not matter that Liam also has a full-time job and that this is a secondary form of income or side-activity.

Liam also calculates that he is allowed deductions for expenditure totalling $300, including entertainment expenditure (at the rate of 50%), which was sometimes needed to get his interviewees talking, and depreciation losses on a laptop and camera.

Liam must include the $480 of income received from his YouTube channel and the $600 he derived from his gigs with the band during the year, in his income tax return. Liam can claim the deductible expenditure at the same time.

Passive receipts

23. Passive receipts may arise in the context of content creation because some content can continue to generate income after it is posted with little or no additional activity from the content creator. For example, once posted, imbedded product affiliate links in blogs, or content on platforms such as Skillshare or Patreon may continue to generate income. The derivation of passive income from content creation may be less common than it once was. For example, the YouTube Partner Program now states that YouTube may disable monetisation on channels that haven't uploaded a video or posted to the community tab for six months or more:[3]

> **Stay active to keep making money**
>
> As the YouTube Partner Program continues to grow, it's important to maintain a healthy, active ecosystem of channels. In order to focus our support for creators who are active and engaged with the community, we may disable monetization on channels that haven't uploaded a video or posted to the Community tab for 6 months or more.

24. However, situations may exist where YouTube or other online platforms decide not to disable monetisation.
25. Even for someone who is no longer creating content, these passive receipts are likely to be income (under ordinary concepts) if they are received regularly. Passive receipts from historical content is also analogous to interest, dividends, royalties, rents and other returns from property.
26. Note that if a person stops making new content, this will likely prevent them from continuing to claim deductions (for example, for home office expenses or depreciation losses). A person may have a deduction for an expense or a loss only if the expense or loss is incurred in deriving income. If a person has stopped creating new content, their expenses and losses will not be incurred in deriving income, even if they continue to derive passive income from past efforts. See Example 5, and see from [79] about deductions for expenses and depreciation losses.

[3] *YouTube Partner Program Overview & Eligibility* (webpage, YouTube, updated November 2020).

Example 5 – Passive income

Aart has a YouTube channel with a large collection of home renovation and building tutorials. Aart used to have more time to create content, but he is currently busy with building work, so has stopped creating content.

Aart's videos have an enduring appeal and they continue to generate income. Because of the nature of the content, and despite not posting any fresh content, YouTube allows Aart to continue being a YouTube partner and monetise the content.

Income

Although his income drops, Aart continues to derive regular payments from YouTube for his historical content, and these payments continue to be income for Aart.

Deductions

Aart is no longer trying to create new videos, and he does not need to do anything to continue deriving passive income from his existing videos.

Aart has computer equipment and camera gear, which he was using to make his videos. This equipment was not fully deducted before Aart ceased his activity. He was also claiming deductions for home office and internet expenses.

Aart is no longer incurring depreciation losses or home office or internet expenses to derive income. He does not need to do anything to continue deriving income. Therefore, Aart cannot continue to claim deductions.

Sources of income

27. It will be common for online content creators to have multiple sources of income (see [3]). Receipts that individually might not be regarded as income might be so regarded when the activity is considered as a whole.4 Therefore, content creators need to consider their activity as a whole. See Example 20 (after [99]).

People's circumstances can affect whether an amount is income

28. An amount that is income when received by one person may not be income if received by someone else. Whether or not an amount received by a person is income depends on the character of the amount in that person's hands.
29. For example, prize winnings from an e-sports competition may be income for a person who is able to make a living from competing in such competitions and associated activities. However, for an amateur player, prize winnings might not be income. This could be because they do not receive amounts from their gaming on a regular basis.
30. Therefore, a content creator needs to consider their own circumstances in working out whether amounts they receive are income. See Example 6.

Example 6 – Content creators need to consider their own circumstances

Joshua, a professional online gamer and streamer, decides to enter an open competition. He notices a statement on the competition information page that the prize money is not taxable. This does not seem right to Joshua.

Whether an amount is taxable depends on the character of the amount in the hands of the recipient. This could be different for different people.

For some more amateur competitors, the prize money might not be taxable, but because Joshua has a business of competing and streaming his gameplay, the prize money he wins will be taxable.

"Gifts" or "donations" can be income

31. It is common for content creators to receive payments from people through online payment or donation platforms. These payments might be described as "gifts" or "donations" but the label given to a payment does not determine its character nor whether it is income to the content creator.
32. Payments of these kinds may be income if they are a product of the content creator's income earning activity.[5]

[4] *FCT v Stone* [2005] HCA 1, (2005) 222 CLR 289.

[5] *Hayes v FCT* (1956) 11 ATD 68 (HCA), *Louisson v Commissioner of Taxes* [1943] NZLR 1 (CA).

33. In most cases, a payment a viewer makes to a content creator will be a product of the content creator's activity. These payments will normally arise because the content creator has included a link to a payment platform in the description of their post and the payer has viewed the content and used the link to make a payment.
34. A viewer may state (for example, they may post a comment around the same time as the payment) that they are making the payment because of their respect and admiration for the content creator. They may also state that the payment is not a reward for the content. These statements, even though they may be genuine, are unlikely to affect whether the payment is income of the content creator.
35. In most cases, a content creator and a payer will have no relationship other than that of content creator and viewer. In these situations, the facts strongly suggest that the payments from the viewers are products of the content-creation activity. This conclusion will be even stronger if the payment entitles the payer to access additional content or other benefits.
36. Even if a content creator and a payer are friends, if the payer is consuming the content created by the content creator, a payment to the content creator is likely to be a product of the income-earning activity, so income.
37. In some cases, a content creator may be able to establish that a payment received is not a product of their content-creation activity. For example, they might receive a payment from a friend or family member who has no interest in the online content and simply wants to support the content creator. However, the burden of proving this is on the content creator. See Example 7.

Example 7 – Donation income

Bella is an online woodworker who carries on an online content-creation business posting videos of her woodworking projects.

Bella includes a link to her Patreon account in the description of her videos and on her website. People who make payments of over $10 a month are entitled to early access to Bella's latest videos. During the income year she receives $3,600 from people who paid over $10 a week and $1,040 from smaller payments.

Bella's grandmother wants to support Bella and makes a one-off payment of $200 directly to Bella. Bella's grandmother does not have an interest in woodworking, but she watched some of the videos as she was interested in what her granddaughter was up to.

Bella is unsure whether all the payments she receives through her Patreon account and from her grandmother are income.

All the payments, except the payment from Bella's grandmother, are income. The payment from Bella's grandmother is not income because it was made due to a private family relationship and not as a product of Bella's business.

The other payments are received because of her online woodworking video business. This is supported by the link included in her videos to her Patreon account. Also, the payments are made by people whose only connection to Bella is that they have watched her videos. The fact that some viewers received something in exchange for their payment makes for a stronger conclusion that those payments are income, but the payments under $10 a month are also income as they are also a product of her business.

Donation tax credits

38. Payments made to a content creator are unlikely to qualify for a donations tax credit for the payer.
39. A content creator may be engaged in an activity that is charitable in nature, but this does not mean a payment to the content creator will qualify for a donations tax credit for the payer.
40. For a person to be entitled to a donations tax credit, the payment the person makes must be made to an approved donee organisation. See Example 8.
41. If a content creator passes a donation on to an approved donee organisation, then the content creator could be entitled to a donations tax credit.
42. For more information on when a donation tax credit can be claimed, see:
    - *Ngā Whiwhinga Tāke mō ngā Takoha: Tax Credits for Donations* (webpage, Inland Revenue); and
    - s LD 3.

Example 8 – Eligibility for a donations tax credit

Aruf watches a YouTube channel created by Naeem. Naeem's videos feature interviews with community leaders from different cultural, ethnic and religious groups. Naeem tries to educate his viewers in the hope of creating a more tolerant and inclusive society.

Aruf loves what Naeem is doing and wants to financially support Naeem's work.

Naeem has included a link in his videos to a Patreon account so people can support him. Naeem has also included a link to the website of a community association that is an approved donee organisation listed by Inland Revenue.

Aruf pays $50 to Naeem's Patreon account and $50 to the community association.

Naeem also donates the $50 he received from Aruf to the community association.

Aruf is eligible for a donation tax credit for the payment he makes directly to the community association, which is an approved donee organisation. However, Aruf is not eligible for a donation tax credit for the payment he makes to Naeem's Patreon account. To be eligible for a donations tax credit, a donation must be made to an approved donee organisation.

Naeem is also eligible for a donation tax credit for the $50 he donates to the community organisation.

Non-monetary receipts (or contra) can be income

43. Non-monetary receipts given to content creators are sometimes referred to as "contra". Non-monetary receipts received by a content creator can be income. This applies where non-monetary items are supplied in addition to or instead of monetary payment. For example, if a content creator is paid and sent products by a cosmetics company, then both the money and the products could be income for the content creator.

44. Not every non-monetary item will be taxable. The first thing to consider is whether the non-monetary item is income (that is, the factors discussed from [9]). The following discussion assumes the item is received as a result of an income-earning activity the content creator carries on. In some cases, a content creator may be able to establish that a non-monetary item is not received as a result of their content-creation activity. If this is the case, then that receipt will not be income.

45. The following discussion also assumes the content creator accepts the item. A person can refuse to accept a payment or item. The content creator can refuse the receipt of a non-monetary item by sending the item back to the payer or refusing to take possession.

Convertibility – whether the receipt (contra) can be sold

46. To be income, a non-monetary receipt must also be able to be converted into money. Whether a receipt can be turned into money will be determined by the nature of the thing received and the rights and obligations between the provider of the thing and the content creator. Note that a non-monetary receipt could be converted into money in different ways. In this context, the most common method of conversion to money would be by selling. The general rule is that if a thing received as a product of a content creator's income-earning activity can be sold, the content creator will have income.[6]

47. Whether a product is convertible depends on the circumstances. For example, where a content creator who promotes cosmetics is provided with a lipstick to use in a promotional video, then the lipstick is unlikely to be sold once it has been opened and used. However, products such as clothes and shoes will usually be able to be sold.

48. Where a content creator is provided with services or experiences that are personal to them, these are less likely to be income because they cannot be sold or converted into money. Where vouchers for services or experiences can be sold, then they will be income when received.

Taxation event is the receipt of the item

49. The event that results in income is the receipt of the item. Because income arises at the time of receipt, the person will have an initial amount of income regardless of the subsequent use of the item. For instance, accepting a non-monetary item and then donating it to charity does not stop the item being income and taxable. The same principle applies if a person is paid in cash and donates an amount to charity. The person is still taxed on the initial receipt. If content creators do not want to be taxed on receipt of a non-monetary item, they should not accept the item.

50. Although the initial receipt is taxable, the subsequent use (for example, a sale or use in the content-creation activity) may also have tax consequences.

[6] *Tennant v Smith* (1892) 3 TC 158 (HL).

Subsequent use – selling items and other non-monetary items

51. As noted above, the first event that gives rise to income is the receipt of the item. Income arises on receipt even if the person does not sell the item. If the person does sell the item, this is a separate taxation event.

52. If the item is sold, the amount received can also be income. That is, income can arise twice: once on receipt of the item and again on the sale of the item.

53. However, if the amount received on sale is income, the person will be allowed a deduction for the "cost" of the item.[7] Although the person did not spend any money to acquire the item, a cost will be given to the item. This cost will be equal to the income derived on receipt. This means the person will not be taxed twice (although if they sell the item for more than its value on receipt, they could be taxed on the difference). See Examples 9–13.

54. A deduction may also be possible where the non-monetary item is used in the content-creation activity.

Subsequent use – non-monetary items used in the content-creation activity

55. Paragraph [79] onwards explains when a content creator may be able to claim a deduction for expenditure and depreciation losses. Similar principles apply in this context because "expenditure" can include something in money's worth provided it passes from the person and has the effect of diminishing their assets. Whether deductions are allowed depends on the tests discussed further below, but crucially a relationship must exist between the expenditure and the business or income-earning activity.8

56. Where a content creator's ability to generate income depends on their number of followers and their reach on social media, then rewards provided to followers (for example, for likes, comments and shares of a social media posts) may have a sufficient relationship with earning income. See Example 14. On the other hand, where a non-monetary item is given to family, friends or a charity it will not be deductible as it will not have a link with earning income.

Valuation of non-monetary items – contra or barter transactions

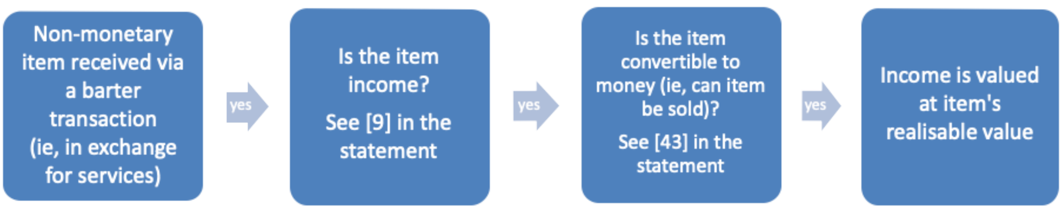
57. Contra or barter transactions involve the exchange of goods or services rather than cash. For instance, an influencer may receive clothes in exchange for their promise to promote the clothes or the brand in a series of social media posts.

58. The amount of income the content creator derives on the receipt of an item is equal to the realisable sale value of the item at the time they receive it (see Flowchart 1). This will usually be the amount the content creator would receive if they sold the item (but, as noted above, the content creator will have income even if they do not sell the item). The resale value might be lower than the recommended retail value or the amount the content creator would have needed to pay if they bought the item.

59. The content creator will have income even if the resale value is low. However, in some cases, the items might not have any resale value. For example, a market may not exist for some second-hand personal items.

60. A content creator will need to estimate the resale value of an item they receive. Precision is not required; a reasonable estimate is acceptable. Different approaches to estimating resale value could be taken. For example, the content creator could:
    - check the resale value of the product on an online marketplace;
    - obtain an estimate from a second-hand store;
    - use, if information is not available for an identical item, the resale value of a comparable item; or
    - calculate, if the content creator receives a large quantity of low-value items, an average value based on a representative sample period.

Flowchart 1: Process for determining whether a non-monetary item received in exchange for services is income



[7] This is considered consistent with comments in *Tasman Forestry Ltd v CIR* (1999) 19 NZTC 15,147 (CA), *Sharkey v Wernher* [1956] AC 58 (HL); *Halliwell v CIR* (1991) 13 NZTC 8,197; and *Rangatira Ltd v CIR* (1996) 17 NZTC 12,727.

[8] Section DA 1 is the general permission which allows a deduction – this is subject to limitations which prevent a deduction in certain circumstances such as where the expenditure is private or capital in nature.

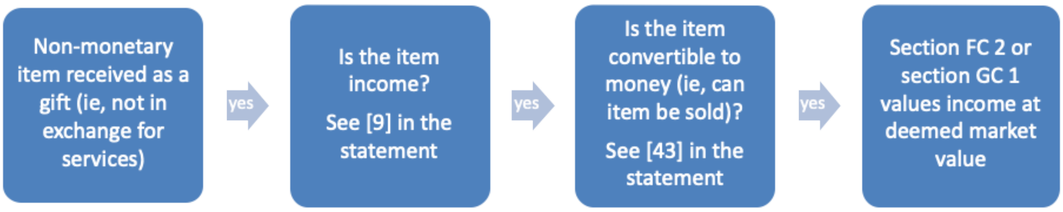
Valuation of non-monetary items – "gifts"

61. Sometimes content creators will receive non-monetary items free from any reciprocal obligations, in other words, a gift with no strings attached. Even though there is no reciprocity such gifts can be income if they are a product of the content-creating activity (discussed from [43]) and convertible into money.

62. Whether a gift is taxable on receipt will depend on the specific circumstances, but occasional unsolicited gifts are unlikely to be taxable. Whereas gifts that are received regularly, are a product of an income-earning activity and can be resold are likely to be taxable.

63. Special rules deem transactions involving gifts to happen at market value.[9] In other words, the value of the item for income tax purposes is deemed to be what it is usually sold for in the ordinary course of business.

Flowchart 2: Process for determining whether a non-monetary gift is income



Cryptoassets

64. Cryptoassets (including cryptocurrencies) are forms of property that can be converted into money. If a person receives cryptoassets as a product of their income-earning activity, they will have income equal to the value of the cryptoassets. There may also be tax consequences when the cryptoassets are subsequently disposed of.

65. For more information about the taxation of cryptoassets, see *Cryptoassets* (Inland Revenue webpage). There is also guidance addressing specific cryptoasset scenarios in:

- *QB 21/06: Income tax – tax treatment of cryptoassets received from an airdrop* (Inland Revenue, 2021); and
- *QB 21/07: Income tax - tax treatment of cryptoassets received from a hard fork* (Inland Revenue, 2021).

Example 9 – If the item can be sold

Tom creates digital content showing home renovation ideas, DIY projects and tool demonstrations.

A power tool company agrees to provide Tom with a drill and a circular saw in exchange for him demonstrating these products in a video. Tom decides to keep them after using them in the video. Based on similar products (second-hand and barely used) for sale on an online marketplace, Tom could sell the drill for $175 and the circular saw for $300. The online marketplace would charge Tom listing and success fees of $5 each.

The receipt of the power tools is income because it is from a contra or barter transaction and is a product of Tom's content-creation activity. This type of receipt is not uncommon for content creators. It is income because it is something Tom could sell for money, even though he has chosen not to. Tom has income equal to the amount he could receive if he sold the power tools.

An amount of $465, being the $475 for which Tom could sell the power tools less fees of $10, would be a reasonable estimate of the income Tom has derived from the receipt of the power tools.

Example 10 – Selling an item that was income when received

Tom, from Example 9, often sells the tools and products he receives from businesses in the building trade through an online marketplace. He changes his mind and rather than keep the power tools he sells them online for a combined price of $450. Tom pays a marketplace fee to sell the items of $10.

Tom has income of $450. However, Tom can also claim a deduction for $465 (this is a cost given to the power tools to prevent double taxation). This effectively cancels out the income derived on receipt and means Tom is ultimately taxed as if he derived income of only $450 less the $10 fee (ie, $440).

[9] Sections FC 1 and FC 2 of the Income Tax Act 2007 deem certain transactions involving gifts to occur at market value and s GC 1 applies where companies give away trading stock.

Example 11 – Non-monetary items that must be used or consumed by the recipient

Joshua, a professional gamer and streamer, receives branded items as part of his latest sponsorship deal. The sponsorship deal requires that he promotes an energy drink brand while competing and streaming. Joshua is given a drinks fridge stocked with 24 energy drinks. He is required to feature the fridge in a studio tour video and drink the energy drinks when streaming.

The receipt of the drinks fridge is income. Joshua can convert the fridge into money after the studio tour video is completed. The income will be equal to the value of a lightly used drinks fridge. Joshua can estimate this value by comparing the fridge with similar items on an online marketplace. (If he decides to sell the fridge then the treatment will be the same as for Example 10.)

Joshua is required to be seen consuming the drinks whilst gaming and streaming, so these drinks cannot be sold and are not income.

Example 12 – Experience not convertible into money

Ashley, a fashion commentator and online content creator, is invited to attend a show (her name is put on a list on the door). Tickets for the show are available to be purchased by members of the public.

Although a value could be given to the invite, Ashley cannot sell the invite because it is her name on the door. This means the invite is not income.

Example 13 – Voucher can be converted into money

Chris, a travel writer, is reviewing a new vineyard restaurant in Havelock North for their travel channel. The restaurant owner gives Chris a voucher for a local spa treatment business. The voucher entitles the holder to receive treatments up to the value of $150. Chris uses the voucher while in Havelock North.

Chris was not under any obligation to redeem the voucher and could have sold the voucher. This means the voucher was convertible into money, so was income to Chris when it was received. Chris finds out that they could have made $130 after fees by selling the voucher on an online marketplace. This is an acceptable estimate of the realisable value of the voucher and the income derived by Chris.

Example 14 – unsolicited gifts used in the content–creation activity

Helen is an online content creator who promotes beauty and fashion products. She has clients who pay her for promoting their brand or products. She usually does not accept unsolicited gifts because she does not want to promote businesses that do not pay her and she is aware she might have to pay tax on gifts capable of being resold.

From time to time, Helen accepts unsolicited gifts and provides them to her followers for engaging with her social media posts. For instance, she receives an unsolicited gift of handmade jewellery from a business seeking publicity. Helen likes the jewellery and thinks she will be able to use it in her business so accepts the gift. She has income equal to the market value of the jewellery, which usually sells for $100.

Helen uses the jewellery as part of a "giveaway" on social media and sends the jewellery to a follower as a reward for re-posting one of Helen's videos. A relationship exists with earning income, because Helen's ability to generate income depends on her number of followers, how engaged those followers are and Helen's social media presence. Helen can claim a deduction for the jewellery. The value of the deduction is the market value of $100.

If both transactions occur in the same tax year, they cancel each other out as there is income of $100 and a deduction of $100. If they happen in different tax years, the same result occurs but happens over that period (that is, income is returned in one year, and a deduction is taken in a later year when the jewellery is "given" away).

Income derived by young people who are still at school may be exempt from tax

66. Some young people who are still at school may not need to pay tax on income derived from their content-creation activities. This is because s CW 55BB provides a limited exemption for certain types of income derived by young people.

67. For the exemption to apply for a tax year, the person must attend school during the tax year. The exemption generally applies to people who are aged under 18 years as well as 18-year-olds provided they did not turn 18 before 1 January in the previous tax year. Further, 18-year-olds must have attended school in the current and previous tax years.

68. The exemption applies for a tax year, which suggests it will apply for a person for the entire tax year if they attend school during the tax year and meet the age requirements.

69. The exemption applies only to certain types of income. The exemption does not apply to, for example, income from employment, interest or dividends (that is, typically income from which the payer deducts tax).
70. Further, the exemption will not apply if in the income year the young person derives income (of the type that would qualify for the exemption) of $2,340 or more. Note that if this threshold of $2,340 is reached, none of the income will be exempt under this provision. In other words, the exemption will not apply to the first $2,340 earned if the threshold is reached. See Example 15.
71. For more detailed information on the exemption, see:
    - *Tamaiti, Rangatahi Rānei: Child or Young Person* (webpage, Inland Revenue);
    - *Individual Income Tax Return Guide* (IR3G, Inland Revenue, 2020); and
    - s CW 55BB.

Example 15 – Young person's income exemption

Olivia and Hannah are both still at school during the 2022 calendar year. Olivia is 16 years old and Hannah is 18 years old (she turned 18 in February). Olivia and Hannah both post videos to TikTok. Olivia posts videos about football training tips and tricks. Hannah posts videos of herself singing and dancing. Both are very popular and make money from their posts. Olivia stops posting to TikTok halfway through the year to concentrate on football. Hannah posts all year.

In the 2023 tax year (which begins on 1 April 2022 and ends on 31 March 2023), Olivia received a sponsorship payment relating to her TikTok posts totalling $500. Hannah received donations from fans during the tax year totalling $2,450.

Other than income from employment and interest on their savings, which Inland Revenue already knows about, the $500 received by Olivia and the $2,450 received by Hannah are the only income that Olivia and Hannah receive during the tax year.

The young person's income exemption applies to the $500 derived by Olivia. However, the exemption does not apply to any of the $2,450 derived by Hannah, because the income she derived during the tax year exceeded the threshold of $2,340. Hannah should include the $2,450 in her tax return.

Threshold of $200 for income other than reportable income

72. Generally, at the end of the tax year, a content creator needs to inform Inland Revenue of any income they earn from their content-creation activities.
73. The types of income that online content creators earn are different from, for example, employment income. Inland Revenue will generally already know about any employment income a person has because their employer has an obligation to report this income to Inland Revenue and withhold PAYE.
74. Often (but not always – see [121] about tax withheld by payer), income that content creators make will be income other than "reportable income", which is defined in s 22D(3) of the Tax Administration Act 1994. "Reportable income" includes things such as employment income and interest.
75. If a person has, in total, $200 or less of income other than reportable income in an income year, then they do not need to inform Inland Revenue of this income.[10] This means it won't be taxed.
76. This $200 income threshold applies to anyone; it is not limited to young people. See Example 16.
77. Note that this is an income threshold, not a profit (that is, income less expenses) threshold.
78. For more information, see:
    - "Simplifying tax administration: Individuals income tax", *Tax Information Bulletin* Vol 31, No 4 (May 2019): 7; and
    - ss 22D(3) and 22K of the Tax Administration Act 1994.

[10] Section 22K of the Tax Administration Act 1994.

Example 16 – $200 threshold

Manaaki is a keen gardener, and in his spare time he posts gardening videos on YouTube. Manaaki also has a part-time job working for a garden centre.

During the tax year, Manaaki earns $172 from views and subscriptions to his YouTube channel and $8,000 from his part-time job.

Manaaki does not need to inform Inland Revenue of the $172 that he earned from YouTube because the $200 income other than reporting income threshold applies.

Deductions for expenses and depreciation losses

79. If a content creator has an income-earning activity, they may be able to claim deductions for expenses and depreciation losses. These deductions will reduce their taxable income. Whether deductions are allowed depends on the tests discussed further below. However, before discussing these tests, some of the expenses that content creators might have are listed to give content creators an idea of what might be deductible.

Types of expense

80. The following are expenses that some content creators might have. Whether these expenses are deductible depends on the tests discussed further below:
    - home office expenses;
    - phone and internet expenses;
    - depreciation losses on equipment and other assets;
    - vehicle or travel expenses, if the content creation involves travel; however, home to work travel (for example, if the creator has a studio or workspace that is not at home) is not deductible;
    - professional fees (for example, accounting or tax agent fees related to the content-creation activity) and fees for creative services (for example, fees for editing, design or promotional work);
    - subscriptions for online content or apps that content creators use for their activity;
    - the cost of buying games and expansion packs (that is, for professional gamers or content creators who feature the games in their content);
    - music licensing fees;
    - in-game micro-transactions for professional gamers or content creators, if these transactions are necessary to be competitive in deriving income from gaming or streaming; and
    - the costs of materials (for example, materials used in instructional videos).

Relationship with income-earning activity

81. As noted above, if a content creator has an income-earning activity, they may be able to claim deductions for expenses and depreciation losses.
82. To be deductible, expenses or losses must be incurred in deriving income. This means a relationship must exist between the expense and the business or income-earning activity.[11]
83. In the case of a business, expenses can be deductible even if the business is not making a profit. However, there must be an intention of making a profit.

Content creator must incur the expenditure

84. A content creator can claim a deduction for an expense only if they are the person who has incurred the expense. For example, a content creator living at home with their parents cannot claim a deduction for internet costs if their parents pay the internet bill.

[11] Section DA 1.

Business must have started and be continuing

85. A person cannot claim deductions for expenses if a business or income-earning activity has not yet started.
86. Generally, an income earning activity starts when the activity can generate amounts that are income of the person. In some cases, there may be certain activities that need to occur before any amounts can be derived, eg a person may need to establish a certain number of viewers or subscriptions before they can make money from their content. In some cases, an income earning activity will not have started because the amounts received are not yet received regularly enough to constitute income.
87. Similarly, a person cannot claim deductions for expenses if a business or income-earning activity has stopped, even if the person continues to derive passive income from their old content. See also from [23] about passive receipts.

Example 17 – Income-earning activity has not started

Li wants to be a professional online gamer and streamer like his friend Joshua.

Li is an excellent gamer, but he does not derive amounts regularly from his gaming and streaming activities. There are a few things he will need to do (for example, climbing the in-game ladder, competing in open tournaments and building his viewership) before he can start deriving regular amounts from competing or streaming. However, Li is committed to giving it a go.

Li purchases equipment he thinks he will need to be competitive and wants to know whether he can have a deduction.

Li cannot have a deduction. Although it is not necessary for an activity to make a profit for expenditure to be deductible, the income-earning activity must have started. Li might have an intention to make a profit one day like Joshua, but his income-earning activity has not started. Li is not yet making income because he is not deriving regular amounts from competing or streaming nor is he in a position to do so. He has a number of things to do before this will be possible.

Expenses that are not deductible

88. Some expenses will not be deductible because they are private or domestic in nature (for example, most clothing expenses.)
89. Private and domestic expenses are essentially living costs and costs associated with the home or family.
90. Some expenses may be related to an income earning activity but also have a private component (eg, household costs where a person has a home office). In these cases, an apportionment is required to calculate the allowable deduction.
91. Expenses on capital assets (for example, a car) are also not deductible.[12] However, a person may be allowed deductions for depreciation losses on some capital assets, if the assets are used in the person's business or income-earning activity.

Related activities

92. An online content creator may be making content that is related to something else they are doing.
93. In these cases, care should be taken to separately identify the expenses incurred when creating content and expenses associated with the other activity. For example, the expenses on the other activity may be of a private and domestic nature, so not deductible. See Examples 18 and 19.

[12] Section DA 2.

Example 18 – Expenditure on related activity not deductible

David and Karen are semi-retired and decide to convert their quarter-acre section into a food forest so they can grow most of their own food. They document the process in videos posted online with the intention of making some money to help cover the cost of the food forest conversion.

David and Karen spend a large amount of money on plants and mulch. They also buy a small tripod for $100 to help film their videos. David and Karen would like to claim deductions for expenses incurred in the food forest conversion. They argue that the expenses are incurred in deriving income from the videos.

David and Karen's videos are popular and they derive $2,000 from the videos. They determine that the amounts received are income from a profit-making scheme or undertaking (often a short-term activity which is carried out with a dominant purpose of making a profit, see s CB 3).

David and Karen may be able to claim a deduction for expenses related to the filming, for example, the $100 cost of the tripod (a low-value asset that can be deducted in full in the year of purchase – see [100] about depreciation losses below). However, the cost of the plants and mulch is not deductible as this expense is of a private or domestic nature. The expenditure on the food forest conversion is largely for David and Karen's private benefit (that is, to provide them with food) rather than being incurred in deriving money from posting videos of the process.

Example 19 – Profit-making scheme and expenses while travelling

Aesha is a photographer. One of the ways that Aesha earns a living is by posting photos on Instagram. She regularly receives payments from viewers through a donation website and from selling high resolution copies of her photos.

Aesha sets out on a three-month overseas holiday. She plans to do some sightseeing and have a relaxing break. However, while travelling, she takes some great photos and continues to post to Instagram and offer photos for sale.

Aesha has continued her content creation income earning activity while on her three-month holiday. The amounts she derives from the donation website and her photo sales are income.

Aesha has kept receipts and good records of her revenue and expenses, so she is able to claim deductions for expenses incurred in deriving her income.

Generally, Aesha cannot claim deductions for her personal holiday expenses as these are private and domestic in nature. However, once a week, Aesha needs to spend a day in her hotel room editing photos and doing administration connected with her Instagram account and photo sales. It would be reasonable for Aesha to claim a deduction for part of her accommodation costs on the one day a week that she needs to do her editing and administration work. Aesha considers her situation carefully and estimates an appropriate proportion and keeps a record of how she arrived at this estimate.

Specific types of expense

94. Four specific types of expense that may be of interest to content creators are discussed further below:
    - home office expenses (see from [95]);
    - internet expenses (see [99]);
    - depreciation losses (see from [100]); and
    - clothing expenses (see from [110]).

Home office expenses

95. If a content creator has a business or income-earning activity that they carry on in an area of their home, they may be able to claim a deduction for home office expenses.
96. The allowable deduction will be based on the proportion of household costs that relate to the area used. Apportionment is needed because costs related to the home also have a private or domestic nature.
97. A person does not need to own their own home to claim home office expenses. A person could be renting or flatting. However, a person will not have home office expenses if they are living rent free and do not have to pay for a share of expenses such as for electricity, gas or water. See Example 20 (after [99]).
98. For more information on claiming home office expenditure see:
    - *Te Whakamahi i tō Kāinga mō tō Pakihi: Using Your Home for Your Business* (webpage, Inland Revenue);

- *Operational Statement OS 19/03: Square metre rate for the dual use of premises* (Inland Revenue, 2019); and
- s DB 18AA.

Internet expenses

99. Content creators are likely to use their home internet plans for both their content-creation activity and for their private or domestic use. Therefore, content creators may be allowed a deduction for a portion of their internet bill. Content creators need to estimate the portion based on their own situation. The estimate must give a fair and reasonable result. See Example 20.

Example 20 – Income and expenses of a professional gamer

Joshua is a professional gamer and streamer. He spends 10 hours a day practising game skills, playing and streaming his games, chatting to viewers, planning travel and other gaming activities, and doing general administrative tasks such as budgeting and recording income and expenses.

Joshua has made his way up the in-game ladder, has been successful in open tournaments and now plays in major overseas tournaments with prize pools of over $1 million. He travels to Asia to compete in person at large tournaments and incurs expenditure on travel and accommodation.

In the income year just ended, Joshua won $10,000 in prize money. However, Joshua received prize money of $15,000, $30,000 and $50,000 from three competitions in the previous income year. He is also doing well in regular game play and could win more prize money in future competitions.

Joshua receives payments of $350 a month on average from Twitch for his streaming. He also spends time chatting with his viewers and analysing his viewership. He then makes changes to his settings and streaming habits to improve his viewership.

Joshua also provides exclusive content and one-on-one coaching to premium members of his Patreon account. He receives $100 a month on average from Patreon payments.

While practising and competing in the game, Joshua earns various in-game items. The game allows the trading of these items for real world currency (at the player's own risk). During the income year, Joshua lists some of the more valuable items and earns $200. Joshua wouldn't set out to earn money this way as he values his time too much. However, since he has earned the items through his practice and competitive game time, he takes the opportunity to make some money.

Joshua pays a talent agent a commission to find and manage sponsorship deals. He receives $3,000 a year in sponsorship payments from a drinks manufacturer for featuring its energy drinks and wearing branded clothing while competing and streaming. He pays $450 of this to his talent agent.

Joshua is flatting and uses a portion of his room for his gaming and streaming activities (for 10 hours a day).

Although a standard fibre internet connection is sufficient for most internet gaming, he pays extra for a faster internet connection to ensure he does not have any lag when competing.

Income

All the amounts Joshua receives are income derived from a business. The prize money may be sporadic, but the facts show he has an intention of making a profit from his online activity. He also takes a business-like approach, committing significant time (10 hours a day) and money (on overseas travel, premium internet and a talent agent) on his activity.

Joshua's total income from his business is $18,600 (prize money of $10,000, Twitch payments of $4,200, $1,200 through Patreon, $3,000 of sponsorship, and $200 from the sale of in-game items).

Expenses

Joshua can claim deductions for expenditure that he incurs in carrying on his business. His deductible expenses for the tax year include the following:

- "Home office" expenses of $1,254.50. The calculation of which is discussed further below.
- Travel expenses (business proportion only) incurred while competing in major tournaments overseas. These included $2,200 on flights and $2,700 on accommodation.
- Gaming and streaming-related expenses of $350, including game purchases, extension packs, in-game purchases, subscriptions to apps used for streaming and analytics.
- Depreciation loss of $631.99. Joshua purchased a new game console during the income year. Because the cost of the console was under the low-value asset threshold ($1,000 from 17 March 2021), Joshua was able to claim the entire purchase price as a depreciation loss in the year of purchase (rather than claiming deductions over multiple years).
- Talent agency commission fees of $450.
- Internet expenses of $528. The calculation of this is discussed further below.

Joshua's expenses total $8,114.49. This means Joshua made a profit of $10,285.51 from the gaming and streaming business in the income year.

Home office expenses calculation

To make the home office expenses calculation a bit easier, Joshua chooses to use the square metre rate option. This option is available to Joshua as he uses a separately identifiable area in his room mainly for his business.

The square metre rate option saves Joshua from having to record and calculate his share of utilities bills (that is, power, gas and water) and from having to estimate the exact proportion of time that he uses the area in his room for his business.

To use the square metre rate option, Joshua needs to calculate the:

- "total premises cost", which will be Joshua's share of the rent, which over the income year totalled $12,500;
- "business square metres", which is the area (in square metres) in Joshua's room that he uses for his gaming and streaming activities (8 square metres);
- total area (in square metres) of the flat (Joshua's room, his flatmates' rooms and common areas), which Joshua finds out from his property manager that this is 110 square metres; and
- "business proportion"; which is the business square metres (the area Joshua uses for his gaming and streaming) divided by the total area of the flat, which is 8 divided by 110 = 7.3%.

Under the square metre rate option, the first part of the calculation involves multiplying the total premises cost by the business proportion. For Joshua, this is $12,500 x 7.3% = $912.50.

The second part of the calculation involves multiplying the business square metres by the square metre rate published by Inland Revenue (for this example we use the square metre rate for the 2020 tax year, which was $42.75). For Joshua, this is 8 x $42.75 = $342.

Joshua's allowable deduction for home office expenses is then given by adding the products of the two calculations described above: $912.50 + $342 = $1,254.50.

Internet

Joshua pays $60 a month as his share of the flat internet bill. This includes the additional $20 cost of having a higher speed internet connection, which Joshua agrees to pay for himself.

Joshua can claim a portion of the $60 amount that he pays, based on the proportion of business use.

Joshua decides that the additional cost of having a higher speed internet connection is 100% attributable to his business and that he uses the internet for his business 60% of the time. As a result, he calculates his allowable deduction as being $44 a month ((100% x $20) + (60% x $40)). This equates to $528 over the course of the income year.

Depreciation losses

100. Content creators may be able to claim deductions for depreciation losses on assets that they use to make content. Examples of these assets might be:
    - computers or game consoles;
    - cameras, lighting or microphones; or
    - vehicles, if the content creator's activity involves the use of a vehicle, eg a travel writer where, and to the extent that, they use the vehicle when creating their travel related content.
101. Deductions for depreciation loss would be limited to the business proportion, if the assets are also used privately. In other words, the depreciation losses must be apportioned between business and private use.
102. Depreciation loss is normally claimed over multiple years, depending on the estimated useful life of an asset. However, for some low-value assets, depreciation loss can be claimed in full in the income year the asset is purchased. The low-value threshold is $1,000.
103. For assets over the low-value threshold, taxpayers need to identify the annual depreciation rate applying to the item of depreciable property.
104. For more information on claiming deductions for depreciation loss and identifying the correct depreciation rate and the useful life of an asset, see:
    - *Te Hekenga Wāriu: Depreciation* (webpage, Inland Revenue);
    - *Depreciation: A guide for businesses* (IR260, Inland Revenue, 2020); and
    - *General Depreciation Rates* (IR265, Inland Revenue, 2020).
105. IR265 provides a step-by-step process to find the right depreciation rate:

    How to find the right rate

    Follow this step-by-step process to find the right depreciation rate.

    1. See the "Industry" category list in the contents pages. If there is an appropriate industry category for your industry and your asset is listed there, use that depreciation rate (either DV or SL), otherwise go to step 2.
    2. See the "Asset" category list in the contents pages. If there is an appropriate asset category and your asset is listed, use that depreciation rate (either DV or SL), otherwise go to step 3.
    3. If the asset is listed under an industry category (step 1) which isn't your main industry, and you use the asset in a similar way to the industry shown, use that depreciation rate (either DV or SL), otherwise go to step 4.
    4. If none of the first three steps apply, use the default class from the appropriate asset category if the description of the default class is applicable to your asset.
    5. If none of the first four steps apply, use the default class rate from the appropriate industry category if the description of the default class is applicable to your asset.
    6. Where there is no appropriate listing for your asset under an industry or asset category, you can apply for a provisional depreciation rate.

    You can search for a specific asset across all industry and asset categories using our depreciation rate finder at **ird.govt.nz**
106. When following the process in IR265 to find the correct depreciation rate, a content creator will need to identify relevant industry groups and asset categories.
107. The relevant industry groups could be:
    - audio and video recording studios and professional photography; and
    - leisure.
108. The audio and video recording studios and professional photography industry might be a good fit for content creators based at home. The leisure industry group may be a good fit for content creators whose activity involves entertainment or travel.
109. The relevant asset categories could include:
    - computer equipment;
    - laptop computers;

- personal computers;
- tablet computers and electronic media storage devices (including smartphones);
- chairs;
- desks;
- office equipment;
- office furniture; and
- screens (for offices).

Clothing expenses

110. Generally, expenditure on clothing and its maintenance is not deductible.[13] Generally, clothing is of a private or domestic nature as it is required for personal reasons such as warmth and modesty. Private or domestic expenditure is not deductible.

111. A content creator may need to dress in a certain way to add impact or authority to their content. Further, the content creator may wear or use the clothing only for the online content. However, these factors will not make expenses on clothing or its maintenance deductible as the private element is still paramount.

112. There would need to be special circumstances for expenditure on clothing to be deductible. Examples might include expenses on protective clothing or costumes. See Examples 21 and 22.

Example 21 – Clothing generally

Ashley, a fashion commentator, is attending a fashion show. She buys a new designer jacket to wear to the show, because being well dressed is essential to the success of her content.

The cost of the jacket is not deductible. Generally, the cost of clothing is private or domestic in nature, so is not deductible. This is so even if a high standard of dress is required for an activity.

Example 22 – Clothing special circumstances

Kenya has a content-creation business that involves creating short comedy skits based on role-playing games that she and her friends play.

Kenya spends $50 buying materials to make a new medieval shopkeeper costume for a comedy skit that she is planning.

The cost of the materials is deductible. Although the costume will consist of clothing, in these circumstances the cost is clearly incurred in deriving income and the private benefit of the costume while worn is incidental.

Overseas income earned by a New Zealand resident

113. A content creator may be required to work overseas as part of their income-earning activity. For example, an online gamer who is a member of an overseas-based team may spend half of the year working overseas with their team. Working digitally also allows content creators based in New Zealand to earn money overseas.

114. A person who is tax resident in New Zealand is taxable on income even if they earn the income overseas (or if the income has an overseas source).[14]

115. A person's tax residency is different from their immigration status.

116. Content creators need to work carefully through the guidance material referred to below to determine their tax residency. However, briefly, if a person has been a New Zealand tax resident, they will become a non-resident taxpayer if they:
    - do not have a permanent place of abode in New Zealand; and
    - are away from New Zealand for more than 325 days in any 12-month period.

117. If a content creator is a New Zealand tax resident and income earned overseas is taxed overseas, tax relief will generally be available to prevent the income from being taxed twice. In some cases, a double tax agreement between New Zealand and the overseas country will give only one country the right to tax. In other cases, the income will be taxed in both countries, but a tax credit will be provided for the tax paid overseas (however, depending on the particular circumstances the tax credit may be limited).

[13] *Mansfield v FCT* (1996) 96 ATC 4,001 (FCA).

[14] Section BD 1.

118. For more information on residency and international tax, see:

- *International Tax for Individuals* (webpage, Inland Revenue).
- *Double tax agreements* (DTAs) (webpage, Inland Revenue).
- *New Zealand Tax Residence: Who is a New Zealand resident for tax purposes?* (IR292, Inland Revenue, 2019); and
- "Interpretation Statement IS 16/03: Tax residence", *Tax Information Bulletin* Vol 28, No 10 (October 2016): 2.

119. IS 16/03 contains several examples detailing when a person will be resident in New Zealand for tax purposes.

120. For a very simple scenario and only one of the relevant tests, see Example 23.

Example 23 – Tax residency

Hyo Jin, originally from Tāmaki Makaurau, is a very popular musician and performer on TikTok. Recently, she has been collaborating and performing with a band in South Korea and posting to TikTok along the way. In the last 12 months, she spent six months overseas and the rest of her time in New Zealand.

Hyo Jin was absent from New Zealand for only 183 days during the last 12 months. This is not long enough for Hyo Jin to lose her New Zealand tax residency. Because Hyo Jin is a New Zealand resident she is taxed in New Zealand on all the income she receives (whether from New Zealand or overseas).

As a New Zealand tax resident, Hyo Jin would need to be absent for more than 325 days **and** not have a permanent place of abode in New Zealand to lose her New Zealand tax residency.

Tax withheld by payer

121. Where a content creator receives an amount that is a "schedular payment" then it should be subject to withholding tax, that is, tax is removed from the payment by the payer and paid to Inland Revenue on the content creators' behalf before the balance of the payment is received by the content creator.

122. Withholding tax helps to ensure tax is paid as income is received, rather than at the end of the income year. The amount deducted is based on a tax code declaration the recipient gives to the payer. In most cases, the tax code used only estimates the tax on the income. Ultimately, the recipient's income tax liability is determined in their annual income tax assessment.

123. Schedular payments are certain types of listed payments (in schedule 4 of the Act). They include:

- a payment made in connection with:
  - a performance at a sporting event or competition;
  - making speeches or giving lectures or talks for any purpose; and
  - acting, singing, playing music, dancing or entertaining generally; and
  - one of the above performances that includes a payment for a content creator to advertise a product as part of their content-creation activity (for example, a company pays an e-sports participant to wear the company's products at an esports competition);
- modelling fees;
- media production fees (for example, if a content creator is creating a video for an advertiser, rather than advertising or endorsing a product in their own content); and
- promotional appearance fees (for example, if a content creator physically appears at an event and uses their fame to promote a product or service).

124. Content creators will often be undertaking one of these activities. In these cases, a payer must withhold tax from the payment. A content creator will also need to give the payer a tax rate notification form: *Tax Rate Notification for Contractors* (IR330C, Inland Revenue, 2019). This will tell the payer what tax rate to use for the withholding.

125. For more information, see *Withholding Taxes* (webpage, Inland Revenue).

GST

126. GST is a tax that is charged on the supply of goods and services.

127. Content creators make supplies of goods or services, so may be required to return GST on those supplies. For example, a content creator may supply a service to an online platform when they post a video on the platform. A content creator may also supply a service to a company when the content creator promotes a product of the company.

128. However, GST is charged on a supply only if the supply is made by a registered person. Generally, a person is required to register for GST only if the total value of their supplies in a 12-month period exceeds or is expected to exceed $60,000 (if the supplies are below this amount then registration is voluntary).

129. For more information on GST obligations, see *GST (Goods and Services Tax)* (webpage, Inland Revenue).

Example 24

Mai is a self-styled "mummy-blogger" who creates social media content about her young children. Much of her content focuses on natural remedies and products for babies and young children. She makes a modest amount from her social media activity ($5,000 a year) but also has an income from her own merchandise which she promotes to her followers. Her merchandise sales are $10,000 a year – driven by the popularity of her "Mummy Mai" branded natural baby massage oil. Mai wants to know whether she needs to register for GST.

Because Mai's supplies do not exceed $60,000 in any 12-month period (and are not likely to) she is not required to registered for GST. She can voluntarily register for GST but Mai decides that registering for GST is not right for her. She does not want to charge GST on sales and does not want to deal with the ongoing requirements around recordkeeping and filing returns.

Keeping good records

130. It is important for online content creators to keep good records. Failing to keep good records is risky. In some cases, failing to keep good records can result in Inland Revenue:

- treating a person as having more income than they actually do (for example, if their income needs to be determined based solely on deposits in their bank account or assets they have acquired);
- disallowing deductions for expenses a person could have claimed if they had kept a record of their expenses; or
- imposing penalties and use of money interest for underpayment of tax.

See Example 25.

131. For more information of record keeping, see *Te Tiaki Pūkete: Record Keeping* (webpage, Inland Revenue).

Example 25 – Keeping good records

Two years pass for Li, the aspiring gamer from Example 17. He has been so busy practising and competing that time seems to have flown by. He has done exceptionally well but he hasn't thought about tax for a while.

A friend suggests to Li that he might want to get on top of his tax situation. Li makes some time to go through his online donation account, Twitch history, bank statements, emails and other records. He is glad that he did, because he realises he has been earning regular income. Li informs Inland Revenue of his additional income and it is included in his income tax assessment for the income year just ended. This spares Li from being subject to penalties and interest.

Li was able to find some receipts and other evidence for expenditure he incurred during the income year just ended. However, he wishes he had kept better records because, if he had, he could have supported greater deductions against his income. Li starts keeping better records for the current income year.

Appendix: Legislation

Income Tax Act 2007

CA 1 Amounts that are income

…

Ordinary meaning

(2) An amount is also income of a person if it is their income under ordinary concepts.

CB 1 Amounts derived from business

Income

(1) An amount that a person derives from a business is income of the person.

Exclusion

(2) Subsection (1) does not apply to an amount that is of a capital nature.

…

CB 3 Profit-making undertaking or scheme

An amount that a person derives from carrying on or carrying out an undertaking or scheme entered into or devised for the purpose of making a profit is income of the person.

CW 55BB Minors' income, to limited extent

When this section applies

(1) This section applies for a tax year to a person, other than an absentee, when the person is—

(a) younger than 15:

(b) younger than 18, and attends a registered school as defined in section 10(1) of the Education and Training Act 2020.

(c) younger than 19, and—

(i) was a person to whom paragraph (b) applied during the previous tax year; and

(ii) turned 18 on or after 1 January in that previous tax year; and

(iii) continues to attend a school of a kind referred to in paragraph (b).

Exempt income—if less than limit

(2) An amount of income derived by the person in the tax year is exempt income if—

(a) the income is none of—

(i) a PAYE income payment from which the person's employer is required to withhold tax under the PAYE rules:

(ii) resident passive income:

(iii) non-resident passive income:

(iv) excluded income:

(v) exempt income under another provision; and

(b) the person derives in the tax year a total amount of income meeting the requirements of paragraph (a) that is less than $2,340.

DA 1 General permission

Nexus with income

(1) A person is allowed a deduction for an amount of expenditure or loss, including an amount of depreciation loss, to the extent to which the expenditure or loss is—

(a) incurred by them in deriving—

(i) their assessable income; or

(ii) their excluded income; or

(iii) a combination of their assessable income and excluded income; or

(b) incurred by them in the course of carrying on a business for the purpose of deriving—

(i) their assessable income; or

(ii) their excluded income; or

(iii) a combination of their assessable income and excluded income.

General permission

(2) Subsection (1) is called the general permission.

Avoidance arrangements

(3) Section GB 33 (Arrangements involving depreciation loss) may apply to override the general permission in relation to an amount of depreciation loss.

DA 2 General limitations

Capital limitation

(1) A person is denied a deduction for an amount of expenditure or loss to the extent to which it is of a capital nature. This rule is called the capital limitation.

Private limitation

(2) A person is denied a deduction for an amount of expenditure or loss to the extent to which it is of a private or domestic nature. This rule is called the private limitation.

Exempt income limitation

(3) A person is denied a deduction for an amount of expenditure or loss to the extent to which it is incurred in deriving exempt income. This rule is called the exempt income limitation.

…

DB 18AA Square metre rate method

When this section applies

(1) A person may choose to apply this section to determine the amount of a deduction, in an income year, for the proportion of business use of a premises (the premises) that is used partly for business purposes and partly for other purposes.

Amount of deduction

(2) The amount of the deduction allowed in an income year for the business use of the premises is calculated using the formula—

(total premise costs × business proportion) + (business square metres × square metre rate).

Definition of items in formula

(3) In the formula,—

(a) total premise costs is the total amount of actual mortgage interest, rates, and rent that the person has paid with respect to buildings and their curtilage on the premises in the income year:

(b) business proportion is determined by dividing business square metres by the total area of buildings on the premises in square metres:

(c) business square metres is the total area, in square metres, of any separately identifiable parts of buildings on the premises that are used primarily for business purposes:

(d) square metre rate is the applicable square metre rate that is published by the Commissioner.

No other deductions allowed

(4) A person who makes an election to apply this section under subsection (1) is not entitled to claim any other deductions for the business use of the premises.

Setting square metre rates

(5) For the purposes of this section, the Commissioner must from time to time set and publish square metre rates.

LD 3 Meaning of charitable or other public benefit gift

Meaning

(1) For the purposes of sections DB 41 and DV 12 (which relate to deductions for gifts of money), and this subpart, a charitable or other public benefit gift—

(a) means a gift of money of $5 or more that is paid to a society, institution, association, organisation, trust, or fund (the entity), if—

(i) the entity is described in subsection (2)(a), (ab), (b), (c), or (d), and the name of the entity is on the list published by the Commissioner under section 41A(14) to (16) of the Tax Administration Act 1994:

(ii) the entity is described in subsection (2)(ac), (bb), or (bc):

(iii) the name of the entity is listed in schedule 32 (Recipients of charitable or other public benefit gifts):

(b) includes a subscription of $5 or more paid to an entity only if the subscription does not confer any rights arising from membership in that entity or any other society, institution, association, organisation, trust, or fund:

(c) does not include—

(i) a testamentary gift:

(ii) a gift made by forgiving some or all of a debt.

Description of organisations

(2) The following are the entities referred to in subsection (1)(a) and (b):

(a) a society, institution, association, organisation, or trust that is not carried on for the private pecuniary profit of an individual, and whose funds are applied wholly or mainly to charitable, benevolent, philanthropic, or cultural purposes within New Zealand:

(ab) an entity that, but for this paragraph, no longer meets the requirements of this subsection, but only for the period starting on the day it fails to meet those requirements and ending on the later of—

(i) the day the entity is removed from the register of charitable entities under the Charities Act 2005:

(ii) the day on which all reasonably contemplated administrative appeals and Court proceedings, including appeal rights, are finalised or exhausted in relation to the person's charitable status.

(ac) a community housing entity, if the gift is made at a time the entity is eligible to derive exempt income under section CW 42B (Community housing trusts and companies):

(b) a public institution maintained exclusively for any 1 or more of the purposes within New Zealand set out in paragraph (a):

(bb) a board that is constituted under subpart 5 of Part 3 of the Education and Training Act 2020 and is not carried on for the private pecuniary profit of any individual:

(bc) a tertiary education institution:

(c) a fund established and maintained exclusively for the purpose of providing money for any 1 or more of the purposes within New Zealand set out in paragraph (a), by a society, institution, association, organisation, or trust that is not carried on for the private pecuniary profit of an individual:

(d) a public fund established and maintained exclusively for the purpose of providing money for any 1 or more of the purposes within New Zealand set out in paragraph (a).

Exception for certain entities

(3) Despite subsection (2)(a), (b), (c), and (d), a society, institution, association, organisation, trust, or fund is not a relevant entity for the purposes of subsection (1) if the society, institution, association, organisation, trust, or fund,—

(a) is not a tax charity, because it is not registered as a charitable entity under the Charities Act 2005; and

(b) in the opinion of the Commissioner, is eligible to be registered as a charitable entity under that Act.

Schedule 4

…

Part F Payments for activities related to sports, media, entertainment, and public speaking

1. A payment of a media contribution fee, or of a promotional appearance fee, has a standard rate of tax of 0.25 for each dollar of the payment.

2. A payment that relates to media production work has a standard rate of tax of 0.20 for each dollar of the payment, if part A of this schedule, and clauses 4 and 5 of this part do not apply to the payment.

3. A payment of a modelling fee has a standard rate of tax of 0.20 for each dollar of the payment.

4. A payment for services connected with a non-resident entertainer providing or performing a Part F activity has a standard rate of tax of 0.20 for each dollar of the payment, if the payment is—

   (a) to the non-resident entertainer:

   (b) to an agent of the non-resident entertainer:

   (c) to a person acting on behalf of the non-resident entertainer.

5. A payment for services connected with a New Zealand resident providing or performing a Part F activity has a standard rate of tax of 0.20 for each dollar of the payment, if clause 6 does not apply to the payment and it is—

   (a) to the New Zealand resident:

   (b) to an agent of the resident:

   (c) to a person acting on behalf of the resident.

6. A payment for services connected with a New Zealand resident providing or performing a Part F activity has a standard rate of tax of 0.15 for each dollar of the payment, if the payment relates to shares of riding or driving fees and it is—

(a) to the New Zealand resident, and the resident is an apprentice jockey or an apprentice driver:

(b) to an agent of the apprentice jockey or apprentice driver:

(c) to a person acting on behalf of the apprentice jockey or apprentice driver.

7. In this part,—

media contribution fee means fees or remuneration, paid to a contributor, that relate to a contribution for television, radio, theatre, stage, or printed media

media production work means work or services that relate to television, videos, or films, if the work or services have the following nature:

(a) on-set and off-set pre-production work or services:

(b) on-set and off-set production work or services:

(c) on-set and off-set post-production work or services

modelling fee means fees or remuneration that relate to modelling, including a personal attendance for any promotional purpose, for photography, for supplying personal photographs, or for supplying personal endorsements or statements

Part F activity means an activity or performance—

(a) connected with—

(i) a sporting event or competition:

(ii) making speeches or giving lectures or talks for any purpose:

(iii) acting, singing, playing music, dancing, or entertaining generally, for any purpose and whether alone or not; and

(b) undertaken by a person who meets the requirements of any of the following paragraphs:

(i) they are not fully or partly sponsored under a cultural programme of an overseas government or the Government of New Zealand:

(ii) they are not an official representative of a body that administers a game or sport in an overseas country:

(iii) they are not undertaking an activity or performance under a programme of a foundation, trust, or organisation outside New Zealand which exists for the promotion of a cultural activity and is not carried on for individual profit of the member or shareholder:

(iv) if they are an employee, officer, or principal of a company, firm, or other person, includes the company, firm, or other person

promotional appearance fee means fees or remuneration that relate to a personal attendance for exhibiting or demonstrating goods

Tax Administration Act 1994

22D Key terms

…

Meaning of reportable income

(3) For the purposes of this Act and the Income Tax Act 2007, **reportable income,** for an individual and a tax year, means an amount of income paid or payable to the individual for the corresponding income year—

(a) that is—

(i) a PAYE income payment:

(ii) a payment of resident passive income:

(iii) a payment of non-resident passive income:

(iv) a benefit under an employee share scheme described in schedule 4, table 1, rows 4 and 7:

(v) attributed PIE income; and

(b) for which the person paying the amount has been provided the individual's tax file number, however this requirement does not apply if the amount is income derived jointly with another person and the Commissioner is able to allocate an amount to the individual for the income year; and

(c) in relation to which information must be provided under this Act to the Commissioner by—

(i) for the items referred to in paragraph (a)(i) to (iv), 31 May in the next tax year:

(ii) for the item referred to in paragraph (a)(v), the date referred to in section 25K.

Meaning of other income

(4) For the purposes of this subpart and section 141JA and schedule 8, other income or income other than reportable income, for an individual and a tax year, means an amount of income paid or payable to, or treated as income of, the individual for the corresponding income year that is not their reportable income.

22K No obligation to provide information: de minimis and certain other amounts

Small amounts of income

(1) No obligation to provide information for a tax year arises if an individual derives income other than reportable income for the corresponding income year of $200 or less.

Other specific provisions may override this section

(2) A specific provision in an Inland Revenue Act requiring an individual to provide information in a particular circumstance overrides this section.

References

Legislative references

Income Tax Act 2007, ss CA 1(2), CB 1, CB 3, CW 55BB, DA 1, DA 2, DB 18AA, FC 1, FC 2, GC 1, LD 3 and schedule 4

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STANDARD PRACTICE STATEMENTS

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

SPS 21/03: Tax payments – when received in time

Introduction

This Statement sets out Inland Revenue's practice for accepting tax payments as having been received in time.

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

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

Payment options	You'll need
Online through your bank – PayTax function – Internet banking	IRD number Tax/product type or media number (from the return, letter or statement) Payment period (if applicable) Authorise the bank to make one-off or regular payments
Debit or Credit Card – Via myIR – On our secure payment website at **www.ird.govt.nz** and search 'make a payment' – On the phone using our 24/7 self-service (say 'make a payment') – On the phone with one of our staff (NZ business hours only)	Visa or Mastercard IRD number Tax/product type (if applicable) Payment period (if applicable)
Direct debit – via myIR – through your bank – on the phone with one of our staff	IRD number An authority for IR to initiate direct debit payments from your bank
Westpac in person – Counter services for cash or EFTPOS (you do not need to be a Westpac customer) – SmartATM for cash (all customers) – SmartATM EFTPOS (Westpac customers only)	From 1 July 2020, a barcode is required. The payment barcode can be found on your return, letter or IR statement - or create your own at **www.ird.govt.nz/barcode**
Through your bank – Automatic payment – Direct credit Both options allow for 2 people to sign	IRD number Tax/product type Payment period

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

Application

This Statement applies from 1 October 2021. It replaces SPS 20/04 Tax payments – when received in time, which was published in Tax Information Bulletin, Vol 32, No 7 (August 2020).

Standard practice

Summary

1. This Statement sets out when Inland Revenue would accept payments as having been received in time, including:
    - electronic payments (from New Zealand)
    - debit/credit cards (Visa or Mastercard only)
    - cash and EFTPOS payments (accompanied by a barcode)
    - tax pooling
    - tax transfers
    - overseas electronic payments
    - weekends and public holidays

Detailed discussion

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

Electronic payments (from New Zealand)

3. Customers are encouraged to make payments electronically, including by internet banking. Payments by this method minimise delays and include formal notification of the date and time payment was made to Inland Revenue. A payment will be received in time when it has been electronically paid or direct credited into an Inland Revenue account either on or before the due date. To ensure payment is received in time, you need to be familiar with your banks' processing schedule.
4. A customer is able to future-date an electronic payment by using the "my tax payment" option available with all major New Zealand bank's internet banking service.
5. Customers who are registered for myIR can set up direct debits if there is an outstanding liability on the account, or if a return is filed at the same time (excluding for Multi Payment Option and Income Equalisation Schemes). Direct Debits cannot be set up for Child Support, KiwiSaver member and Tax Pooling. A direct debit payment will be received in time when the direct debit transaction is made on or before the New Zealand due date.

Debit/credit cards

6. Customers can make payment by using a (Visa or Mastercard only) debit/credit card over the phone to Inland Revenue, through the payment page on the IR website and through myIR, our secure online service.
7. A convenience fee of 1.42% is payable (charged by the banks) on all debit/credit card transactions from within New Zealand and overseas[1].
8. A debit/credit card payment will be received in time when it has been paid or direct credited into an Inland Revenue account on or before the New Zealand due date.

Cash and EFTPOS payments

9. Payments by cash or EFTPOS cannot be accepted over-the-counter at an Inland Revenue office. Westpac bank is authorised to receive over-the-counter payments on behalf of Inland Revenue.

[1] The convenience fee will also be payable on Child Support and Student Loan customer repayments from overseas (where Inland Revenue currently pays the convenience fee) with effect from 22 October 2021.

10. Cash payments should not be sent by mail or courier to Inland Revenue.
11. Since 1 July 2020, payments at a Westpac branch or Smart ATM must either include a barcode obtained from letters, returns[2], and statements issued by Inland Revenue, or a barcode created through the Inland Revenue website[3] to provide clear payment instructions. A separate barcode is required for each individual tax type payable and tax period.
12. Customers may pay by cash or EFTPOS at a Westpac counter or cash at a Westpac Smart ATM. Customers with a Westpac bank account may also pay via EFTPOS at a Westpac Smart ATM.
13. Payments made at a Westpac branch are received in time if they are made on or before the due date. The cut off time for a payment made at an ATM is 9PM, any payment made after this will go in the banking file on the next business day.

Tax pooling

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

Overseas electronic payments

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

Tax transfers

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

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

20. Customers may make deposits via their online banking Pay Tax facility, by credit card and direct debit, as these tax types have been added into online banking as options for payment.

Weekends and public holidays

21. If a due date falls on a weekend or a public holiday, a payment will be in time when it is received at a Westpac branch or an Inland Revenue bank account on or before the next working day.

Provincial Anniversary Days

22. For those customers located in the province that is celebrating its anniversary day and who usually make tax payments in person over-the-counter at Westpac, the payment will be in time if received on or before the next working day.

This Standard Practice Statement is signed on 1 October 2021.

Rob Falk
National Advisor,
Technical Standards, Legal Services

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

[3] Through Inland Revenues website payment page at **www.ird.govt.nz/make-a-payment/paying-at-westpac** or **www.ird.govt.nz/barcode**

LEGAL DECISIONS – CASE SUMMARIES

This section of the *TIB* sets out brief notes of recent tax decisions made by the Taxation Review Authority, the High Court, Court of Appeal, and the Supreme Court.

We've given full references to each case, including the citation details where it has already been reported. Details of the relevant Act and section will help you to quickly identify the legislation at issue. Short case summaries and keywords deliver the bare essentials for busy readers. The notes also outline the principal facts and grounds for the decision.

These case reviews do not set out Inland Revenue policy, nor do they represent our attitude to the decision. These are purely brief factual reviews of decisions for the general interest of our readers.

Case summary

Taxation Review Authority confirms that backdated ACC weekly compensation is taxed in the year of receipt

Decision date: 01 October 2021

CSUM 21/09

Case

***Disputant v Commissioner of Inland Revenue* [2021] NZTRA 3**

Legislative References

Income Tax Act 2007, s BD 3;

Accident Compensation Act 2001, s 252.

Legal terms

Backdated ACC weekly compensation; income; derive; cash or accruals basis.

Summary

The disputant challenged her income tax assessment for the tax year ended 31 March 2018 (the period in Dispute). The Accident Compensation Corporation ("ACC") made a gross payment of $180,951.22 (the weekly Compensation Payment) to the disputant in the Period in Dispute. The Commissioner of Inland Revenue ("the Commissioner") taxed the entire Weekly Compensation Payment in the Period in Dispute when the disputant received it.

Impact

This decision affirms that an individual who has no trade, and who receives backdated ACC weekly compensation, is taxed on a cash basis (ie, in the year of receipt) in accordance with s BD 3(2) of the Income Tax Act 2007 ("the ITA 2007"). The decision also confirms that the High Court case of *Hollis v Commissioner of Inland Revenue* (2010) 24 NZTC 23,967 (HC), is still the leading authority in this area of the law.

Facts

In September 2013, the disputant injured her left wrist and hand at her work with the Auckland Council when she lifted a two-litre bottle of milk out of the fridge.

In December 2013, the disputant resigned from her employment with the Auckland Council with her final day of work being 30 January 2014. Between September 2013 and May 2014, the disputant consulted with medical professionals for both the left wrist injury and for pain she was experiencing in her right wrist. The pain in her right wrist was due to an injury she obtained in 1993, diagnosed as a gradual process injury, whilst employed as an auditor with the Inland Revenue Department.

The disputant was certified unfit for work by Work and Income New Zealand ("WINZ") and ACC on 6 August and 29 October 2014 respectively.

The disputant set up a consultancy business in environmental sustainability and planning consents and completed a 10-day contract with the Environmental Protection Authority in March/April 2014.

In August 2014, the disputant applied for a WINZ benefit and provided a medical certificate in support from her GP.

In October 2014, the disputant's GP lodged a claim for left carpal tunnel syndrome arising from the left wrist/hand injury, and the disputant sought weekly compensation from ACC from 22 April 2014.

On 24 May 2017, ACC was directed to investigate and determine the claim for weekly compensation arising from the disputant's covered injuries for her right hand and wrist.

On 11 October 2017, ACC wrote to the disputant informing her that:

- during the period 22 April 2014 to 17 September 2017, she didn't receive the full amount of weekly compensation that she was entitled to;
- the Weekly Compensation Payment had been calculated to be an amount of $188,386.95 before tax; and
- weekly compensation is taxed in the year in which it is received, not the year to which the payment relates.

On 9 November 2017, the disputant received the Weekly Compensation Payment from ACC (less the tax that had been deducted).

Issues

The issues that the Taxation Review Authority ("the Authority") was required to determine are:

- What is the correct tax treatment of the Weekly Compensation Payment; and
- Is there a discretionary power for the Commissioner to apply a different tax treatment?

Decision

Tax treatment of the Weekly Compensation Payment

The disputant's general thrust of her argument was that derivation is a flexible concept and could be adapted to allocate the Weekly Compensation Payment to prior income years (2015 to 2018) to reduce the effective tax rate in her case. The Authority noted that if the disputant were correct, and she derived the income during the 2015 to 2018 income years as it accrued, she would have been obliged to include the income in her tax returns and pay tax.

If an attempt were made to go back and amend assessments from earlier years, the disputant would potentially be liable for late payment penalties and use of money interest.

The Authority rejected all of the disputant's contentions; not only because of the long line of authority but because they were fundamentally flawed in principle. The Authority held that taxing backdated weekly compensation payments in the year of receipt is long established and a deliberate policy setting in the ITA 2007, as well as the complementary payment provisions in the Accident Compensation Act 2001.

Discretionary power

The Authority noted that in exceptional circumstances the Commissioner has power to alter the usual application of tax law, but usually there is no general discretionary power to exempt taxpayers from tax law.

The disputant submitted that taxing the Weekly Compensation Payment in the year of receipt was so reprehensible that it triggered an extraordinary discretionary power. The Authority held that this argument had no merit, and that taxing backdated weekly compensation payments in the year of receipt is long-standing and settled law.

About this document

These are brief case summaries, prepared by Inland Revenue, of decisions made by the Taxation Review Authority, the District Court, the High Court, the Court of Appeal or the Supreme Court in matters involving the Revenue Acts. For Taxation Review Authority matters, names have been anonymized. The findings of the court described in a case summary will no longer represent current law where the matter has been successfully appealed or subsequent amended legislation has been enacted.