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TAX INFORMATION Bulletin

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YOUR OPPORTUNITY TO COMMENT

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

You can find a list of the items we are currently inviting submissions on as well as a list of expired items at **taxtechnical.ird.govt.nz** (search keywords: public consultation).

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Ref	Draft type	Title	Comment deadline
PUB00500	Interpretation statement	Shortfall penalties – s 141A, 141B and 141C of the Tax Administration Act 1994	31 October 2025
PUB00509	Interpretation statement	Income tax implications of providing sponsorship	21 November 2025

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IN SUMMARY

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Technical decision summary

NEW LEGISLATIONS

This section of the TIB covers new legislation, changes to legislation including general and remedial amendments, and Orders in Council. These commentaries are first published on the **Tax Policy website** shortly after any new legislation is enacted or Orders in Council are made to help affected taxpayers and their advisors understand the consequences of the changes.

SL 2025/151: Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2025

This Order in Council commentary provides information on a decrease to the fringe benefit tax prescribed rate of interest for low-interest employment-related loans, applying from 1 July 2025.

Order

Section RA 21(3) and (4) of the Income Tax Act 2007 The Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2025 was made on 21 July 2025. The Order in Council decreases the fringe benefit tax (FBT) prescribed rate of interest for low-interest employment-related loans from 7.38% to 6.67%.

Background

The FBT rules tax non-cash benefits provided to employees. Included in the definition of "fringe benefit" is any employment-related loan on which the employer is charging a rate of interest that is below the market rate. The interest differential is taxable.

A prescribed rate set by regulations is used as a proxy for the market rate of interest to save employers the compliance costs associated with determining the market rate relevant to loans they have provided to their employees.

Section RA 21(3) of the Income Tax Act 2007 permits the making of regulations by Order in Council to set a prescribed rate of interest for calculating FBT on low-interest loans. Once a rate is set, it remains the prescribed rate until changed by a subsequent Order in Council.

By administrative convention, the FBT prescribed rate of interest is based on the 'floating first mortgage new customer housing rate' series published by the Reserve Bank (RBNZ) each month. It is updated when there has been an increase or decrease in the RBNZ rate of 20 or more basis points since the FBT rate was last set. The RBNZ rate for April 2025 was 6.67%. This is down from 7.38%, the rate for January 2025, when the FBT prescribed rate of interest was last set. The FBT prescribed rate of interest is being lowered accordingly.

Key features

The FBT prescribed rate of interest for low-interest employment-related loans has been decreased from 7.38% to 6.67%, effective from 21 August 2025.

Effective date

The new prescribed rate of 6.67% applies for the quarter beginning 1 July 2025 and subsequent quarters.

Further information

The new Order in Council can be found at:

Income Tax (Fringe Benefit Tax, Interest on Loans) Amendment Regulations (No 2) 2025 (SL 2025/151) – New Zealand Legislation

SL 2025/150: Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2024–25 Income Year) Order 2025

This Order in Council commentary provides information on a change in the deemed rate of return for taxing interests in foreign investment funds, effective from 1 April 2025.

Order

Section EX 55 of the Income Tax Act 2007 The Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2024–25 Income Year) Order 2025 was made on 21 July 2025. The deemed rate of return on attributing interests in foreign investment funds has been set at 8.04% for the 2024–25 income year.

Background

The deemed rate of return is set annually and is one of the methods that can be used to calculate income from foreign investment fund interests. The rate is calculated by taking an average of the five-year government bond rate at the end of each quarter, plus a margin of 4%.

Key features

The deemed rate of return for taxing interests in foreign investment funds is 8.04% for the 2024–25 income year, a decrease of 0.59% from the previous income year.

Effective date

The new rate was set by Order in Council on 21 July 2025 and came into force on 25 July 2025.

Further information

The new Order in Council can be found at:

Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2024–25 Income Year) Order 2025 (SL 2025/150) – New Zealand Legislation

BINDING RULING

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 25/04: PPS Mutual Limited

Issued | Tukuna: 30 June 2025

This Product Ruling applies to profit share benefit allocations and payments to Members (or Members' estates) under the death benefit, terminal illness benefit and maturity benefit provided for in the PPS Mutual Profit Share Benefit Multiple Life Policy.

START DATE – END DATE | RĀ TĪMATA – RĀ MUTUNGA
30/06/2025 – 29/06/2028

Product Ruling | Whakataunga Whakaputanga – BR Prd 25/04

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

Name of person who applied for the Ruling | Ingoa o te tangata i tono i te Whakatau

This Ruling has been applied for by PPS Mutual Limited (PPS Mutual).

Taxation Laws | Ture Tāke

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

This Ruling applies in respect of ss CA 1(2), CB 1, CB 3, EY 8 and EY 9, and the definitions of "profit participation policy" and "savings product policy" in s YA 1.

The Arrangement to which this Ruling applies | Te Whakaritenga i pāngia e tēnei Whakataunga

The Arrangement is the PPS Mutual Profit Share Benefit Multiple Life Policy (Multiple Life Policy).

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

Documents relevant to the Arrangement

1. The following documents provided to Inland Revenue in draft on 23 June 2025 are relevant to the Arrangement:
   - PPS Mutual Profit Share Benefit Multiple Life Policy
   - PPS Mutual Profit Share Benefit Information Sheet
2. The final executed documents will not be materially different from the draft documents provided to Inland Revenue on 23 June 2025.

Background

3. PPS Mutual is new to the New Zealand insurance market. PPS originated in South Africa in 1941 where it was formed as a mutual organisation to provide life insurance products to professionals. In 2016 PPS launched in Australia, and it is now establishing a life insurance company in New Zealand to provide life and disability insurance to New Zealand professionals. PPS Mutual will initially have financial support from PPS Insurance Company Limited (PPS South Africa) through a loan facility.

Multiple Life Policy

4. The Multiple Life Policy will be owned by the Professional Provident Society Trust (the PPS Trust). The PPS Trust is also the ultimate owner of PPS Mutual through its 100% ownership of shares in PPS Holdings Limited (the owner of 100% of the shares in PPS Mutual).
5. The PPS Trust holds the Multiple Life Policy for the benefit of PPS Mutual members (Members). An individual will automatically become a Member and eligible to benefit under the Multiple Life Policy when they become a life insured under any PPS Mutual Professionals' Choice Policy (Professionals' Choice Policy), provided they meet the prescribed membership eligibility criteria. There is no separate sign-up process.
6. Information regarding the Multiple Life Policy and this basis of automatically becoming a life insured under the Multiple Life Policy will be provided to prospective lives insured / Members when information is provided to them about the Professionals' Choice Policy.
7. The Profit Share Benefit (PSB) is a means by which Members can share in the financial success of PPS Mutual's business. Each Member receives allocations to their PSB annually at the discretion of PPS Mutual in accordance with the PPS Mutual Profit Share Benefit Allocation and Dividend Policy. Allocations will depend on factors assessed by the board of PPS Mutual based on its view of the financial performance and capital needs of PPS Mutual's business. The determination of overall PSB allocations will take into account the earned premiums for all types of cover. Further, the PSB allocation to a particular Member is based on premiums paid on all policies where the Member is insured, and includes policies that are treated as both life and non-life for income tax purposes. The PPS Mutual Profit Share Benefit Information Sheet states:

> The board is not restricted as to the factors it may consider when making Profit Share Benefit allocations. However, the following factors have been identified in the Profit Share Benefit Allocation and Dividend Policy as relevant for determining allocations:
>
> - Profit Share Benefit margins on the company's Professionals' Choice policies (for both members and other insured persons);
> - actuarial experience adjustments;
> - investment returns;
> - re-allocation of Profit Share Benefit values of former members; and
> - PPS Mutual's capital needs from time to time.
>
> The basis for calculating allocations will be applied consistently to all members within a defined group (a group of members considered to be similar for actuarial purposes by PPS Mutual's Appointed Actuary).
>
> Individual allocations to your Profit Share Benefit will be determined by the board based on the following factors:
>
> - premiums paid in respect of your cover as a life insured under your Professionals' Choice policies for the applicable membership period; and
> - your Profit Share Benefit value before the allocation is made.
>
> Your personal claims history under your Professionals' Choice policies will not affect your individual Profit Share Benefit allocation.

8. PSB allocations can be positive, negative or nil, depending on the exercise of discretion by the Board of PPS Mutual in accordance with the PPS Mutual Profit Share Benefit Allocation and Dividend Policy.
9. The PSB is payable only on a Member's death, a Member's terminal illness or when a Member voluntarily requests it from the age of 65. When a Member becomes eligible to receive a payout under the PSB, the minimum they will receive is $100. A Member's PSB allocation does not confer any immediate right to receive funds. A Member's interest in the PSB is also not transferable.
10. A Member's PSB value from time to time is the total of PSB allocations made in respect of the Member under the Multiple Life Policy since the date they became a member, less any previous PSB payment received by the Member (for example, an amount earlier paid out on terminal illness).
11. Further PSB allocations will be made after PSB payments are made on terminal illness or on request from age 65 if the Member continues to be insured under a Professionals' Choice Policy. This could, for example, be the case if income protection cover continues in these circumstances. Since the conditions of terminal illness or attaining age 65 (respectively) have already been met in such a circumstance, the Member could elect to be paid such an allocation immediately. While theoretically possible, such subsequent PSB allocations and resulting further PSB payments are not expected to be common.

12. PSB values can reduce to nil but they cannot become negative. A Member's PSB value represents their cover (sum insured) under the Multiple Life Policy.
13. PPS Mutual intends for annual PSB allocations to be smoothed so allocation rates are broadly sustainable over time and not subject to a high level of volatility.
14. PSBs provided under the Multiple Life Policy will be fully backed by investment assets and collectively invested at PPS Mutual's discretion. However, those assets will be part of PPS Mutual's overall investment assets, which also include assets backing other PPS Mutual liabilities. Members have no control over the investment strategy.
15. Premiums must be paid on the Professionals' Choice Policy or policies under which the member is a life insured, but no separate payment is required to receive the PSB.
16. The Multiple Life Policy does not have a "surrender value" as defined in s YA 1.
17. Members who are no longer a life insured under a Professionals' Choice Policy are eligible for continuation of the PSB only if they have been a Member for at least 5 years and their PSB value is $1,000 or more.
18. The Multiple Life Policy has no fixed expiry date and is intended to continue indefinitely.
19. For regulatory purposes under the Insurance Prudential Supervision Act 2010 and the Insurance (Prudential Supervision) Regulations 2010, the Multiple Life Policy is treated as non-participating life insurance business referable to the PPS Mutual Statutory Fund.

How the Taxation Laws apply to the Arrangement | Ko te pānga o ngā Ture Tāke ki te Whakaritenga

The Taxation Laws apply to the Arrangement as follows:

(a) The Multiple Life Policy is a "life insurance policy" as defined in s EY 9.

(b) The Multiple Life Policy will not be a "savings product policy" or a "profit participation policy" as defined in s YA 1.

(c) PSB allocations in respect of a Member and the receipt of payments under the death benefit, terminal illness benefit or maturity benefit by a Member or a Member's estate under the Multiple Life Policy will not be income under s CA 1(2), s CB 1 or s CB 3.

Period or income year for which this Ruling applies | Te wā, te tau moni whiwhi rānei i pāngia ai e tēnei Whakataunga

This Ruling will apply for the period beginning on 30 June 2025 and ending on 29 June 2028.

This Ruling is signed by me on the 30th day of June 2025.

Howard Davis

Group Leader | Rōia Kaihautū ā-ropu Taake
Tax Counsel Office | Te Tari Tohutohu Tāke

OPERATIONAL STATEMENT

Operational statements set out the Commissioner of Inland Revenue's view of the law in respect of the matter discussed and deal with practical issues arising out of the administration of the Inland Revenue Acts.

OP 25/02: Commissioner's operational position on the FBT treatment of open loop cards provided by employers to employees

Issued | Tukuna: 8 September 2025

On 16 April 2025, the Commissioner issued **Questions we've been asked (QWBA) QB 25/07** ***What is the income tax treatment of gift cards and products provided as trade rebates or promotions?***

This QWBA states the Commissioner's view of the correct tax treatment for when an employer provides an open loop card (as defined in the QWBA) to an employee. The employer should gross up the face value of the open loop card given to an employee and return PAYE on that amount. During consultation for the QWBA, the Commissioner learned that employers often treated open loop cards as a fringe benefit and returned them for fringe benefit tax (FBT). As a result, the QWBA advised that the following decision had been made regarding the past treatment of open loop cards:

> **Past treatment of open loop cards**
>
> [76.] The Commissioner acknowledges that some employers have been incorrectly treating open loop cards provided to employees as fringe benefits (and subject to the FBT rules) and not the payment of money (and PAYE income payments). The Commissioner will not apply resources to correct previous tax positions taken in return periods ending on or before the date of this statement where an employer has incorrectly treated the provision of an open loop card to an employee as a fringe benefit and returned FBT on that basis.

Since the release of the QWBA, Parliament has proposed amendments to the law to allow open loop cards to be treated as a fringe benefit. This amendment is part of the Taxation (Annual Rates for 2025–26, Compliance Simplification, and Remedial Measures) Bill (199-1) that will be enacted before 31 March 2026. The amendment will be retrospective.

The Commissioner recognises that immediate implementation of the position outlined in the QWBA would be difficult for employers for tax positions taken after the date of issue of the QWBA and before amendment of the law. This is due to required changes to, for example, computer systems, payroll systems and accounting records. The Commissioner also notes that such changes would only be required for a short time given the amendment's retrospective effect.

Therefore, the Commissioner will also not apply resources to determining whether an employer taxpayer has applied the position outlined in the QWBA correctly for the PAYE periods that cover 1 April 2025 to 31 March 2026. This position only applies where the employer has returned fringe benefit tax on the provision of open loop cards during this period.

INTERPRETATION STATEMENTS

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

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

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

Some interpretation statements may be accompanied by a fact sheet summarising and explaining the main points. Any fact sheet should be read alongside its corresponding interpretation statement to completely understand the guidance. Fact sheets are not binding on the Commissioner. Check **taxtechnical.ird.govt.nz/publications** for any fact sheets accompanying an interpretation statement.

IS 25/19: Income Tax – Whether an off-market share cancellation is made in lieu of the payment of a dividend

Issued | Tukuna: Issue date

This interpretation statement considers the application of s CD 22(6) and (7) of the Income Tax Act 2007 in relation to the factors to be taken into account in determining whether an off-market cancellation of shares is made in lieu of the payment of a dividend.

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

REPLACES | WHAKAKAPIA

- **IS 2966**: Exclusion from the term "Dividends" – whether distribution made in lieu of dividends' payment

Summary | Whakarāpopoto

1. This interpretation statement examines how the anti-avoidance rule in s CD 22(6) and (7) of the Act (commonly known as the "in lieu of dividend" test[1]) applies to an amount a company pays to a shareholder on an off-market cancellation of shares.
2. Subpart CD provides a wide definition of the term "dividend". On the face of it, all distributions from a company to its shareholders in their capacity as shareholder are dividends unless a dividend exclusion provision applies. This includes any amount distributed on the cancellation of shares in a company. However, an amount distributed on an "off-market cancellation" of shares may be excluded from the dividend definition where the relevant requirements in s CD 22 are satisfied.
3. Broadly, the dividend exclusion for an off-market share cancellation payment applies where:
   - one of the bright line tests in s CD 22(3) is met;
   - there is sufficient available subscribed capital (ASC) per share calculated in accordance with s CD 22(2) or CD 22(4) (whichever is applicable); and
   - no part of the payment is made in lieu of the payment of a dividend, ie, the anti-avoidance rule does not apply.
4. The bright line tests are intended to establish an objective means to determine when a company is undertaking a genuine capital reduction through a share cancellation. The anti-avoidance rule in s CD 22(6) reinforces the bright line tests and applies in circumstances where the purpose of a share cancellation is to avoid paying a dividend and therefore defeats the purpose of the bright line tests.

1 This statement uses the terms "anti-avoidance rule" and "in lieu of dividend" test interchangeably.

5. The Commissioner is required to consider a number of factors, set out in s CD 22(7), when determining whether an amount is paid in lieu of a dividend. The factors are:
   - the nature and amount of dividends the company pays before or after the cancellation;
   - the issue of shares in the company after the cancellation;
   - the expressed purpose or purposes of the cancellation; and
   - any other relevant factor.
6. Each of these factors is discussed separately in detail from [32].

Scope

7. This interpretation statement focuses on the anti-avoidance rule prescribed in s CD 22(6) and (7) only. It **does not** provide detailed commentary on the calculation of ASC or the application of the bright line tests.

Analysis | Tātari

8. Section CD 22 provides a dividend exclusion for an amount that a company pays to a shareholder in consideration of an "off-market cancellation" of a share in the company.[2]

Background and history of s CD 22

9. The meaning of legislation must be ascertained from its text and in light of its purpose and context.[3] It is therefore useful to first examine the history of s CD 22 and its legislative purpose.
10. Section CD 22, in its current form, can largely be traced back to an amendment to s 4A(1)(c) of the Income Tax Act 1976, which took effect from 1 July 1994. The amended section was a result of a broad review of the dividend rules that the Government undertook in the early 1990s,[4] with the assistance of the Valabh Committee.[5] This review coincided with (and was therefore influenced by) the enactment of the Companies Act 1993.
11. The Companies Act 1993 made it easier for a company to repurchase or redeem its own shares. In essence, the share repurchase provisions in the Companies Act 1993 are a means of returning capital to shareholders, which previously had only been possible through an application to the High Court. This change meant that income tax rules of that period also had to be formulated to cover the tax implications of funds that companies distributed to their shareholders by way of share repurchases or share redemptions.
12. The Government and the Valabh Committee were concerned that the increased flexibility to return funds to shareholders could significantly reduce the amount of tax from dividends.[6] In their view, distributing retained earnings as an ordinary dividend is fundamentally no different from doing so through a share repurchase.[7] However, the Government also did not wish to unduly hinder commercial decisions to restructure companies' balance sheets.[8]
13. As a result, the Income Tax Act 1976 introduced a series of tests known as the "bright line tests" and the "in lieu of dividend" test, which permitted ASC to be returned tax-free on share repurchases or redemptions if specific criteria were met. In summary, the bright line tests treated repurchases of small parcels of shares (where the repurchase was less than 10% of the market value of all shares) as dividends, and repurchases of larger parcels as tax-free. This was necessary to prevent companies from distributing their earnings to their shareholders by way of tax-free repurchases instead of dividends. In addition, when a share repurchase defeated the purpose of the new rules, the Commissioner had a residual discretion to treat a distribution on the repurchase of shares as being in lieu of the payment of dividends.

2 In accordance with s CD 22(1), the section does not apply where the share is cancelled on liquidation of the company. For completeness, in the event of a liquidation, a separate dividend exclusion may be available under s CD 26.

3 Section 10 of the Legislation Act 2019; *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36, [2007] 3 NZLR 767.

4 The definition of dividends under the Income Tax Act 1976: A discussion document (Office of the Minister of Finance, July 1990).

5 The Consultative Committee on the Taxation of Income from Capital.

6 Taxation Reform (Companies and Other Matters) Bill: Submissions on significant issues (excluding international tax avoidance) – officials' report to Finance and Expenditure Select Committee, at [17].

7 The Taxation Implications of Company Law Reform – a discussion document (December 1993) (the 1993 discussion document), at 10.

8 Taxation Reform (Companies and Other Matters) Bill: Submissions on significant issues (excluding international tax avoidance) – officials' report to Finance and Expenditure Select Committee, at [3].

14. For the most part, these rules have survived the various rewrites to the Act. However, the legislative requirement that the Commissioner "is satisfied that neither the whole nor any part of the relevant cancellation was made in lieu of the payment of dividends"[9] was rewritten. Now, there is a requirement that the anti-avoidance rule does not apply for a share cancellation to qualify for the dividend exclusion in s CD 22.[10] This amendment did not change the role of the in lieu of dividend test, which is to counter behaviours that defeat the purpose of the bright line tests.
15. For reference, the table below sets out the corresponding provision in each subsequent Act.

Income Tax Act	Corresponding provision
Income Tax Act 1976	s 4A(1)(c)
Income Tax Act 1994	s CF 3(1)(b)
Income Tax Act 2004	s CD 14
Income Tax Act 2007	s CD 22

Bright line tests

16. To qualify for the dividend exclusion in s CD 22, an amount distributed under an off-market share cancellation must first meet one of the five bright line tests in s CD 22(3), which are as follows:
    - The cancellation is part of a "pro rata cancellation" that results in a "fifteen percent capital reduction" for the company.[11]
    - The cancellation is part of a "pro rata cancellation" that results in a "ten percent capital reduction" for the company and the Commissioner has given a notice under s CD 22(8).
    - The cancellation is not part of a "pro rata cancellation" and results in the shareholder suffering a "fifteen percent interest reduction".
    - The company is an unlisted trust and the cancellation is not part of a "pro rata cancellation".
    - The share being cancelled is a "non-participating redeemable share".
17. Broadly, the bright line thresholds are intended to establish an objective test to determine when a company is undertaking a genuine capital reduction. Where the cancellation is part of a pro rata offer to all shareholders, the capital reduction must be at least 10% of the market value of all participating shares in the company.
18. For a reduction that falls between the 10% and 15% thresholds, the company must apply for a notice from the Commissioner. The Act includes a "rebuttable presumption" that such a reduction is a dividend unless the Commissioner agrees with the company that it is not.[12]
19. The 15% bright line test was set at that level (considered to be approximately three times the typical dividend yield) to provide reasonable scope for a company, for reasons such as downsizing of operations, to fund a one-off distribution to its shareholders from its ASC without approval from the Commissioner.[13]
20. Shares that qualify as "non-participating redeemable shares" do not need to meet a bright line threshold due to their debt-like nature. But the redemption of such shares is still subject to the requirement that they are not redeemed in lieu of the payment of dividends.

9 Section 4A(1)(c)(iii) of the Income Tax Act 1976 and s CF 3(1)(b)(iii) of the Income Tax Act 1994.
10 Section CD 22(2)(c).
11 Terms within speech marks in this list are defined in s CD 22(9).
12 Hansard (540 New Zealand Parliamentary Debates, 2 June 1994, at 1372–1373).
13 The 1993 discussion document at 17 and 18.

Anti-avoidance rule

21. In addition to meeting one of the bright line tests, s CD 22(2)(c) requires that the anti-avoidance rule in s CD 22(6) does not apply. These provisions state:

> *Ordering rule*
>
> (2) The **amount is not a dividend** to the extent to which it is less than or equal to the available subscribed capital per share calculated under the ordering rule, **if**—
>
> (a) 1 of the bright line tests in subsection (3) is met; and
>
> (b) the company is not an unlisted trust that has chosen the slice rule for the share under subsection (4); and
>
> (c) **the anti-avoidance rule in subsection (6) does not apply**.
>
> …
>
> *Overriding anti-avoidance rule*
>
> (6) Neither subsection (2) nor (4) excludes an amount paid by a company on cancellation of a share from being a dividend if **any part of the payment** is **in lieu of the payment of a dividend**.
>
> [Emphasis added]

22. The phrase "in lieu of the payment of a dividend" in s CD 22(6) is broad and could mean that the anti-avoidance rule applies whenever a share cancellation is in place of a dividend payment. However, the use of the term "anti-avoidance" in the subheading of s CD 22(6) suggests that the rule's application is limited to situations where the purpose of a share cancellation is to avoid paying a dividend when distributing an amount to a shareholder. Although the rule operates to reinforce the bright line tests, there is no presumption that it will apply in all circumstances involving a share cancellation. Nor is there a presumption that this rule is less likely to apply to share cancellations that meet the bright line tests. It is a rule that operates in tandem with the bright line tests. Whether or not it will apply will depend on the facts presented.

Meaning of "…if any part of the payment is in lieu…"

23. The anti-avoidance rule stipulates that no part of a payment made on the cancellation of a share can be in lieu of the payment of a dividend. In other words, if any portion of the payment is in lieu of the payment of a dividend, the entire payment will be treated as a dividend (see Example | Tauira 1).

24. This interpretation is evident from the language used in s CD 22(6). Specifically, the term "payment" used in this section clearly corresponds to the "amount paid" on the cancellation of a share, as mentioned in the same sentence. Therefore, if any part of the "amount paid" is a substitute for a dividend, the whole amount will be considered a dividend.

Example | Tauira 1 – Where part of a payment is in lieu of a dividend

> TrueFaux Solutions Limited (TSL) undertakes an off-market share cancellation. The share cancellation is for $100,000 and precisely meets the 15% bright line test under s CD 22(3)(a). TSL does not treat the share cancellation payment as a dividend because it considers the dividend exclusion in s CD 22 applies.
>
> Two years later, the Commissioner reviews the transaction and determines, after considering the factors listed in s CD 22(7) (to be discussed from [26]), that half of the $100,000 share cancellation payment is in lieu of the payment of a dividend. Given this view, the Commissioner considers the entire payment is a dividend.

25. Notably, the situation described above in paras [23] and [24] is different from a scenario where part of a share cancellation payment is a dividend simply because there is insufficient ASC to cover the entire cancellation amount. In the latter case, the portion of the payment that exceeds the ASC is already characterised as a dividend under the relevant tax rules, and cannot also be considered "in lieu" of a dividend for the purposes of the anti-avoidance rule. Therefore, as long as the company can demonstrate that no part of the remainder of the cancellation amount (ie, the portion covered by ASC) represents a substitute for a dividend, the anti-avoidance rule in s CD 22(6) will not apply to that part.

Factors that must be considered in applying the anti-avoidance rule

26. The Act expressly sets out the factors that must be considered when applying the anti-avoidance rule. Section CD 22(7) states:

> *Factors relevant in applying anti-avoidance rule*
>
> (7) For the purposes of applying subsection (6), the following factors **must** be considered:
>
> (a) the nature and amount of dividends paid by the company before or after the cancellation; and
>
> (b) the issue of shares in the company after the cancellation; and
>
> (c) the expressed purpose or purposes of the cancellation; and
>
> (d) any other relevant factor.

27. The use of a conjunctive list in s CD 22(7) requires that the four listed factors are considered collectively. It is possible that, in each case, some factors may:
    - either support or contradict other factors;
    - imply that the cancellation is a substitute for a dividend, while others may not; or
    - provide a clearer indication as to the nature of the cancellation than others.
28. The relative importance of each factor and how the Commissioner views them collectively will depend on the specific facts and circumstances of each case. Several examples from [75] illustrate how the Commissioner might consider and weigh up the factors listed in s CD 22(7) when applying the anti-avoidance test in particular situations.
29. It is not possible for the Commissioner to explicitly outline the weight of each factor, as the Act does not assign a specific weight to any of the listed factors. Logically, an anti-avoidance rule must be flexible to achieve its intended purpose.
30. Further, the Commissioner considers that if Parliament intended for some factors to carry more weight than others in all scenarios, that would have been reflected in the wording of the section. The broad scope of s CD 22(7), particularly para (d), suggests Parliament's intention is to grant the Commissioner sufficient power and flexibility to challenge a share cancellation that is in lieu of a dividend.[14]
31. Each of the factors listed in s CD 22(7) is discussed separately in detail below. Determining whether an amount is paid in lieu of a dividend requires a careful consideration and balancing of all relevant factors.

The nature and amount of dividends paid by the company before or after the cancellation – s CD 22(7)(a)

32. This factor requires an analysis of the company's dividend-paying practice both before and after the share cancellation. Its purpose is to identify any evidence in the company's practice or history of paying dividends that indicates the share cancellation is a dividend substitute. The test therefore focuses on:
    - the frequency and amounts of dividends the company paid before and after the share cancellation, if any;
    - any unexplained change in dividend paying practices or policy; and
    - how earnings in the company, if any, have been or will be used.
33. The following are common scenarios where a company's dividend history or practice might indicate that a share cancellation is a dividend substitute:
    - The company has not paid dividends before or after a share cancellation, but has instead accumulated earnings over time and distributed these on the cancellation.
    - The company has adopted and followed a low or no-dividend policy, or has made an unexplained change in policy to reduce dividends, as well as accumulating cash earnings.

14 Parliament's intent is also evident in Hansard records (542 New Zealand Parliamentary Debates, 25 August 1994, at 3130–3131). On 25 August 1994, the Select Committee reported the Bill back to Parliament. In his speech presenting the Select Committee report to Parliament, Mr Max Bradford (Chairman of the Select Committee) stated:

> The proposals in the Bill were introduced following extensive consultations with the commercial community and reflect a desire not unduly to discourage balance sheet restructurings while at the same time protecting the tax base. The Committee received several submissions advocating the removal or confinement of the Commissioner's power to deem a distribution on a repurchase that exceeds the thresholds to nevertheless be a dividend. **However, the committee considered the Commissioner's discretion to be an integral part of the package, and has recommended only minor changes in this area** … [Emphasis added]

34. There are, of course, valid business reasons for holding on to funds instead of paying regular dividends. For example, a company in a growth phase might reinvest all earnings and surplus cash into business expansion. When it is clear that earnings are retained for sound business reasons, the absence of dividend payments alone does not indicate that the share cancellation is in lieu of a dividend.

35. The Act refers to "dividends paid". It does not refer to expectations, purpose, intentions or policy. The test therefore is not based on the company's dividend policy but is stated explicitly in terms of its practice or history of paying dividends. Nevertheless, the company's dividend policy may be useful in explaining its distribution decisions in some cases. For example, if no pattern in the distribution of dividends is apparent, but the company can show that it has adhered to an explicit policy that refers to objective criteria, the Commissioner may be able to draw conclusions that would not otherwise be available.

36. Where the Commissioner is asked to rule, or give a s CD 22(8) notice, on a proposed share cancellation, a practical issue arises given, at the time of making the decision, the Commissioner will not have visibility over events occurring after cancellation. In such cases, the Commissioner may rely on any relevant information or knowledge that can be gained prior to the cancellation. Such information might include dividends declared but not paid, and knowledge of the directors' intentions and expectations (including knowledge of the company's dividend policy).

The issue of shares in the company after the cancellation – s CD 22(7)(b)

37. This factor is relevant where a company issues or intends to issue shares after it undertakes a share cancellation. The main focus here is to identify instances where companies take artificial steps in order to meet one of the bright line tests.

38. A company may cancel sufficient shares to meet the 10% or 15% bright line levels and, by doing so, effect a tax-free distribution. The company may then issue more shares to raise capital, thereby reducing the effective capital reduction below the bright line levels. If the purpose of the subsequent share issue is to replace cash needed for the company's operational or capital expenditure, this raises a question as to whether the company really had the intention of reducing capital and was in a position to do so.

39. The length of time between the cancellation and the subsequent capital raise (by way of an issue of shares) is also relevant. The shorter this period is, the more likely it might indicate the company made the cancellation in lieu of the payment of dividends (see Example | Tauira 2).

Example | Tauira 2 – Share issue following cancellation

Bulbaflora Botanicals Limited (BBL) has 1 million shares on issue. The market value of each share is $2 (ie, the shares have a total market value of $2 million).

The following transactions occur:

- On 30 June 2024, BBL buys back 150,000 shares from its sole shareholder, Ashton, for a total price of $300,000. It cancels the shares immediately following the buy-back.
- On 15 July 2024, BBL issues 100,000 shares to Ashton to raise $200,000 to fund the acquisition of a significant asset.

When viewed as a whole, the result of the two transactions is that the net capital reduction in BBL is $100,000. This amount represents only a 5% capital reduction, which falls below the minimum bright line test of 10%.

The circumstances, including the short duration between transactions, indicate that BBL has in reality effected a distribution that is more indicative of a dividend than of a bona fide capital reduction. However, this factor forms only part of the test in s CD 22(7) and it therefore needs to be viewed in the wider context rather than in isolation.

40. If a company does issue shares after a share cancellation, the following factors will likely be relevant for the Commissioner to take into account in applying s CD 22(7)(b):
    - the length of time between the share cancellation and the additional share issue;
    - the company's reason(s) for issuing additional shares;
    - the amount of capital returned under the share cancellation;
    - the amount of capital raised from the additional share issue, if any; and
    - the company's financial position, at both the time of cancellation and the time of the subsequent share issue, which might indicate whether the company was in the position to return capital in the first place.

41. A common scenario where a company might issue additional shares after a share cancellation is where the cancellation occurs close to the grant date of an existing employee share scheme. The Commissioner considers shares issued under such a scenario are not detrimental when applying the "in lieu of dividend" test, provided the company has no arrangements intended to defeat the purpose of the provision.

42. In cases where the company issues new shares after a cancellation to replenish its capital, it generally does not matter who receives the new shares. For example, instead of issuing shares on a pro rata basis, a company may issue shares only to some shareholders or to entirely new shareholders. This will generally not affect the potential application of s CD 22(7)(b), if other relevant factors suggest the reissue is to circumvent the bright line tests. The provision does not distinguish between situations based on which shareholders receive new shares.

43. Again, if the Commissioner is asked to rule on a proposed share cancellation or give a s CD 22(8) notice, the Commissioner is placed in the difficult situation of having to consider the company's issue of shares after the cancellation. The Commissioner then has to rely on knowledge available before the cancellation in respect of share issues planned for after the cancellation. That knowledge might include share issue offers the company made or received, and any information that the directors and the shareholders supplied about their intentions or expectations related to share issues, including any commercial reasons provided for the subsequent issue of shares.

The expressed purpose or purposes of the cancellation – s CD 22(7)(c)

44. This factor requires a consideration of the stated purpose or purposes of the share cancellation. If there is strong objective evidence showing the cancellation is undertaken to achieve a commercial outcome, the cancellation is less likely to be treated as a dividend substitute.

45. The "purpose" of a particular arrangement refers to what that arrangement seeks to achieve. The "expressed purpose" of a share cancellation therefore refers to statements made by the company regarding what the cancellation is intending to achieve. These may be statements made directly to the Commissioner, or through the company's board papers and external communications around the cancellation. Notably, the provision enables the Commissioner to request and consider such statements. It does not require the Commissioner to accept, at face value, subjective statements that do not reflect the objective purpose of the cancellation.

46. Therefore, when considering this factor, the Commissioner will test a company's statements against any available objective evidence. The evidence could include the company's funding requirements, costs of funding, industry norms, market interest rates and so on.

47. The more intuitive and compelling the reason for the cancellation of the shares, the stronger this factor will be in reaching the overall decision. Therefore, the presence of an objective commercial reason for the transaction should assist in indicating that the distribution is not in lieu of dividends.

48. The following are some examples of shares being cancelled to achieve commercial objectives. **These are not intended to serve as an exhaustive or definitive list of what the Commissioner may accept as commercial objectives.** Instead, they are examples that have previously been submitted to the Commissioner as commercial reasons for cancelling shares. Whether any purpose, objective or reason helps to demonstrate that the relevant transaction constitutes a genuine share cancellation will also depend on the availability of supporting objective evidence (as noted above at [46]) and its appropriate weighting along with the other factors listed in s CD 22(7).

Group restructure or reorganisation

49. A share cancellation may be a necessary step in reorganising the ownership and corporate structure of a group. Some examples might be:
    - transferring the overall strategic control of the group to the hands of its principals and certain senior employees, rather than outside shareholders;
    - demerging a group of companies before listing part of the group through an initial public offering; or
    - facilitating the exit of a major shareholder where it is infeasible for the other shareholders to acquire the exiting shareholder's stake.

Return of surplus capital

50. When a company has more capital than necessary for its operations and investments, it might opt to return the excess through a share cancellation. Common sources of surplus capital, as reported to the Commissioner, include:
    - proceeds from selling substantial assets or a significant segment of the company;
    - funds from earlier capital-raising efforts that the company did not use because the planned investment did not materialise; and
    - other one-off capital or windfall receipts such as an insurance settlement that will not be reinvested due to a permanent reduction of the business.
51. This consideration must, of course, be assessed alongside other relevant factors. A dividend also serves the purpose of returning surplus capital. Therefore, it is essential to identify specific characteristics that distinguish a share cancellation, particularly a pro rata cancellation, from a dividend. If the surplus capital merely represents earnings accumulated to satisfy the bright line thresholds, when viewed objectively, this factor will support the view that the share cancellation is a substitute for a dividend.
52. On the other hand, if a company with surplus capital, despite its history of high dividend payments, wishes to cancel its shares for a sound commercial reason, it is unlikely to be seen as attempting to defeat the purpose of the bright line tests.

Balance sheet restructure

53. A company may also wish to restructure its balance sheet to achieve financial goals. For example, a company might borrow from an arm's length lender to fund a return of capital through cancelling shares, in order to (among other reasons):
    - align its debt-to-equity ratio more closely with industry peers;
    - reduce funding costs by opting for less expensive debt over equity;
    - cut administration costs associated with managing a broad shareholder base; or
    - increase its earnings per share, in the case of a company that tracks this metric (eg, a publicly listed company).
54. As noted at [48], the examples set out above are not exhaustive. There may well be additional commercial reasons for cancelling shares that, together with the other factors listed in s CD 22(7), demonstrate the relevant cancellations are not in lieu of a dividend.

Any other relevant factor – s CD 22(7)(d)

55. The Commissioner must also consider any other relevant factor that might indicate whether an amount is paid in lieu of a dividend. The Act does not specify what factors could be relevant in applying this test. However, based on published policy documents, the Commissioner is likely to consider the following factors:
    - Is the capital reduction part of the downsizing of the company? If so, this would be an indication the cancellation is not in lieu of dividends.[15]
    - Has the company sold part of the business, while returning a sizeable amount to the shareholders in addition to a dividend? If so, this would suggest the cancellation was not in lieu of a dividend.[16]
    - Has the company been retaining earnings and then distributing them without any accompanying reduction of the business? A distribution arising from a cancellation of shares in this case would probably be in lieu of dividends.[17]
    - Is the capital return an unusual one-off event? If it is, this could suggest that the cancellation is not in lieu of a dividend.[18] Conversely, if the company has previously made several successive share cancellations that leave the respective interests of the shareholders unchanged, this may indicate that the reductions are in lieu of dividends.[19]
56. The Commissioner may also consider the following factors to be relevant.

15 The 1993 discussion document at 17.

16 The taxation of distributions from companies: final report (Valabh Committee, July 1991) at 31.

17 The 1993 discussion document at 18.

18 The 1993 discussion document at 11 and 17.

19 The 1993 discussion document at 18.

Change in shareholder interests

57. Will the share cancellation affect the shareholders' interests (in terms of their shareholding percentages or the quantum of their invested capital) significantly, or will their interests remain mostly the same after the capital reduction? In other words, will the overall shareholder capital be greatly reduced? A substantial change in ownership interests or invested capital could suggest that the cancellation serves a different purpose from just distributing funds. Conversely, a minimal change could indicate that the payment resulting from the cancellation was in lieu of a dividend.

58. For example, a company might purchase all of a shareholder's shares with the result that the shareholder exits from the company. This could be the company's first share repurchase and, to that extent, would be an "unusual event". This suggests that the payment is not made in lieu of any dividend, but rather to facilitate a shareholder's exit.

59. On the other hand, a company making multiple redemptions of small quantities of non-participating redeemable shares could suggest the redemptions are replacing dividends in some cases, as each redemption represents a small change in the holder's interests in the company.

Non-participating redeemable shares

60. While the anti-avoidance test does not explicitly state that non-participating redeemable shares should be treated differently from ordinary shares, the nature of non-participating redeemable shares inherently leads to a reduced scope for the application of the anti-avoidance rule.

61. Among other characteristics, a non-participating redeemable share generally:
    - is redeemable at the option of the company or the shareholder, or at a specified date;[20]
    - can only be redeemed for its subscription price (if the share is not a "fixed-rate share");[21] and
    - carries only a protective right in respect of shareholder decision-making rights.[22]

62. This means that, in many cases, there is no ability to extract earnings using non-participating redeemable shares, particularly where the holders of such instruments do not also share in the profits of the same company in other ways (eg, holding ordinary shares).

63. Non-participating redeemable shares may also be issued to raise funds on a short-term basis. In such instances, the shares may be issued for a specified period and therefore limits the opportunity to redeem the shares in substitution for a dividend.

64. Conversely, as noted at [59], non-participating redeemable shares could be used as a mechanism to replace dividends in other cases. For example, a company could structure its initial equity funding with each shareholder having non-participating redeemable shares in the same proportion as their ordinary shareholding. This provides an avenue for the company to undertake regular small proportional redemptions of the non-participating redeemable shares in lieu of paying regular dividends. Therefore, the anti-avoidance rule continues to be relevant in this situation.

Accumulation of funds and earnings in subsidiary or subsidiaries

65. In cases involving a group of companies where a company acts as a holding company while its subsidiary conducts business operations, the Commissioner may consider any inexplicable accumulation of earnings in the subsidiary to be relevant. This is especially so in cases where the holding company utilises such accumulated earnings from the subsidiary to finance a share cancellation.

66. The Commissioner is unlikely to accept an argument that a share cancellation is not in lieu of a dividend simply because the holding company has no retained earnings, where it is clear a subsidiary has been accumulating earnings and deferring dividends as part of an arrangement to assist the holding company meet one of the bright line tests (see Example | Tauira 7).

67. However, it is also acknowledged that the mere presence of retained earnings in a subsidiary is not sufficient in itself to suggest a cancellation is in lieu of a dividend. For example, if a holding company owns shares in two subsidiaries and sells the shares in one of them, a subsequent capital reduction that is funded by the sales proceeds is unlikely to be affected by the fact that the remaining subsidiary has a retained earnings balance.

20 Paragraph (b)(i) of the definition of "non-participating redeemable shares" in s CD 22(9) and s 68(b)(i) to (iii) of the Companies Act 1993.

21 Paragraph (c) of the definition of "non-participating redeemable shares" in s CD 22(9).

22 Paragraph (d)(i) of the definition of "non-participating redeemable shares" in s CD 22(9).

Leaving amounts payable under a share cancellation outstanding

68. When a company cancels its shares but leaves the amount payable on the cancellation outstanding, it can create an opportunity for the company to substitute taxable dividends with tax-free loan repayments. This situation is particularly evident when a company has no surplus funds to return to shareholders but cancels enough shares to meet one of the bright line tests, leaving the amounts payable on the cancellation outstanding on open and interest-free terms. This arrangement creates a mechanism for the company to pay future earnings to shareholders in small instalments, as loan repayments, where each instalment individually would not otherwise meet one of the bright line thresholds.

69. The same effect could also be achieved by returning capital to shareholders and then immediately accepting it back as interest-free shareholder advances. Such transactions do not naturally align with the purpose of s CD 22 which is designed to help facilitate the return of shareholder capital[23] because, unlike a cancellation funded by third party debt, such transactions do not return capital on the cancellation of shares.

70. In some cases, relevant parties might use these arrangements to circumvent the purpose of the bright line tests. For example, a company might cease its historical dividend paying practice and opt to cancel its shares, leave an outstanding payable balance, and then distribute earnings through tax-free loan repayments instead (see Example | Tauira 8). Such arrangements could be a relevant factor under the anti-avoidance rule, if they are not supported by objective commercial purposes, and the Commissioner may enquire into, and assess:
    - Whether leaving the outstanding balance aligns with the stated purpose of the cancellation.
    - Whether there are objective commercial reasons for both the company and its shareholders to enter into such arrangements.

71. As with the factor under s CD 22(7)(c), the presence of an objective commercial reason for leaving the amount payable under a share cancellation outstanding should assist in indicating that the transaction is not in lieu of dividends. For example, following the sale of a significant asset, a company might wish to return the full sale proceeds to its shareholders as it no longer has a use for that money. However, part of the sale proceeds may be held in escrow temporarily until the relevant sale terms are satisfied. In this case, cancelling shares and leaving part of the balance outstanding until the escrowed sum is paid to the company is unlikely to cause the cancellation to be seen as in lieu of the payment of a dividend.

Is an initial intention to pay a dividend required?

72. From time to time, the Commissioner receives arguments that the term "in lieu" in the phrase "if any part of the payment is in lieu of the payment of a dividend" implies that the anti-avoidance rule can only be applied where a company initially intended to pay a dividend but opts to cancel shares instead. According to this argument, the anti-avoidance rule cannot apply if the company never intended to pay a dividend in the first place.

73. The Commissioner considers that neither the language nor the purpose of s CD 22(6) supports this interpretation. The Shorter Oxford English Dictionary[24] defines the term "in lieu" as "in the place" or "instead" (of). The term simply indicates a substitution of one thing for another without suggesting any prior intention. A person may choose one course of action over another without having any prior intention to do the substituted act.

74. Additionally, s CD 22(6) serves as an anti-avoidance provision. In practice, some companies might, for tax avoidance purposes, deliberately choose not to distribute earnings as dividends. Instead, they accumulate earnings with the intention of meeting one of the bright line thresholds, allowing them to distribute these earnings as tax-free share cancellation payments. Interpreting s CD 22(6) to exclude such situations from the anti-avoidance rule, simply because such companies never intended to pay dividends, would contradict the rule's purpose.

23 Refer to the heading of s CD 22: "**Returns of capital**: off-market share cancellations" and the background section of this interpretation statement.

24 *Shorter Oxford English Dictionary* (6th ed, New York, Oxford University Press)

Examples | Tauira

75. The following examples are provided to illustrate how the Commissioner might approach the application of the "in lieu of dividend" test. These examples are intended **solely for illustrative purposes** and **should not be seen as definitive guidelines** for determining what constitutes a payment in lieu of a dividend. Each case must be evaluated on its own facts and circumstances.

Example | Tauira 3 – Returning capital following a significant asset sale

Evergreen Capital Assets Limited (ECAL) is a company that invests in commercial real estate properties. The company was established 10 years ago and raised $60 million in ordinary equity and borrowed $30 million from the bank to purchase four separate commercial properties, each worth $20 million.

Over the past 10 years, ECAL has paid annual dividends amounting to 50% of its after-tax profits. The remainder has been reinvested to expand ECAL's business operations.

ECAL recently sold one of its commercial properties for $40 million. After repaying $10 million of its bank loan, the directors choose to return the remaining $30 million to shareholders due to a lack of suitable investment opportunities.

ECAL does not plan to issue any additional shares after the cancellation as the directors believe it has sufficient capital to continue its operations. It also intends to continue its dividend policy after the cancellation, distributing profits from its remaining properties and operations.

The Commissioner considers the relevant factors listed in s CD 22(7) and notes the following:

Relevant factor	Application to the example
The nature and amount of dividends paid by the company before or after the cancellation	The regular payments of dividends before and after the cancellation support the argument that the decision to return the $30 million is a one-off event driven by the sale of a significant property, rather than a change in the company's dividend policy or practice to meet the bright line tests.
The issue of shares in the company after the cancellation	ECAL does not intend to issue additional shares after the cancellation. This factor does not indicate that the cancellation is in lieu of a dividend, nor does it conclusively prove that it is not.
The expressed purpose or purposes of the cancellation	The expressed purpose of the cancellation is to return surplus capital to shareholders following the sale of a significant property. The decision is based on the directors' assessment that there are no suitable investment opportunities available that would provide an adequate return on the capital. Both the expressed purpose and the objective evidence suggest the cancellation is not in lieu of a dividend.
Other relevant factors	The cancellation is a significant one-off event, representing a return of capital from the sale of a major property rather than a distribution of accumulated earnings. The return of capital will result in a substantial reduction in the company's total assets and equity, reflecting the sale of one of its four major properties.

Conclusion: Based on the above factors, the Commissioner is likely to conclude that the $30 million returned to shareholders is not in lieu of a dividend. The cancellation is driven by an objective commercial decision to return surplus capital following the sale of a significant property, rather than an attempt to distribute earnings in a tax-advantaged manner.

Example | Tauira 4 – Returning accumulated earnings and cash through a share cancellation

EVTech Innovations Limited (EIL) proposes a pro rata off-market cancellation to return an amount equal to 10% of the total market value of its ordinary shares on issue.

The relevant facts and background are as follows:

- The proposed share cancellation involves EIL returning $200,000 to its shareholders by buying back ordinary shares.
- Immediately before the proposed cancellation, EIL has:
  - **ASC balance:** $1 million in respect of its ordinary shares;
  - **retained profits:** $200,000 accumulated over the past 3 years;
  - **imputation credits:** a very minimal balance, due to two breaches in shareholder continuity in the past 3 years; and
  - **cash balance:** $250,000 accumulated gradually, as a result of its day-to-day trading activities, over the past 3 years from a starting balance of $50,000.
- The directors of EIL state:
  - EIL does not have a dividend policy and has not paid any dividends previously. This is due to their wish to maintain a cash buffer for contingencies.
  - EIL has no concrete plans for its future distributions.
  - EIL does not plan to issue additional shares after the proposed cancellation.
  - The purpose of the proposed cancellation is to improve a "lazy" balance sheet by returning excess capital to shareholders. For this reason, the cancellation would be funded using existing cash that EIL holds.

The Commissioner considers the relevant factors listed in s CD 22(7) and notes the following:

Relevant factor	Application to the example
The nature and amount of dividends paid by the company before or after the cancellation	EIL has not paid any dividends previously, despite having accumulated profits and cash balances. While the directors cite a desire to maintain a cash buffer for contingencies, this does not reconcile with the expressed purpose of the share cancellation to improve a "lazy" balance sheet. The inconsistency between these rationales raises questions about whether the share cancellation is being used to distribute profits in a manner that substitutes for dividends.
The issue of shares in the company after the cancellation	EIL does not intend to issue additional shares after the cancellation. This factor does not indicate that the cancellation is in lieu of a dividend, nor does it conclusively prove that it is not.
The expressed purpose or purposes of the cancellation	The stated purpose is to return surplus capital to shareholders to improve balance sheet performance. However, when viewed objectively, the surplus being returned is simply accumulated profits. Therefore, this factor indicates the cancellation is likely to be in lieu of dividend.
Other relevant factors	The relevant factors are as follows: • The cancellation is a one-off transaction but is not accompanied by a significant reduction in the company's business or assets. • The quantum and the pro rata nature of the capital return indicate that no single shareholder will suffer a material reduction in their ownership interests in EIL. • The minimal balance of imputation credits means shareholders would face a higher tax liability on dividends, creating an incentive to distribute earnings through a share cancellation instead.

Conclusion: Given the lack of dividend payments, the accumulation of profits and cash, the irreconcilable statements relating to EIL's cash balance, and the pro rata nature of the share cancellation, it would be difficult to satisfy the Commissioner that the cancellation is not in lieu of the payment of a dividend. The facts suggest that EIL undertakes a share cancellation once it has accumulated sufficient profits to meet the 10% bright line test. Taken together with the absence of imputation credits, these factors weighed up indicate that EIL may be using the cancellation to avoid distributing profits as taxable dividends.

Example | Tauira 5 – Balance sheet restructure

LuckyCoin Investments Limited (LIL) has 20 million ordinary shares on issue and a total ASC balance of $20 million. LIL repurchases and cancels 10 million of the ordinary shares at the price of $1.50 per share. Therefore, it returns the total amount of $15 million, which represents more than 15% of the market value of all shares in LIL.

Other relevant facts and background are as follows:

- LIL has no retained earnings or significant cash balances as it has incurred annual losses since incorporation.
- LIL has never paid a dividend and does not have a dividend policy.
- At the early phases of its business, LIL had been unable to secure bank lending to fund its business and had been relying fully on shareholder capital. It has now reached the next stage of its business cycle and can begin to service debt. It borrows $15 million from a third-party lender to fund the entire cancellation.
- The purpose of the cancellation is to align its debt-to-equity funding mix with industry norms, supportable by LIL's research and analysis.
- LIL has no plans to issue additional shares after the cancellation.

The Commissioner considers the relevant factors listed in s CD 22(7) and notes the following:

Relevant factor	Application to the example
The nature and amount of dividends paid by the company before or after the cancellation	This factor does not suggest the cancellation is in lieu of a dividend. Historically, LIL has incurred annual losses and has had no excess cash to distribute and therefore has been unable to pay any dividends.
The issue of shares in the company after the cancellation	LIL does not intend to issue additional shares after the cancellation. This factor does not indicate that the cancellation is in lieu of a dividend, nor does it conclusively prove that it is not.
The expressed purpose or purposes of the cancellation	This factor indicates the cancellation is less likely to be in lieu of a dividend. The share cancellation seeks to achieve an objective commercial outcome and LIL has provided supporting evidence.
Other relevant factors	This factor indicates the cancellation is less likely to be in lieu of a dividend. The cancellation is a significant one-off event as it is the first time LIL has returned capital and the cancellation represents a significant (75%) reduction in each shareholder's invested capital in the company.

Conclusion: When considering all of the factors, the Commissioner on these facts would be satisfied that any amount paid under the share cancellation is not in lieu of a dividend. The cancellation is supported by an objective and verifiable commercial purpose, and it is clear from the facts that prior to this transaction LIL has not been in a position to pay dividends.

Example | Tauira 6 – Return of surplus capital with policy of paying high dividends

GreenTech Energy Solutions Limited (GES) is an established company in the renewable energy sector, focusing on solar and wind energy projects. Over the years, GES has benefited from favourable conditions and increased public interest in sustainable energy, which in combination have led to a steady increase in profits.

GES finds itself with surplus capital despite:

- having a dividend policy and practice of paying out 70% of its annual after-tax profits as dividends; and
- retaining the remainder to invest back into its business operations and to pay down external debt.

This surplus has accumulated due to several factors, including:

- **Efficient capital management:** GES has consistently managed its capital expenditures efficiently, completing projects under budget without compromising quality.
- **Operational savings:** Advances in technology in recent years have led to operational savings, reducing costs more than anticipated. This includes a reduction in a quarter of the GES labour headcount and the closure of one of its offices over the past 2 years.
- **Disposals of capital assets:** As a result of the office closure, some surplus assets have been sold for market value.

GES wishes to return $20 million of surplus capital to its shareholders as it believes it does not need the capital due to the reduced operations. The board proposes a pro rata share cancellation scheme where GES will repurchase and cancel a portion of shares, distributing the surplus capital (equal to 16% of the company's market value and 50% of its ASC balance) back to shareholders. This will be GES's first share cancellation.

GES does not intend to issue additional shares in the foreseeable future as it has sufficient capital. Its dividend-paying policy will continue unaltered after the cancellation.

The Commissioner considers the relevant factors listed in s CD 22(7) and notes the following:

Relevant factor	Application to the example
The nature and amount of dividends paid by the company before or after the cancellation	GES has a policy of paying regular dividends and has a record of paying 70% of its annual after-tax profits as dividends. The surplus capital has accumulated despite this policy and the reinvestment of earnings into the business, which appears to suggest that the surplus is not a result of withholding dividends to meet the bright line test. GES' decision to continue the high dividend policy after the cancellation also indicates it has not deliberately altered its distributions to disguise a dividend.
The issue of shares in the company after the cancellation	This factor does not suggest the cancellation is in lieu of a dividend because GES does not intend to issue additional shares after the cancellation, nor does it conclusively prove that it is not.
The expressed purpose or purposes of the cancellation	The return of surplus capital appears to be driven by an objective commercial purpose. GES has objective evidence to demonstrate that the capital is in excess due to the material reduction in its business operations.
Other relevant factors	This factor indicates the cancellation is less likely to be in lieu of a dividend for the following reasons: • The cancellation is part of the downsizing of the company's operations. • The cancellation is an unusual one-off event as GES has never cancelled its shares in the past. • There is a significant 50% reduction in the invested capital for all shareholders.

Conclusion: GES's share cancellation is not in lieu of a dividend. There is an objective commercial reason for returning surplus capital following a downsizing of the company's operations. GES has also been paying high levels of dividends which demonstrates the surplus capital is not the result of withholding earnings to satisfy one of the bright line tests.

While there are some retained earnings on GES's balance sheet, that fact needs to be considered in the whole context of the anti-avoidance test. The test is designed to stop behaviours that defeat the purpose of the bright line tests. The mere presence of retained earnings alone is not sufficient to demonstrate a taxpayer has engaged in such behaviour, hence the Act's requirement to consider all the factors listed in s CD 22(7).

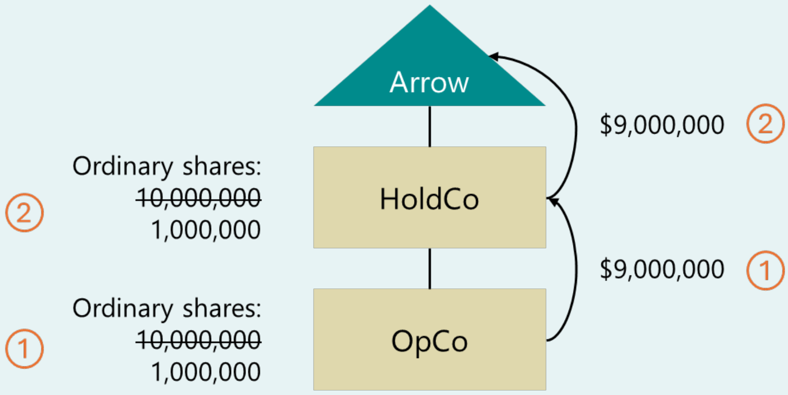
Example | Tauira 7 – Using a subsidiary's retained earnings to reduce capital

Arrowhead Capital Holdings Limited (HoldCo) holds 100% of the shares in Arrowhead Capital Limited (OpCo). HoldCo wishes to cancel 9 million shares and return $9 million to Arrow, its sole shareholder.

Before the proposed cancellation, the relevant standalone financial and tax attributes for HoldCo and OpCo are as follows:

	HoldCo	OpCo
Ordinary shares on issue	10,000,000	10,000,000
ASC	$10,000,000	$10,000,000
Retained earnings	$1,000	$10,000,000
Cash balance	$1,000	$12,000,000

The following diagram presents the group structure and the proposed cancellation.



HoldCo considers the cancellation will not be in lieu of a dividend for these reasons:

- It has not been retaining earnings to meet the bright line test as it is just a holding company with minimal income.
- The $9 million it receives from OpCo is capital in nature.

Other relevant facts and background are as follows:

- HoldCo has no dividend policy and has never paid a dividend.
- HoldCo does not intend to issue additional shares to replace the capital to be paid under the proposed cancellation.
- To fund the cancellation, OpCo will cancel 9 million of its shares and pay $9 million to HoldCo from its cash reserve.
- OpCo's cash reserve arises from its day-to-day trading activity and a total of $9 million has been gradually deposited into a high-interest savings account.
- The cancellation will not affect the group's business operations.
- The expressed purpose of the cancellation is to return the shareholder's capital that the group no longer needs.

The Commissioner considers the relevant factors listed in s CD 22(7) and notes the following:

Relevant factor	Application to the example
The nature and amount of dividends paid by the company before or after the cancellation	This factor provides no indication as to whether or not the cancellation is in lieu of a dividend. This is because there is no history of any dividend-paying practice and no funds have historically been available to distribute in HoldCo. Notably, the absence of distributable funds in HoldCo is not, in itself, persuasive evidence of a genuine capital return. In this group structure, dividends can be effectively deferred at the operating company level, and (as discussed below) that appears to be the case here.
The issue of shares in the company after the cancellation	HoldCo does not intend to issue additional shares after the cancellation. This factor does not indicate that the cancellation is in lieu of a dividend, nor does it conclusively prove that it is not.
The expressed purpose or purposes of the cancellation	HoldCo states that the purpose of the cancellation is to return surplus capital the *group* no longer needs. It is necessary to examine the source of the relevant funds for objective evidence that they represent genuine surplus capital and not simply accumulated profits. The source of HoldCo's funds is OpCo's capital reduction. As noted above, the group structure allows HoldCo and OpCo to coordinate their affairs, so it is important to assess whether OpCo's reduction reflects genuine surplus capital. If the purpose were truly to return the group's unneeded *capital*, one might expect some change such as a business divestment or at least a permanent downsizing. Here, however, the OpCo continues as before and it simply utilises a bank account of accumulated trading profits. Accordingly, the expressed purpose does not convincingly demonstrate that the cancellation is a genuine return of capital.
Other relevant factors	The following are some other factors that, on balance, indicate the cancellation is in lieu of a dividend: • HoldCo's status as a holding company with minimal income carries little weight. The purpose of the anti-avoidance test is to counteract dividend substitutions; it is a "relevant factor" if HoldCo funds its share cancellation with a dividend substitute from its subsidiary, particularly under a coordinated scheme such as the back-to-back share cancellations in this instance. • There is no explanation or any evidence that might otherwise demonstrate that the accumulation of OpCo's earnings in a separate account occurred for an objective commercial reason, rather than for the purpose of distributing those earnings under a share cancellation. • The "one-off transaction" nature of the proposed cancellation does not negate the fact that the group has been accumulating earnings that it plans on distributing under the cancellation without an accompanying reduction of the business.

	• The 90% reduction in Arrow's invested capital is significant. However, in this instance, there appears to be no "in principle" difference between distributing from the retained earnings reserve and the share capital reserve given the absence of shareholding dilution and the lack of a genuine commercial reason to cancel shares (other than to make a distribution). • The $9 million HoldCo receives from OpCo is not "capital in nature", contrary to HoldCo's assertion. The payment from OpCo does not itself qualify for the exclusion under s CD 22 for the same reasons set out above. It therefore retains its character as a dividend (albeit an exempt dividend under s CW 10) and is not "capital" in nature.

Conclusion: It would be difficult to satisfy the Commissioner that the share cancellation by HoldCo is not in lieu of a dividend. The funds used for the cancellation originates directly from OpCo's accumulated earnings, indicating that the cancellation is simply a distribution of the group's earnings.

Additionally, the cancellation does not accompany any reduction in the group's business operations, suggesting it is not driven by a need to downsize or restructure but is instead a means to distribute earnings in a tax-free manner.

Example | Tauira 8 – Swapping dividends with shareholder loan repayments

Tax Savvy Returns Limited (TSR) is a profitable company established in 2015. It has 1 million ordinary shares on issue and a total ASC balance of $1 million as at 31 March 2024.

Following the increase in the income tax rate for trustees to 39% on 1 April 2024, TSR repurchases 999,000 shares at $1 per share from its sole shareholder, trustees in the Capital Efficiency Trust (CET). TSR does not pay cash for the repurchase of its shares. Instead, the consideration is left outstanding as a $999,000 loan owed to CET. The loan is interest free.

TSR does not apply to the Commissioner for a notice under s CD 22(8) as the directors are satisfied that the cancellation meets all the relevant tests in s CD 22. Two years later, the cancellation is selected for review by the Commissioner. The Commissioner identifies the following facts during the review:

- Before the cancellation, TSR paid annual dividends equal to 70% to 80% of annual taxable profits.
- Since the cancellation, TSR has not paid any dividends and has instead applied profits towards the repayment of the shareholder loan owed to CET.
- TSR has not issued any additional shares since the cancellation.
- There have been no material changes to the size, operation and profitability of the company, either before or after the cancellation.

TSR states the purpose of the cancellation was to alter the debt-to-equity ratio of the company. However, no justification is provided for doing so.

TSR also states:

- The cancellation was an unusual one-off transaction as the company has not previously returned capital.
- The cancellation was also significant as it reduced CET's invested capital substantially.

The Commissioner considers the relevant factors listed in s CD 22(7) and notes the following:

Relevant factor	Application to the example
The nature and amount of dividends paid by the company before or after the cancellation	The consistent practice of paying dividends at a high payout ratio before the cancellation established a predictable pattern of profit distribution to shareholders. The cancellation abruptly altered this pattern. Since the cancellation, TSR has ceased to pay out its earnings as dividends. It has instead applied profits to repay the shareholder loan. This demonstrates the cancellation has created an alternative avenue for TSR to distribute profits to CET.
The issue of shares in the company after the cancellation	TSR does not intend to issue additional shares after the cancellation. This factor does not indicate that the cancellation is in lieu of a dividend, nor does it conclusively prove that it is not.
The expressed purpose or purposes of the cancellation	Although altering the debt-to-equity ratio can be a valid commercial reason for cancelling shares, TSR has not provided any evidence to justify the necessity or commercial rationale for this ratio adjustment. Accordingly, this factor does not assist TSR's position.
Other relevant factors	While there is no evidence of TSR retaining earnings for distribution, the creation of an interest-free loan via the share cancellation is, in economic reality, a distribution to the shareholder that is evidently realised using TSR profits. The almost complete reduction of CET's invested capital is material in legal form. However, given that the capital is retained in TSR (as debt as opposed to equity) and that CET continues to be the sole shareholder, it is arguable that the cancellation has not materially changed the shareholder interests in TSR in economic reality.

Conclusion: The Commissioner is likely to conclude that the share cancellation by TSR is in lieu of a dividend. The consistent high dividend payments before the cancellation, the abrupt change in distribution pattern coinciding with the increased trustee tax rate, and the creation and use of an interest-free loan to distribute profits all indicate that the share cancellation is a method employed to distribute earnings in a tax-free manner.

The lack of any justification for altering the debt-to-equity ratio further supports the conclusion that the cancellation is in lieu of a dividend.

Example | Tauira 9 – Dividend bearing redeemable preference shares

Cerulean Capital Limited (CCL) is a well-established private financial institution. It has a new regulatory requirement to maintain a certain amount of paid-up capital. It proposes to issue redeemable preference shares (RPSs) to third-party investors to satisfy this requirement.

The RPSs are "non-participating redeemable shares" for the purposes of the Act. The terms of the RPSs include the following:

- Each RPS is issued at $1 per share, permitted under CCL's constitution.
- The RPSs do not carry a participation or voting right other than protective voting rights.
- The RPSs carry a right to a quarterly dividend based on a predetermined formula, at CCL's discretion.
- If no dividends are paid on the RPSs, CCL is prevented from paying dividends on its ordinary shares.
- The RPSs are perpetual and holders do not have a right to request redemption.
- The RPSs may only be redeemed every 5 years for their issue price.
- Alternatively, the RPSs may be redeemed for their issue price where an unanticipated change in the relevant regulation impacts on the continued use of the RPSs.
- To redeem the RPSs, CCL will also need to:
    - meet the solvency test under the Companies Act 1993; and
    - satisfy the regulator that it will have sufficient capital after the redemption.

The Commissioner considers the relevant factors listed in s CD 22(7) and notes the following:

Relevant factor	Application to the example
The nature and amount of dividends paid by the company before or after the cancellation	The RPSs are yet to be issued, so there is no dividend history to consider. However, the RPS terms do provide that the RPSs will carry a right to quarterly cash dividends. It is unlikely that dividends will be withheld on the RPSs because: • they are the primary means by which the third party investors are rewarded financially; and • under the terms of the RPSs, CCL will be prevented from paying dividends on its ordinary shares.
The issue of shares in the company after the cancellation	This factor is mainly about identifying cases where a company cancels shares and later issues additional shares to circumvent the bright line thresholds. Given non-participating redeemable shares such as the RPSs are not subject to the bright line thresholds of 10% or 15%, this factor is less relevant in this case. Further, while it is possible that CCL may replace the RPSs with another equity instrument in the future to meet its regulatory capital requirement, it would likely do that in the context of the regulatory environment rather than to avoid paying a dividend.
The expressed purpose or purposes of the cancellation	CCL can only redeem the RPSs under very limited circumstances. All of those circumstances involve objective commercial reasons for redeeming the RPSs and are subject to strict conditions, including approval from the regulator. This supports the view that any redemption of the RPSs is unlikely to be in lieu of a dividend.
Other relevant factors	The RPS instrument is a special product issued to satisfy regulatory requirements. The terms of the RPSs diminish any avoidance concerns. In any case, given the RPS are issued to third parties (as opposed to ordinary shareholders) and can only be redeemed for their issue price, it would be difficult for the redemption to be in lieu of a dividend.

Conclusion: Overall, none of the factors in s CD 22(7) give concern that any amount paid under the share cancellation is in lieu of a dividend.

Example | Tauira 10 – Issuing NPRS to fund shareholder buy-out

This example involves two separate transactions and is split into two parts.

Part one – Non-pro rata cancellation of ordinary shares

Very Agreeable Prices Limited (VAP) is a mature retail company operating a nationwide chain of stores. VAP has 2 million ordinary shares on issue, each valued at $50, giving a total market value of $100 million.

One of VAP's substantial shareholders, Discontent Capital Partners (DCP), wishes to exit its investment in VAP due to a disagreement over the company's future strategic direction. DCP holds 400,000 VAP ordinary shares (20% of total), which are worth $20m.

The remaining shareholders agree it is best for DCP to exit the business by way of VAP repurchasing and cancelling DCP's ordinary shares. But VAP does not have enough funds to do this. Therefore, to fund the share repurchase, VAP issues 20 million NPRS at $1 per share to:

- a new investor, Shining Armour Investments (SAI), who subscribes for 10 million NPRS only, and
- the existing shareholders who subscribe for the remaining 10 million NPRS.

The NPRS:

- do not confer the NPRS holders any voting rights in relation to VAP,
- carry a high fixed dividend rate and rank ahead of ordinary shares, and
- can only be redeemed at the issue price of $1 per share.

The other relevant factors are as follows:

- VAP has a policy and practice of paying out 80% of its after-tax profits as dividends to its ordinary shareholders.
- Due to the requirement to pay dividends on the NPRS ahead of the ordinary shares, VAP's dividend policy will be amended so that ordinary shareholders will receive a lower dividend pay-out so long as the NPRS remain on issue.
- VAP does not intend to issue additional shares.
- VAP has not previously cancelled shares.

The Commissioner considers the relevant factors listed in s CD 22(7) and notes the following:

Relevant factor	Application to the example
The nature and amount of dividends paid by the company before or after the cancellation	This factor indicates the cancellation is not in lieu of a dividend. Before the cancellation, VAP has consistently paid out 80% of its after-tax profits as dividends to ordinary shareholders. Although the dividend policy will be amended post-cancellation due to the NPRS obligations, the combined effect of the dividend policy and the fixed rate dividend payout on the NPRS means VAP is unlikely to be accumulating profits. Objectively, this change is commercially driven and does not suggest an attempt to avoid paying dividends.
The issue of shares in the company after the cancellation	This factor does not suggest the cancellation is in lieu of a dividend. VAP does not intend to issue additional shares following the cancellation of DCP's shares. Separately, the NPRS are issued in response to a genuine commercial need, and are issued prior to the share cancellation.
The expressed purpose or purposes of the cancellation	This factor supports the view that the cancellation is not in lieu of a dividend. The stated purpose is to facilitate the exit of a significant shareholder due to strategic misalignment. This purpose is supported by the facts of the arrangement.
Other relevant factors	On balance, this factor supports the view that the cancellation is not in lieu of a dividend because: • VAP has not previously cancelled shares, suggesting this is a one-off "unusual" transaction for the company. • The cancellation results in the complete removal of a significant shareholder, materially altering VAP's ownership and capital structure.

Conclusion: Overall, none of the factors in s CD 22(7) raise concern that the amount paid to DCP for the cancellation of its shares is in lieu of a dividend. The transaction is driven by a genuine commercial need to resolve a shareholder conflict.

Part two – Redemption of NPRS

Sometime after subscribing for the NPRS, SAI requests that VAP redeems all 10 million NPRS and return its $10 million investment. VAP decides to fund the full redemption using new borrowings from an unrelated bank.

The other relevant factors are as follows:

- Prior to the redemption, VAP has continued to consistently pay dividends on its ordinary shares under the adjusted dividend policy, while also paying the fixed dividends on the NPRS.
- After the redemption, VAP will increase its dividend policy (to the extent allowable while servicing debt obligations). It will continue to pay dividends on its ordinary shares and the remaining NPRS.
- No additional shares are issued as part of the transaction, and VAP does not intend to issue further shares following the redemption.

The Commissioner considers the relevant factors listed in s CD 22(7) and notes the following:

Relevant factor	Application to the example
The nature and amount of dividends paid by the company before or after the cancellation	While the ordinary dividend payout was reduced due to the NPRS dividend obligations, VAP continued its practice of distributing profits rather than accumulating them. After the redemption, VAP will keep paying dividends. This continuity in dividend payments, indicates that the redemption is not in lieu of a dividend.
The issue of shares in the company after the cancellation	VAP does not intend to issue any additional shares following the redemption of the NPRS. This factor, therefore, does not indicate that the redemption is in lieu of a dividend, nor does it conclusively prove that it is not. In any case, the concern behind this factor (replacing returned capital with new capital to defeat the bright line tests) is less relevant here because the NPRS redemption is not constrained by those bright line thresholds.
The expressed purpose or purposes of the cancellation	The redemption of the NPRS is to facilitate the exit of a shareholder. The facts of the example suggest this is a genuine commercial need and there is no objective evidence to suggest otherwise.
Other relevant factors	Several other factors support the view that the redemption is not in lieu of a dividend: • **Nature of the NPRS and investor:** The NPRS are held by an investor with no ordinary shareholding in VAP. The only value that SAI receives from VAP are the fixed dividends (taxed as such) and the return of its $10 million capital. These factors in the context of the facts suggest that there is no opportunity to use the redemption to disguise a dividend. • **Funding of the redemption:** VAP funds the $10 million redemption by borrowing from an unrelated bank at the time of redemption. This means the company did not rely on accumulated profits to finance the payment. • **One-off, required transaction:** This redemption is a one-off event. The redemption results in the complete removal of SAI's stake, and significantly alters VAP's capital structure. Such a substantial change, effectively unwinding the earlier introduction of a new investor, indicates that the redemption is a genuine commercial transaction and not in lieu of the payment of a dividend.

Conclusion: Overall, none of the factors in s CD 22(7) raise concern that the amount paid to SAI for the cancellation of its shares is in lieu of a dividend.

Appendix – Legislation | Āpititanga – Whakature

CD 22 Returns of capital: off-market share cancellations

When this section applies

(1) This section applies when a company pays an amount to a shareholder because of the off-market cancellation of a share in the company, other than on liquidation of the company.

Ordering rule

(2) The amount is not a dividend to the extent to which it is less than or equal to the available subscribed capital per share calculated under the ordering rule, if—

- (a) 1 of the bright line tests in subsection (3) is met; and
- (b) the company is not an unlisted trust that has chosen the slice rule for the share under subsection (4); and
- (c) the anti-avoidance rule in subsection (6) does not apply.

Bright line tests

(3) The bright line tests referred to in subsection (2)(a) are as follows:

- (a) the cancellation is part of a pro rata cancellation that results in a fifteen percent capital reduction for the company:
- (b) the cancellation is part of a pro rata cancellation that results in a ten percent capital reduction for the company and the Commissioner has given a notice under subsection (8):
- (c) the cancellation is not part of a pro rata cancellation and results in the shareholder suffering a fifteen percent interest reduction:
- (d) the company is an unlisted trust and the cancellation is not part of a pro rata cancellation:
- (e) the share is a non-participating redeemable share.

Unlisted trusts choosing slice rule

(4) If the company is an unlisted trust, it may issue a share on terms that the ordering rule does not apply and that instead the slice rule applies to the cancellation. If this happens, the amount paid is not a dividend to the extent to which it is less than or equal to the available subscribed capital per share calculated under the slice rule (but still subject to the anti-avoidance rule in subsection (6)).

Calculation concessions for foreign unlisted widely-held trusts

(5) If a company is an unlisted widely-held trust not resident in New Zealand and a shareholder cannot obtain sufficient information to calculate the available subscribed capital per share under the ordering rule,—

- (a) the share is treated as if it were issued under subsection (4) on terms that the slice rule applies; and
- (b) the available subscribed capital under the slice rule is—
  - (i) the amount paid for the issue of the share, if subparagraph (ii) does not apply; or
  - (ii) the value of the money or property in which a beneficial interest would have vested in the shareholder had the share not been issued, if the share is a taxable bonus issue under paragraph (d) of the definition of the term.

Overriding anti-avoidance rule

(6) Neither subsection (2) nor (4) excludes an amount paid by a company on cancellation of a share from being a dividend if any part of the payment is in lieu of the payment of a dividend.

Factors relevant in applying anti-avoidance rule

(7) For the purposes of applying subsection (6), the following factors must be considered:

- (a) the nature and amount of dividends paid by the company before or after the cancellation; and
- (b) the issue of shares in the company after the cancellation; and
- (c) the expressed purpose or purposes of the cancellation; and
- (d) any other relevant factor.

Commissioner notifying view

(8) If no part of a payment on cancellation of a share is in lieu of the payment of a dividend, the Commissioner may give notice to the company that subsection (6) does not apply to the cancellation.

Some definitions

(9) In this section –

counted associate means—

(a) a person associated with the shareholder other than merely by virtue of being a relative; or

(b) a spouse, civil union partner or de facto partner, or minor child of the shareholder, or a trustee of a trust under which a spouse, civil union partner or de facto partner, or minor child of the shareholder has benefited or is eligible to benefit

fifteen percent capital reduction means the circumstance in which the total amount paid by the company on account of the cancellation (or on account of any other pro rata cancellation of participating shares in the company occurring at the same time) is at least 15% of the market value of all participating shares in the company at the time the company first gave notice to shareholders of the cancellation

fifteen percent interest reduction means the circumstance in which, immediately after and as a result of the cancellation (together with any other cancellation of participating shares in the company occurring at the same time),—

(a) the total direct voting interests in the company of the shareholder and any counted associates is 85% or less of their total direct voting interests in the company immediately before the cancellation; and

(b) if at the time of the cancellation a market value circumstance exists, the total direct market value interests in the company of the shareholder and any counted associates is 85% or less of their total direct market value interests immediately before the cancellation

non-participating redeemable share means a share that meets the following conditions

(a) the share is issued, under the company's constitution or establishing legislation, on terms that involve the share being required or allowed to be redeemed or repaid before the company is liquidated; and

(b) the share is—

(i) a redeemable share under section 68 of the Companies Act 1993 or an equivalent provision of foreign law; or

(ii) issued under 1 of New Zealand's Acts relating to co-operative companies; or

(iii) subject to sections FA 2 (Recharacterisation of certain debentures) and FZ 1 (Treatment of interest payable under debentures issued before certain date) or section FA 2B(2) (Stapled debt securities); or

(iv) a unit in a unit trust that is not a widely-held trust; and

(c) the share is either a fixed-rate share or a share for which the amount payable on cancellation is no more than the available subscribed capital per share calculated under the slice rule; and

(d) the shareholder does not have shareholder decision-making rights in relation to the share except—

(i) a protective right; or

(ii) if the company is subject to 1 of New Zealand's Acts relating to co-operative companies

participating share means a share that is not a non-participating redeemable share

protective right means a shareholder decision-making right that—

(a) arises only if the shareholder's position may be altered to the shareholder's detriment or if the company defaults on its obligations under the terms of the share; and

(b) is granted to the shareholder only to assist the shareholder to prevent the alteration or to remedy the default; and

(c) when the share is issued is not expected to arise

ten percent capital reduction means the circumstance in which the total amount paid by the company on account of the cancellation, or paid on account of any other pro rata cancellation of participating shares in the company occurring at the same time, is at least 10% of the market value of all participating shares in the company at the time the company first gave notice to shareholders of the cancellation

unlisted trust means a unit trust or group investment fund, the units or interests in which are not quoted on the official list of a recognised exchange.

References | Tohutoro

Legislative references | Tohutoro whakatureture

Companies Act 1993 – s 68

Income Tax Act 1976 – s 4A

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Taxation Reform (Companies and Other Matters) Bill: Submissions on Significant Issues (Excluding International Tax Avoidance) – officials' report to Finance and Expenditure Select Committee

The definition of "Dividends" under the Income Tax Act 1976 – a discussion document (Office of the Minister of Finance, July 1990)

The taxation implications of company law reform – a discussion document (December 1993)

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IS 25/20: Student Loans – Overseas borrowers and their obligations

Issued | Tukuna: 15 September 2025

This interpretation statement discusses when a student loan borrower will be a New Zealand-based borrower and when they will be an overseas-based borrower. A borrower's status as New Zealand-based or overseas-based will determine whether interest accrues on their loan and will impact their repayment obligations.

All legislative references are to the Student Loan Scheme Act 2011 unless otherwise stated.

Introduction | Whakataki

1. Student loan borrowers must make repayments on their loans if they live overseas, or if they live in New Zealand and earn over the repayment threshold. If a borrower is living overseas, their student loan may also accrue interest. For this reason, it is important to know when a borrower will become overseas-based.
2. This interpretation statement outlines the following:
   - When a borrower is New Zealand-based, and therefore does not have to pay interest on their loan.
   - When a borrower will become overseas-based.
   - The circumstances in which a borrower might be treated as being physically in New Zealand while they are overseas. This may mean they are a New Zealand-based borrower for some or all of the time they are overseas when they otherwise would not be.
   - What happens when overseas-based borrowers return to New Zealand. This includes when interest stops being added to the loan, and when overseas repayment obligations cease.
   - The relevance of tax residence.
3. Borrowers can be either New Zealand-based or overseas-based. Their status as overseas-based or New Zealand-based may affect the way their loan is treated.
4. Overseas-based borrowers must typically make repayments on their loan at a set amount, and these loans typically incur interest. However, there are exceptions to this. Interest accrues daily and is added to the loan annually.
5. New Zealand-based borrowers typically have payments towards their loan deducted from their salary or wages, and while they remain New Zealand-based they will not incur interest on their loan.

New Zealand-based borrowers

6. The majority of borrowers who have studied and lived in New Zealand will be New Zealand-based by default and will remain so if they live and work in New Zealand. This status will not be affected by short holidays or trips overseas. However, if borrowers travel overseas a lot or for extended periods, their New Zealand-based status may change.
7. A borrower will generally become overseas-based if they are away from New Zealand for 184 consecutive days or if they are treated as having been away from New Zealand for 184 consecutive days, because they have been in New Zealand for less than 32 days total in a 184-day period. This can be any 184-day period and can span calendar years and/or income years.
8. For more information on when a borrower will become overseas-based, see "Overseas-based borrowers" (from [14]) and the accompanying examples.
9. For information on when a borrower will become New Zealand-based again after having been overseas-based, see "Becoming a New Zealand-based borrower when returning to New Zealand" (from [110]).

Repayment obligations for New Zealand-based borrowers

10. New Zealand-based borrowers repay their loan based on how much they earn.
11. Deductions are made at a rate of 12% of any income over the repayment threshold. The threshold for the 2025–26 income year[1] is $24,128. See **Repaying my student loan when I earn salary or wages** on Inland Revenue's website for updated figures. The following are some other relevant details:

1 1 April 2025 to 31 March 2026.

- Salary and wage earners have their repayments deducted directly.[2]
- There are specific rules for borrowers who have a secondary job, are self-employed, or are employed but earn other income. See the link below for more information on repayments in these situations.
- Repayment is not required if income is below the threshold.[3]
- New Zealand-based borrowers do not get charged interest on their loan.[4]

For more information, see **Living in New Zealand with a student loan** on Inland Revenue's website.

Requirements before going overseas

12. If a borrower is planning to go overseas for more than 6 months, they must tell Inland Revenue before they leave New Zealand.[5]
13. The borrower must provide Inland Revenue with:
    - a postal address, which can be either a permanent overseas postal address, a New Zealand postal address, or the New Zealand address of someone empowered to act for the borrower; and
    - an email address or other means of electronic communication; and
    - any other information the Commissioner may reasonably require in order to determine the borrower's repayment obligations and whether interest will be payable on the loan.[6]

Overseas-based borrowers

14. A borrower who is New Zealand-based will become overseas-based in either of the following circumstances:
    - They are absent from New Zealand for 184 consecutive days (see from [18]).

    OR

    - They are **treated as** having been absent from New Zealand for 184 consecutive days. This will be the case if the borrower has been in New Zealand for less than 32 days in total in any 184-day period starting on any full day the borrower was overseas (see from [21]).
15. For either of these tests, the 184-day period can be any 184-day period and can span calendar years and/or income years. The 184-day period can begin before the person becomes a borrower.[7]
16. Days of partial presence in New Zealand (eg, days of arrival to and departure from New Zealand) are treated as days in New Zealand. Therefore, if a borrower is in New Zealand for any part of a day, that day will not count towards the overseas-based day count.[8]

    Note: Borrowers can use a tool in myIR to calculate if their travel dates will result in them becoming overseas-based. To do so, in myIR go to your student loan "account summary", select **"more"**, then in the "travelling overseas" section select **"calculate your interest status"** and then add in your travel dates.

17. Repayment obligations for overseas-based borrowers are discussed in detail from [27]. Broadly, if a borrower is overseas-based:
    - interest will be applied to their student loan from the first day on which they are overseas-based;[9] and
    - their compulsory loan repayments will generally be based on their loan at the time they become an overseas-based borrower.[10]

2 Section 36.
3 Section 37.
4 Section 133.
5 Section 28.
6 Section 28.
7 Section 23(2).
8 Section 24.
9 Section 135.
10 Section 110. But see footnote 18 on page 11.

Becoming overseas-based because borrower is absent from New Zealand for 184 consecutive days

18. If a borrower is absent from New Zealand for 184 consecutive days, they will become an overseas-based borrower. In very simple terms, this means a borrower will become overseas-based under this test once they have been overseas for 6 months, if none of the listed circumstances discussed from [46] applies to them. They will be treated as being an overseas-based borrower from the later of:[11]
    - the first of the 184 consecutive days they were absent from New Zealand; or
    - the day they became a borrower.

    See Example | Tauira 1.
19. This test is the most likely one to apply to a borrower going overseas for a typical "OE" (overseas experience). However, if a borrower has been away from New Zealand before departing for their OE and has not been back in New Zealand for at least 32 days before departing for their OE, the second test (discussed from [21]) will be relevant, and may alter the date from which they become an overseas-based borrower. The second test will also be relevant if a borrower on a typical OE has a trip back to New Zealand within the first 184 days (roughly 6 months) of their OE, for example for a wedding or funeral, and then goes back overseas to continue their OE.
20. If a borrower going on a typical OE has not been overseas for at least 32 days before departing for their OE and has not made any trips back to New Zealand within the first 184 days of their OE, it is not necessary to consider the second test. The borrower will be an overseas-based borrower from the day after their departure from New Zealand. For information about repayment obligations, see "Repayment obligations for overseas-based borrowers", from [27].

Example | Tauira 1 – Becoming overseas-based because borrower is absent for 184 consecutive days

Alex has a student loan and is a New Zealand-based borrower.

17 February 2025 – Alex moves to Australia to start a new job.

22 December 2025 – Alex returns to New Zealand for Christmas.

4 January 2026 – Alex returns to Australia.

Alex was absent from New Zealand for 184 consecutive days from 18 February 2025 to 20 August 2025. Alex is therefore an overseas-based borrower. This is effective from Alex's first full day of absence from New Zealand, which was 18 February 2025. The fact Alex came home for Christmas in December 2025 does not alter his status as an overseas-based borrower from 18 February 2025. Once a borrower becomes an overseas-based borrower they remain as such until they become a New Zealand-based borrower again.

Becoming overseas-based because borrower is <u>treated as</u> absent from New Zealand for 184 consecutive days

21. A borrower may also become an overseas-based borrower if they are **treated as** having been absent from New Zealand for 184 consecutive days. A borrower will be treated as being away from New Zealand for 184 consecutive days if they are in New Zealand for less than 32 days in total in any 184-day period starting on any full day the borrower was overseas. They will be treated as overseas-based from the later of:[12]
    - the first day of the 184-day period; or
    - the day they became a borrower.

    See Example | Tauira 2.
22. In short, a New Zealand-based borrower can travel outside of New Zealand and not become overseas-based so long as they spend at least 32 days in New Zealand in any given 184-day period.[13] This is sometimes referred to as the "32-day rule".
23. The 32 or more days in New Zealand do not need to be consecutive; they can be made up of multiple visits to New Zealand during the 184-day period.[14] See Example | Tauira 3.

11 Section 23(3).
12 Section 23.
13 Section 22.
14 Section 22(1)(b)(i).

24. If a borrower is overseas for 153 or more days in a 184-day period, it is impossible for them to spend 32 or more days in New Zealand in that 184-day period. Any days that they do spend in New Zealand in that period will be treated as being days of absence from New Zealand, subject to that being altered by the tie-breaker rule discussed from [119]. As such, the borrower will be treated as having been absent from New Zealand for 184 consecutive days and will become an overseas-based borrower.
25. However, under the tie-breaker rule, it is possible for borrowers to have their overseas-based status reversed if they become New Zealand-based again when they have been overseas for more than 153 days but less than 184 days in a 184-day period. The tie-breaker rule will be relevant if any of the days of presence in New Zealand in the 184-day period subsequently count towards the person being a New Zealand-based borrower. For more information, see the discussion under "Returning to New Zealand" from [110].
26. If a borrower has become overseas-based, the rules discussed under "Becoming a New Zealand-based borrower when returning to New Zealand" (see from [110]) apply for becoming New Zealand-based again.

Example | Tauira 2 – Multiple trips – Becoming overseas-based because borrower is treated as absent from New Zealand for 184 consecutive days, having been in New Zealand for less than 32-days in a 184-day period

Tim has a student loan.

14 January 2025: Tim leaves New Zealand to attend his best friend's wedding in Fiji. Tim is away for 12 days and, during this time, Tim applies for a job in Scotland. [12 days out of New Zealand]

27 January 2025: Tim returns to New Zealand from the wedding and is offered the job in Scotland. [26 days in New Zealand]

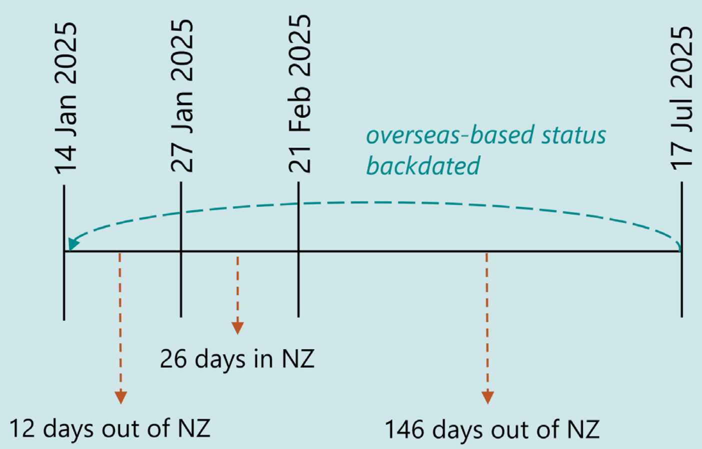
21 February 2025: Tim moves permanently to Scotland. He does not return to New Zealand for a visit until Christmas 2025.

Tim knows he will become an overseas-based borrower under the student loan scheme after being overseas for 184 days (approximately 6 months). He therefore expects he will become overseas-based on 24 August as that is 184 days after he moved to Scotland.

However, Tim was in New Zealand for **less than 32 days** in a 184-day period starting on a full day he was overseas. This is the period from 15 January 2025 to 17 July 2025. After he left New Zealand on 14 January, he returned to New Zealand for only 26 days (27 January 2025 to 21 February 2025 = 26 days of presence in New Zealand) before leaving permanently. Because Tim was in New Zealand for less than 32 days in the 184-day period from 15 January 2025 to 17 July 2025, the days he was in New Zealand are **treated as** days of absence from New Zealand. This results in Tim being **treated as** absent from New Zealand for 184 consecutive days, and Tim becomes an overseas-based borrower.

As Tim left New Zealand permanently, none of the 26 days of him being present in New Zealand subsequently counted towards him becoming New Zealand-based again, so the tie-breaker rule is not relevant.

Tim's overseas-based borrower status is backdated to apply from the first full day of absence (being the start of the 184-day period), which was **15 January 2025**.



Example | Tauira 3 – Multiple trips – Borrower not overseas for 153 or more days in any 184-day period, so remains New Zealand-based (no days of absence treated as days of presence)

Tim has a student loan.

14 January 2025: Tim leaves New Zealand to attend his best friend's wedding in Fiji. Tim is away for 12 days, and during this time he applies for a job in Scotland. [12 days out of New Zealand]

27 January 2025: Tim returns to New Zealand from the wedding and is offered the job in Scotland. [26 days in New Zealand]

21 February 2025: Tim flies to Scotland for a 6-week trial period. However, the job does not work out. [42 days out of New Zealand]

5 April 2025: Tim returns to New Zealand. [92 days in New Zealand]

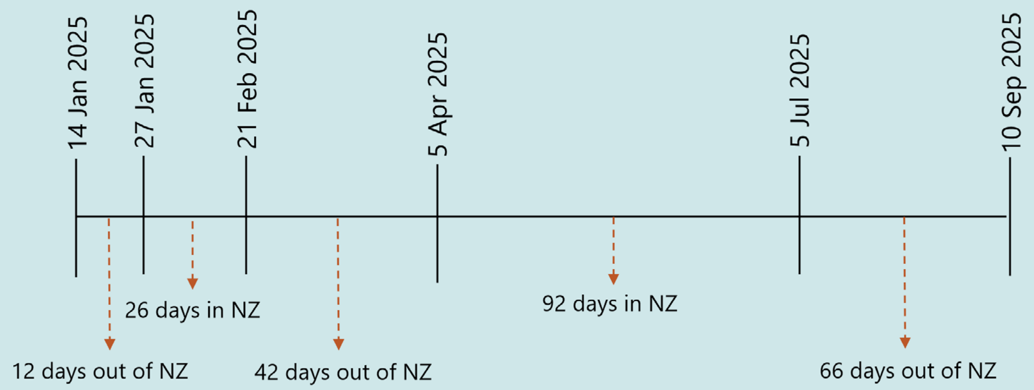
5 July 2025: Tim leaves New Zealand once again as his sister Tam has just had a baby in Canada and, because Tim is still job hunting, he agrees to go and help Tam out for a couple of months. Tim leaves New Zealand and heads to Canada. [66 days out of New Zealand]

10 September 2025: Tim returns to New Zealand. Tim has finally found a job in New Zealand and is settled for the time being.

In total, between 15 January 2025, Tim's first full day of absence from New Zealand, and 10 September 2025, when he returned from Canada, Tim spent **120 days** outside of New Zealand.

A borrower needs to be absent from New Zealand for at least 153 days in any 184-month period to be treated (subject to the tie-breaker rule) as absent for 184 consecutive days and therefore become overseas-based.

Because Tim spent only 120 days outside of New Zealand, at no point was there a 184-day period in which he spent enough time outside of New Zealand to become an overseas-based borrower for the purposes of his student loan, even though he took multiple trips for various reasons.



Repayment obligations for overseas-based borrowers

27. Overseas-based borrowers are required to make minimum loan repayments, regardless of how much they earn.

28. Borrowers will receive an assessment notice each year setting out the minimum repayments they need to make and the due dates for those. There are two repayments to be made each year – generally these are due by 30 September and 31 March.[15] The assessment notice will usually be sent out in early April each year. However, the timing of the assessment notice and due dates for payments can be different for someone who is a new overseas-based borrower, depending on when they became an overseas-based borrower.

15 Section 112(1).

29. The amount borrowers need to pay by each due date generally depends on their consolidated loan balance when they first become an overseas-based borrower.[16]

30. However, if a borrower's loan balance increases while they are overseas-based, their repayments may also increase. However, if the loan balance decreases, the repayments will not decrease.[17] This means that if loan repayments reduce the outstanding balance, the repayments will remain at the amount they were when the borrower first became overseas-based. However, if the loan balance increases because interest accrues at a greater rate than repayments or there is further borrowing, the repayment amount due will increase accordingly. Table | Tūtohi 1 summarises the repayment obligations for overseas-based borrowers, depending on their loan balance.

Table | Tūtohi 1 – Repayment obligations for overseas-based borrowers

Loan balance	Amount to repay each year	Instalments
Less than $1,000	Total loan balance	Half of the total loan balance paid by 30 September; the remaining half of the loan paid by 31 March
$1,000 to $15,000	$1,000	$500 paid by 30 September; $500 paid by 31 March
$15,000 to $30,000	$2,000	$1,000 paid by 30 September; $1,000 paid by 31 March
$30,000 to $45,000	$3,000	$1,500 paid by 30 September; $1,500 paid by 31 March
$45,000 to $60,000	$4,000	$2,000 paid by 30 September; $2,000 paid by 31 March
More than $60,000	$5,000	$2,500 paid by 30 September; $2,500 paid by 31 March.

31. If borrowers live in Australia, the United Kingdom, Europe, Canada, or the United States, they can set up direct debit payments in their myIR account. See **Paying from overseas** on Inland Revenue's website for more information.

Interest for overseas-based borrowers

32. For overseas-based borrowers, interest is calculated each day on the loan balance using the current interest rate. Interest is always included in the loan balance, but interest only compounds on 31 March each year.[18]

33. For the 2025–26 income year,[19] the annual interest rate is 4.9%. For updated interest rates see **Student loan interest and fees** on Inland Revenue's website.

34. If borrowers do not make their payments on time, they may also be charged late payment interest. For the 2025–26 income year,[20] the late payment interest rate is 8.9% (see the link at [33] for the updated rate).

35. Late payment interest is charged on the unpaid amount if the unpaid amount is $334 or more. Late payment interest is calculated, charged, and added to the borrower's unpaid amount the day after its due date. It will keep being charged and added to the unpaid amount (monthly) until the borrower has caught up with their payments.[21]

36. The standard interest rate continues to apply to the rest of the loan.[22]

16 Section 110. This is the case unless the borrower has been continuously overseas-based since 31 March 2014 and is an existing borrower, in which case the repayments generally depend on the borrower's consolidated loan balance on 31 March 2014.

17 Section 110(4). If a borrower has a final-year fees-free entitlement credited against their consolidated loan balance after they become an overseas-based borrower, that entitlement is treated as credited on the date they were awarded their qualification and will be taken into account accordingly, in terms of their minimum repayments.

18 Section 135.

19 1 April 2025 to 31 March 2026.

20 1 April 2025 to 31 March 2026.

21 Section 139.

22 Section 139.

37. Relief from late payment interest may be available if the Commissioner of Inland Revenue believes this would be equitable.[23]

Temporary repayment suspension

38. New Zealand-based borrowers can get a temporary repayment suspension. This gives them a break from making overseas-based repayments for up to 12 months while they travel overseas.[24]

39. During this time, interest still accrues on the loan. It is just the overseas-based repayment obligations that are suspended. Any New Zealand-based repayments that are due will still need to be paid; they are not covered by the temporary repayment suspension.

40. If a borrower continues to be overseas-based after their temporary repayment suspension has ended, their overseas-based loan repayment obligations will commence. The required repayments will be based on the greatest consolidated loan balance the borrower had on any 31 March after they became an overseas-based borrower but before the last day of the tax year.[25] This means that any interest accrued on the loan during the temporary repayment suspension may increase the repayment obligations, compared to what they would have otherwise been.

41. A borrower may apply for this temporary suspension either from New Zealand or from overseas, but the application cannot be made by an overseas-based borrower (ie, it must be made before the borrower meets the requirements to become overseas-based – typically in the first 6 months after their departure).[26]

42. A borrower must provide an alternative contact person who lives in New Zealand during the time the borrower is overseas.[27]

Nominated person and alternative contact person

43. A borrower can set up a nominated person to help keep them up to date with their loan obligations while they are overseas, but this is not mandatory. A borrower may also include an alternative contact person for Inland Revenue to contact if we cannot contact the borrower.

44. A nominated person can contact Inland Revenue and act on the borrower's behalf. They can also complete and sign tax returns and other forms, and receive the information sent to the borrower. Unlike a nominated person, an alternative contact person cannot view or update the loan.

45. A borrower must have an alternative contact person if they are applying for a temporary repayment suspension.

Circumstances in which borrowers may be treated as being physically in New Zealand

46. There are several circumstances, listed in s 25, in which borrowers may apply to be treated as being physically in New Zealand while they are overseas. This may mean that either they do not become overseas-based at all or the point at which they become overseas-based is deferred. This treatment may apply to some or all of the days on which the borrower is overseas.

47. The Commissioner may, if he considers it fair and reasonable, treat a borrower as being physically in New Zealand if they are not in New Zealand because of one of the listed circumstances.[28]

48. The circumstances in which a borrower may be treated as being physically in New Zealand while they are overseas are where the borrower:
    - is in the service in any capacity of the Government of New Zealand (see from [52]);
    - is working as a volunteer or for token payment for a charity (see from [55]);
    - experiences an unexpected delay in travel (see from [61]);
    - has an unplanned personal absence (see from [67]);
    - is required to be overseas because of the borrower's employment or occupation (see from [72]);
    - is undertaking study or an internship that meets certain requirements (see from [76]);

23 Section 146(2).
24 Section 108.
25 Section 110.
26 Section 107(2).
27 Section 107A.
28 Section 25.

- is in Niue, the Cook Islands, Tokelau, or the Ross Dependency (see from [98]);
- is accompanying their spouse, civil union partner, or de facto partner overseas (see from [101]); or
- has a serious illness as defined in s 25(4) and is unable to meet their repayment obligations as a result of this serious illness (see from [105]).

49. Other than for the serious illness exception, the relevant circumstance must be the **principal reason** the borrower is not, was not, or will not be in New Zealand.[29]
50. For any of these exceptions to apply, the borrower must provide Inland Revenue with supporting documentation.[30] The particular documentation required will depend on the situation.
51. A day on which the borrower is treated as being physically in New Zealand under these exceptions counts in the same way that a day in which the borrower is physically in New Zealand would for the purposes of the day counts and rules.[31]

In service of the New Zealand Government

52. If a borrower is overseas in the service, in any capacity, of the Government of New Zealand, they may be able to be treated as being in New Zealand. For example, this may apply to people in the armed forces or the police, and to diplomats.
53. Being in the service of the Government of New Zealand must be the principal reason the person is not or will not be in New Zealand.
54. The borrower will need to provide a letter from the government agency they work for, which must include the details of their role and the dates they are required to be overseas.

Volunteer for charity

55. If the principal reason a borrower is overseas is to volunteer for a charitable organisation, they may be able to be treated as being in New Zealand.
56. The borrower must provide evidence that the work being done as a volunteer or for token payment for a charity is work to:
    - relieve poverty, hunger, sickness, or the ravages of war or natural disaster;
    - improve the economy of a country on the Organisation for Economic Co-operation and Development (OECD) list of countries receiving development assistance; or
    - raise the educational standards of a country on the OECD's list of countries receiving development assistance.
57. The charity must be listed as a charity under s 27A. Find the listed charities at **Approved charities for interest-free student loans** on Inland Revenue's website.
58. The borrower must provide a letter from the organisation stating the details of the arrangement.
59. The maximum period a borrower may be treated as physically in New Zealand in these circumstances is up to 24 months in total.
60. If the application is approved the borrower will need to inform Inland Revenue of their worldwide income.[32] They may also still need to make repayments.

Unexpected delay

61. A borrower may be treated as being in New Zealand if the principal reason they are not in New Zealand is because of an unexpected delay.
62. This could be relevant, for example, if a borrower was planning to travel for 6 months or less, but due to events outside of their control they could not return to New Zealand as planned.
63. An unexpected delay could be due to something beyond the borrower's control like an airline strike, personal illness, death of a family member, natural disaster, terrorism or an act of war.

29 Section 25(1) and (3).
30 Section 26.
31 Sections 22(1A) and 23(1B).
32 If the application is being made retrospectively, a worldwide income declaration will be required before the application is approved.

64. The borrower must provide evidence of their intended return to New Zealand (eg, their original flight reservations) and of the unexpected delay that prevented them from returning to New Zealand as intended. They must also be able to show that if they had returned to New Zealand, they would have been a New Zealand-based borrower.
65. The borrower must have been a New Zealand tax resident under the Income Tax Act 2007 (the ITA) for the period to which the application applies. They will need to provide tax residence information to establish this residency status if they were overseas for more than 325 days.
66. Example | Tauira 4 illustrates circumstances in which an application for a delay may or may not apply.

Example | Tauira 4 – When a borrower may be treated as being physically in New Zealand because of an unexpected delay

Stefan and Amelia finished uni and travelled overseas for their "OE" (overseas experience). Stefan booked his trip to be overseas for a total of **182 days,** in order to get the most amount of time travelling while keeping his loan interest free. Amelia was not sure when she wanted to go back to New Zealand and had no return flight booked.

On the final day of his trip, Stefan went to catch his flight back to New Zealand out of Frankfurt. A snowstorm rolled in and all flights were cancelled.

Stefan could not get another flight for a week. This meant that he automatically became an overseas-based borrower, as he was absent from New Zealand for 184 or more consecutive days, and would be treated as an overseas-based borrower from the day after he left New Zealand. As such, interest would be charged on his loan, dating back to the day after he left New Zealand.

To prevent this outcome, Stefan must apply to Inland Revenue to ask for the days his return was unexpectedly delayed to be treated as days in New Zealand rather than as days overseas. In making this application, Stefan must provide his original flight reservations, and evidence of the snowstorm that delayed him.

Amelia was not sure when she wanted to go back to New Zealand and had no return flight originally booked. In Stefan's last week in Frankfurt, Amelia decided she did not want to continue travelling alone, so 2 days before Stefan's flight back to New Zealand she booked on the same flight. Amelia had been out of New Zealand for **185 days** when she booked her return flight.

Amelia left at the same time as Stefan did. However, she was absent from New Zealand for 184 or more days before booking her flight back to New Zealand. Amelia therefore could not claim an unexpected delay, as it was not the snowstorm that had prevented her from returning to New Zealand before becoming an overseas-based borrower; she simply had not decided to return yet. Therefore, Amelia's interest cannot be removed.

Unplanned personal absence

67. A borrower may be treated as being in New Zealand if the principal reason they are not in New Zealand is that they had an unplanned personal absence.[33]
68. This circumstance could be relevant to a borrower who was overseas but returned to New Zealand before becoming an overseas-based borrower, and then later had unplanned days of absence from New Zealand that would otherwise cause them to become overseas-based. It could also be relevant to an overseas-based borrower who has returned to New Zealand but has an unplanned personal absence before they qualify as a New Zealand-based borrower.
69. The unplanned absence must be due to an event or to circumstances beyond the borrower's reasonable planning and control. For example, an unplanned personal absence beyond the borrower's reasonable planning and control could occur because a family member is seriously ill or has died.
70. The borrower must have been a New Zealand tax resident under the ITA for the period to which the application applies.
71. The borrower must provide evidence of the duration of, and reason for, the unplanned absence and that it was due to an event or to circumstances beyond their reasonable planning and control.

Required for employment or occupation

72. A borrower may be able to be treated as being in New Zealand if the principal reason they are not in New Zealand is that they are only working overseas temporarily.

33 Section 25 (1)(d).

73. The borrower must show that they get either salary or wages[34] from a New Zealand source or income from a business permanently established in New Zealand.
74. The borrower must provide a letter from their employer with the details of the arrangement and confirmation that the principal reason they are overseas is required for their job.
75. The borrower must be a New Zealand tax resident under the ITA and they must have a "permanent place of abode" only in New Zealand while they are overseas. In order to be satisfied of this, the Commissioner may require some information about accommodation the borrower has both in New Zealand and overseas. **IS 25/16**: **Tax residence** explains the concept of a permanent place of abode.[35]

Undertaking study or an internship

76. A borrower may be treated as being in New Zealand if the principal reason they are not in New Zealand is that they are undertaking study or an internship that meets certain requirements (set out in sch 1).
77. Schedule 1 lists various types of study and internship that may qualify a borrower to be treated as physically in New Zealand. These studies and internships, along with the associated requirements, are set out below.
78. When a borrower is studying overseas, the course of study must meet the requirements as defined by reference to the New Zealand Qualifications Authority (NZQA) levels.
79. Example | Tauira 5 illustrates a situation where a borrower's overseas study is not verified by NZQA as being at the required level, so the borrower is not treated as physically in New Zealand during the time he is overseas undertaking the study.

Example | Tauira 5 – Borrower cannot be treated as physically in New Zealand because overseas study is not verified by NZQA as being at the required level

Harry is a huge fan of Georgia – an Instagram life-coach.

Georgia is based in the USA and offers an 8-month course through which you can become a Georgia-certified life-coach.

Harry has completed a bachelors degree and has a $32,000 student loan as a result of undertaking that degree. He decides he wants to be a Georgia-certified life-coach, so enrols in Georgia's course and attends it in person in the USA.

Harry has a friend from university, Manaia, who went on to do a master's degree in Germany, and she was able to be treated as being physically in New Zealand during this time.

So Harry applies to Inland Revenue for an exemption to being treated as an overseas-based borrower on the basis that he is studying overseas, not working, and he feels that the qualification he is gaining will be useful when he gets back to New Zealand.

However, Georgia's course is not verified by NZQA as being at the required level, unlike the German university programme Manaia left New Zealand to do. For this reason, Harry will not be able to be treated as physically in New Zealand for the duration of his course with Georgia.

This means that Harry will become overseas-based after **183 days** outside New Zealand, effective from his date of departure, and Harry's loan will incur interest.

Studying at postgraduate or undergraduate level overseas

80. A borrower can apply to be treated as being in New Zealand if the principal reason they are overseas is to study full time with an overseas education provider at postgraduate or undergraduate level.
81. Study at postgraduate or undergraduate level means study that is assessed by NZQA as being equivalent to level 7, 8, 9 or 10 on the New Zealand Register of Quality Assured Qualifications developed by NZQA under s 452(1)(c) of the Education and Training Act 2020. Example | Tauira 6 sets out a situation where the borrower meets these requirements but cannot be treated as physically in New Zealand because study is not their principal reason for being overseas.

34 Or some other "PAYE income payment" as defined in s RD 3(1) of the ITA (which includes schedular payments.

35 But note that in terms of the tax residence rules, a person can have a permanent place of abode in New Zealand even if they also have one elsewhere. That is not the case in order to potentially be treated as being in New Zealand when working overseas temporarily.

82. The borrower must provide evidence of an Overseas Study Assessment from NZQA verifying that the study is at the required level. In addition, they must provide evidence of their full-time enrolment in the course and the start and end dates of the course of study. For more information, search for "apply for an overseas study assessment" on **NZQA's website**.

83. If the application is approved, the borrower will need to inform Inland Revenue of their worldwide income.[36] They may also still need to make repayments while overseas.

Example | Tauira 6 – Borrower cannot be treated as physically in New Zealand because overseas study is not the principal reason for being overseas

Zoë leaves New Zealand after finishing university, to travel around Europe. She has no plans to return to New Zealand in the foreseeable future and does not need to return at any particular time as she has dual UK / New Zealand citizenship. After 18 months, Zoë is settled and enjoying life in the UK and still has no plans to return to New Zealand. She decides to enrol in a postgraduate degree in the UK.

The postgraduate degree meets the relevant study level requirements, as assessed by NZQA, and Zoë is undertaking the study full time.

However, undertaking the study was not the principal reason Zoë is overseas, so she is not able to be treated as physically in New Zealand for the duration of her study.

Studying with a New Zealand education provider as part of an exchange or agreement

84. A borrower can apply to be treated as being in New Zealand if the principal reason they are overseas is to study full-time overseas under a formal exchange or agreement.

85. They must be undertaking study that they are enrolled in with a New Zealand tertiary education provider and that, if completed successfully, will count towards a qualification offered by a New Zealand tertiary education provider.

86. The study must be assessed by NZQA as being equivalent to level 7 or above on the New Zealand Register of Quality Assured Qualifications developed by NZQA under s 452(1)(c) of the Education and Training Act 2020.

87. The borrower will need to provide a letter from their New Zealand education provider confirming the details of their study and that the arrangements meet these requirements.

88. If the application is approved, the borrower will need to provide Inland Revenue with details of their worldwide income.[37] They may also still be required to make repayments while overseas.

Completing postgraduate study with a New Zealand tertiary education provider that cannot be completed in New Zealand

89. A borrower can apply to be treated as being in New Zealand if the principal reason they are overseas is to complete full-time postgraduate study that cannot be completed in New Zealand.

90. They must be undertaking study that they are enrolled in with a New Zealand tertiary education provider and that, if completed successfully, will count towards a qualification offered by a New Zealand tertiary education provider.

91. The study must be assessed by NZQA as being equivalent to level 8 or above on the New Zealand Register of Quality Assured Qualifications developed by NZQA under s 452(1)(c) of the Education and Training Act 2020.

92. The borrower will need to provide a letter from their New Zealand education provider confirming the details of their study meet these requirements.

93. If the application is approved, the borrower will need to inform Inland Revenue of their worldwide income.[38] They may also still be required to make repayments while overseas.

Interning or studying overseas with a government-funded scholarship

94. A borrower who is receiving a qualifying government-funded scholarship for a course of study or an internship may be able to apply to be treated as being in New Zealand, if that is the principal reason they are not in New Zealand.

36 If the application is being made retrospectively, a worldwide income declaration will be required before the application is approved.

37 If the application is being made retrospectively, a worldwide income declaration will be required before the application is approved.

38 If the application is being made retrospectively, a worldwide income declaration will be required before the application is approved.

95. The borrower will need to be receiving a qualifying scholarship for full-time study, a full-time internship, or a part-time internship with part-time study.

96. They will need to obtain a letter from Education New Zealand confirming the study or internship meets the criteria and send this to Inland Revenue.

97. If the application is approved, the borrower will need to inform Inland Revenue of their worldwide income.[39] They may still be required to make repayments while overseas.

In Niue, the Cook Islands, Tokelau, or the Ross Dependency

98. If the principal reason a borrower is not in New Zealand is because they are in Niue, the Cook Islands, Tokelau or the Ross Dependency, they may be able to be treated as being in New Zealand.

99. The borrower must meet their repayment obligations on time during the period they are treated as being in New Zealand.

100. If the application is approved, the borrower will need to inform Inland Revenue of their worldwide income.[40] They may still be required to make repayments while overseas.

Accompanying spouse or partner

101. A borrower may be able to be treated as being in New Zealand if the principal reason they are going overseas is to accompany their spouse, civil union partner or de facto partner and the spouse or partner is going overseas:

- in the service of the Government of New Zealand (see from [52]);
- to volunteer for a charity, provided they meet certain requirements (see from [55]);
- as required for their employment (see from [72]); or
- under any of the study or internship exceptions (see from [76]).

102. The borrower must have been a New Zealand tax resident under the ITA for the period to which the application applies.

103. They must provide evidence of their relationship, including that they were living with their spouse or partner before they left New Zealand.

104. The borrower must also provide proof that their spouse or partner meets the requirements for one of the exceptions listed above.

Serious illness, injury or disability

105. If a borrower has a serious illness, injury or disability and is unable to make their overseas-based repayments as a result, they may be able to be treated as being in New Zealand.

106. They may, therefore, (depending on the length of their serious injury, illness or disability) become a New Zealand-based borrower and have their repayment obligations based on their income rather than the overseas-based repayment formula.

107. The illness, injury or disability must be one that results in the borrower not being able to engage in paid work other than for a token payment or very low wage, or that poses a serious and imminent risk of death.

108. The borrower must also have no other way of meeting the repayment obligations (eg, from other sources of income such as from a rental property, or from savings).

109. To apply to be treated as being in New Zealand under this circumstance, the borrower will need to provide a medical certificate or letter from a doctor. They will also need to inform Inland Revenue of their worldwide income and provide other financial details such as information about their expenses and assets.

Becoming a New Zealand-based borrower when returning to New Zealand

110. A borrower who is overseas-based will become New Zealand-based in either of the following circumstances:

- They are present in New Zealand for 183 consecutive days (see from [114]).

OR

- They are **treated as** having been present in New Zealand for 183 consecutive days. This will be the case if the borrower has been present in New Zealand for 152 or more total days in any 183-day period starting on any full day the borrower was in New Zealand (see from [115]).

39 If the application is being made retrospectively, a worldwide income declaration will be required before the application is approved.

40 If the application is being made retrospectively, a worldwide income declaration will be required before the application is approved.

111. For either of these tests, the 183-day period can be any 183-day period and can span calendar years and/or income years. The 183-day period can begin before the person becomes a borrower.[41]

112. Days of partial presence in New Zealand (eg, days of arrival to and departure from New Zealand) are treated as days in New Zealand. Therefore, if a borrower is in New Zealand for any part of a day, that day will count towards days present in New Zealand.[42]

113. If a borrower returns to New Zealand and becomes a New Zealand-based borrower, their student loan will be interest free from the date they become a New Zealand-based borrower, and repayments will be based on how much they earn. However, most returning borrowers will still have a part-year overseas-based repayment obligation to pay before their repayments revert to being based on their earnings.

Becoming New Zealand-based because a borrower is in New Zealand for 183 consecutive days

114. When an overseas-based borrower returns to New Zealand, after 183 consecutive days here they will become New Zealand-based. They will be treated as being a New Zealand-based borrower from the later of:[43]

- the first of the 183 consecutive days they were in New Zealand; or
- the day they became a borrower.

See Example | Tauira 7.

Example | Tauira 7 – Becoming New Zealand-based because borrower is in New Zealand for 183 consecutive days

Alex has a student loan and is an overseas-based borrower. He has spent the last 2 years working in Australia.

17 February 2025 – Alex returns to New Zealand to start a new job. Alex does not leave New Zealand again until January 2026 when he goes to Melbourne for a week.

Alex is in New Zealand for 183 consecutive days from 17 February 2025 to 18 August 2025. He therefore becomes a New Zealand-based borrower as of 17 February 2025, being the first of the 183 consecutive days he was in New Zealand.

Becoming New Zealand-based because a borrower is treated as having been in New Zealand for 183 consecutive days

115. A borrower may also become a New Zealand-based borrower if they are **treated as** having been in New Zealand for 183 consecutive days. A borrower will be treated as having been in New Zealand for 183 consecutive days if they have not been absent from New Zealand for more than 31 days in total in any 183-day period starting on any day they were in New Zealand. They will be treated as being New Zealand-based from the later of:[44]

- the first day of the 183-day period; or
- the day on which they became a borrower.

116. This test means that for a borrower returning to New Zealand, trips out of New Zealand in a 183-day period that add up to less than 32 days will not stop the borrower becoming a New Zealand-based borrower from the time they moved back here.

117. This test also means a borrower may become New Zealand-based again from a time before they moved back to New Zealand permanently (eg, because of an earlier trip back to New Zealand for a job interview or to visit family). Example | Tauira 8 illustrates this situation.

41 Section 22(2).
42 Section 24.
43 Section 22(3).
44 Section 22(3).

Example | Tauira 8 – Becoming New Zealand-based because borrower is treated as having been in New Zealand for 183 consecutive days (away from New Zealand for less than 32 days in a 183-day period)

Norman is an overseas-based borrower.

12 June 2025: Norman comes to New Zealand for 25 days to look for a job.

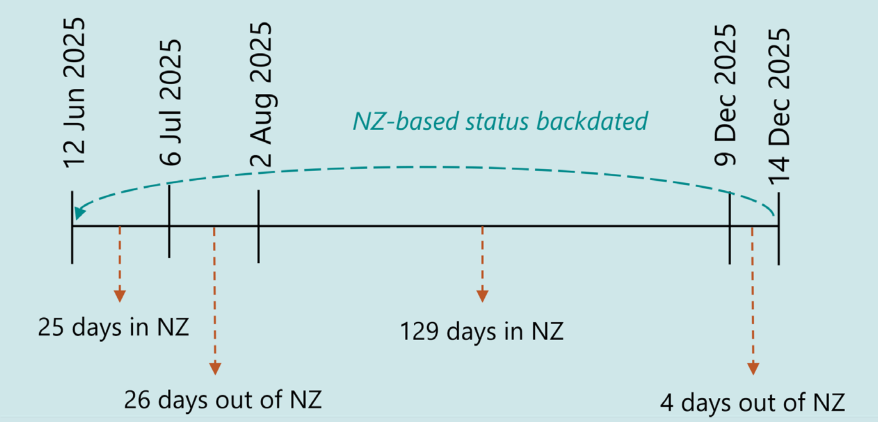
6 July 2025: Norman goes back to Finland for 26 days to pack up to move to New Zealand.

2 August 2025: Norman is in New Zealand for 129 days while he settles into his new job.

9 December 2025: Norman leaves for 4 days to attend a concert in Australia.

14 December 2025: Norman returns to New Zealand again.

In the 183-day period from **12 June 2025** to **14 December 2025**, Norman was away from New Zealand for 30 days. As Norman was not away for 32 or more days in that 183-day period, he is **treated as** having been in New Zealand for the full 183 days. He therefore meets the requirements for becoming New Zealand-based. His status as being New Zealand-based is backdated to the first day of the 183-day period, which was **12 June 2025**.



Repayments and interest when returning to New Zealand

118. When a borrower becomes New Zealand-based, their loan will be interest free from the first day of their status as New Zealand-based. Any interest charged from the first day that counts towards the borrower becoming New Zealand-based until the day-count test for becoming New Zealand-based has been satisfied, will be retroactively removed.

Tie-breaker

119. A borrower who has been overseas for 153 or more days in a 184-day period, but for less than 184 days, is considered an overseas-based borrower. This is because, as explained from [21], if a borrower spends less than 32 days in total in New Zealand in a 184-day period they will be treated as being away from New Zealand for 184 days. If a borrower is overseas for 153 or more days in a 184-day period, it is impossible for them to spend 32 or more days in New Zealand in that 184-day period.

120. If, however, the borrower then returns to New Zealand, this overseas-based status may be reversed.

121. This reversal may occur because a borrower cannot be treated as both overseas and present in New Zealand on the same day. If any days of presence in New Zealand that are treated as overseas days for becoming overseas-based **also** count towards becoming New Zealand-based, the New Zealand-based treatment of those days takes precedence and they cannot be treated as overseas days. This may mean that the borrower would no longer meet the 184-day threshold for being overseas-based (or may not meet it until a later date). The following examples illustrate circumstances in which the borrower's days overseas are treated as New Zealand days (Example | Tauira 9) and circumstances in which they are not (Example | Tauira 10).

122. If a borrower has been overseas for 153 or more days in a 184-day period but for less than 184 days and returns to New Zealand, they should check their status. They can do so by using the travel dates tool in myIR (described in the note under [16]), or by contacting Inland Revenue to discuss their circumstances.

Example | Tauira 9 – Tie-breaker: days treated as overseas become treated as New Zealand days

Lilian has a student loan and is New Zealand-based. She decides to travel overseas before starting to look for work.

18 February 2025 – Lilian leaves for her "OE" (overseas experience) and spends 145 full days away from New Zealand.

14 July 2025 – Lilian returns to New Zealand. She is in New Zealand for 25 days.

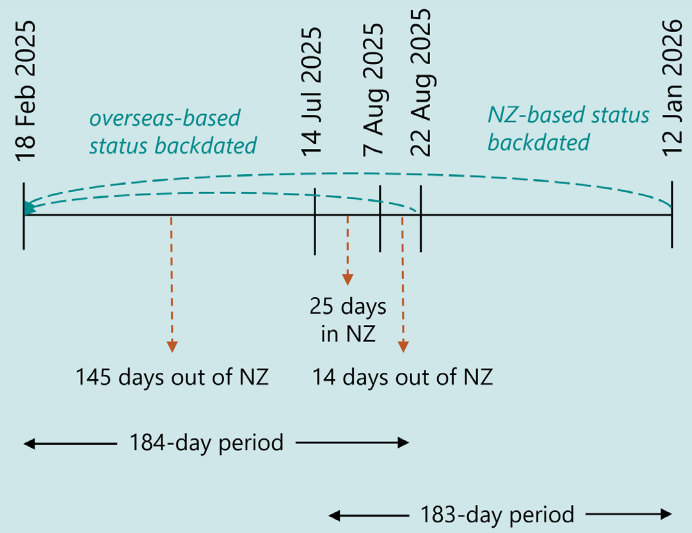
7 August 2025 – Lilian departs New Zealand to spend two weeks with her sister in Australia, returning on 22 August 2025. [Away from New Zealand for 14 days]

21 August 2025 – It is now 184 days since Lilian's first full day of absence from New Zealand (19 February 2025). Lilian is considered an overseas-based borrower as she was in New Zealand for less than 32 days in the 184-day period from 19 February 2025 to 21 August 2025 (she was in New Zealand for only 25 days in that 184-day period).

While Lilian is treated as an overseas-based borrower with effect from 19 February 2025 because she was in New Zealand for less than 32 days in the 184-day period from 19 February 2025 to 21 August 2025, she returned from her OE before the end of that period (on 14 July 2025). This means there may be days, starting from 14 July 2025 that, on the face of it, count towards both the overseas-based borrower and New Zealand-based borrower tests.

12 January 2026 – It is now 183 days since Lilian returned from her OE on 14 July 2025.

On the face of it, the 25 days from **14 July 2025** to **7 August 2025** and the 14 days from **8 August 2025** to **21 August 2025** are treated both as overseas days for the purpose of the tests for becoming overseas-based and as days of presence in New Zealand for the purpose of the tests for becoming New Zealand-based. A day cannot be treated as both a day overseas and a day of presence in New Zealand. In this situation, the days will count only as a New Zealand-based days not as an overseas-based days. This means that Lilian is now treated as only having spent 145 days overseas (the days she was in fact overseas on her OE). The 25 days from 14 July 2025 to 7 August 2025, on which she was in New Zealand but treated as overseas, no longer count as overseas days. And the 14 days from 8 August 2025 to 21 August 2025, on which she was overseas are treated as days in New Zealand. As Lilian is treated as overseas for less than 184 days, she will be considered a New Zealand-based borrower for the entire period and her overseas-based status will be reversed. Any interest charged will be retroactively removed, as Lilian's overseas-based status is reversed completely.



In the 184-day period starting on 19 February 2025, Lilian was in New Zealand for only 25 days, so those 25 days are initially treated as days out of New Zealand. However, in the 183-day period starting on 14 July 2025, Lilian is overseas for only 14 days. As such, she is treated as being in New Zealand for the whole of that 183-day period (14 July 2025 to 12 January 2026). The 25 days that were initially treated as overseas days are now treated as days in New Zealand, and that treatment overrides the overseas treatment. And the 14 days she was out of New Zealand in the 183-day period are also treated as days in New Zealand. This reverses Lilian's treatment as overseas-based, as she is no longer treated as having been absent from New Zealand for 184 consecutive days - only the initial 145 days out of New Zealand count as overseas days, which is not enough for Lilian to be overseas-based.

Example | Tauira 10 – Tie-breaker does not apply: days treated as overseas remain as such

Josie is a New Zealand-based borrower who travels overseas as follows:

14 November 2024: Goes overseas. [Away from New Zealand for 20 days]

5 December 2024: Back to New Zealand. [In New Zealand for 18 days]

22 December 2024: Leaves New Zealand again. [Away from New Zealand for 87 days]

20 March 2025: Back to New Zealand. [In New Zealand for 5 days]

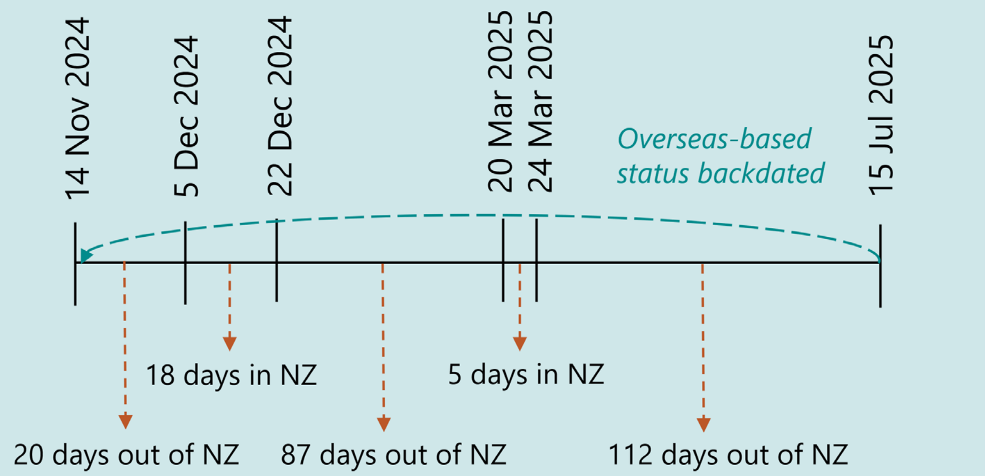
24 March 2025: Leaves New Zealand again. [Away from New Zealand for 112 days]

15 July 2025: Arrives back in New Zealand to live here permanently.

In the 184-day period from 15 November 2024 to 17 May 2025, Josie spent less than 32 days in New Zealand (she was here for 23 days in New Zealand in total in that period). She is, therefore, overseas-based from the first day she was absent in that period, which was 15 November 2024, and her loan is subject to interest from that date.

None of the days Josie was in New Zealand before her permanent return to New Zealand counts towards her becoming New Zealand-based. This is because there is no 183-day period starting before her return on 15 July 2025 for which Josie meets one of the tests for becoming New Zealand-based again. Because there are no days that are treated as both overseas days and New Zealand days for the purpose of the tests for becoming overseas-based and New Zealand-based (respectively), the tie-breaker test is not relevant to Josie.

Once Josie has been in New Zealand for 183 consecutive days (which will occur on 13 January 2026, assuming she takes no further trips overseas), she will become a New Zealand-based borrower again, with effect from 15 July 2025.



Relevance of tax residence

123. A person's tax residence status is relevant to what taxes they may have to pay in New Zealand. A person's tax residence status is different from their status as being New Zealand-based or overseas-based student loan purposes. A person may be tax resident in New Zealand but be an overseas-based borrower. Likewise, a person may be tax non-resident but be a New Zealand-based borrower.

124. For student loans, tax residence under the ITA is relevant if a borrower is applying to be treated as physically in New Zealand because of:

- an unexpected delay (see from [61]);
- an unplanned personal absence (see from [67]);
- an absence required for their employment or occupation (see from [72]); or
- an absence due to accompanying a spouse, civil union partner or de facto partner overseas in certain circumstances (see from [101]).

125. To meet the tax residence requirement in each of those circumstances, it is not relevant whether taxing rights are allocated to New Zealand under any applicable double tax agreement. What is relevant is only whether the borrower is tax resident under one of the tests in the ITA (see [127]).

126. The following discussion sets out the tax residence tests in the ITA that apply to individuals. This will assist borrowers who are in any of the circumstances listed at [124] to understand if they satisfy the tax residence requirement to potentially be treated as physically in New Zealand. Example | Tauira 11 illustrates a situation where tax residence and student loan status (New Zealand-based or overseas-based) may not align.

Tax residence rules for individuals

127. An individual is a New Zealand tax resident if they:

- have a permanent place of abode in New Zealand, even if they have a permanent place of abode elsewhere;[45]
- have been in New Zealand for more than 183 days in total in any 12-month period and have not ceased being tax resident;[46] or
- are absent from New Zealand in the service of the New Zealand Government.[47]

128. If someone is a New Zealand tax resident, they will become a non-resident 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 a 12-month period. Non-residence will be backdated to the later of the first full day of absence from New Zealand or the day after the person ceased having a permanent place of abode in New Zealand.

129. Any part-day of presence (eg, the day someone arrives in or departs from New Zealand) counts as a whole day of presence. The 183 days of presence or 325 days of absence do not need to be consecutive.

130. The 'permanent place of abode' test is the overriding test. Tax residence is backdated to the first of the 183 days of presence, provided the person did not have a permanent place of abode in New Zealand earlier than that date. Non-residence status is backdated to the first of the 325 days of absence on which the person did not have a permanent place of abode in New Zealand.

45 Section YD 1(2) of the ITA.

46 Section YD 1(3) of the ITA. Note there is an exception to this rule for persons employed under the recognised seasonal employment scheme.

47 Section YD 1(7) of the ITA.

Example | Tauira 11 – Tax residence and student loan status may not align

Jeff has a student loan. After finishing his studies and working in New Zealand for 2 years, he and his brother purchase an apartment in Christchurch together, as a home for them to live in.

Jeff is an IT contractor. Over the next year, he has various contracts for work in New Zealand and in Australia. He lives in the apartment in Christchurch when he has New Zealand-based contracts and he stays in Australia when he has contracts there.

15 January 2022: Jeff leaves New Zealand for a contract in Sydney.

1 April 2022: Jeff returns to New Zealand for contract here.

16 April 2022: Jeff leaves New Zealand for a contract in Melbourne.

30 July 2022: Jeff and his brother move to the United Kingdom (Jeff directly from Melbourne) and rent out their New Zealand apartment through a rental property management company.

15 January 2025: Jeff returns to New Zealand with his girlfriend, who he met overseas. They travel around the country, doing a number of New Zealand's Great Walks and exploring various tourist destinations.

16 July 2025: Jeff and his girlfriend return to the United Kingdom permanently.

The following paragraphs explain how the different tests for tax residence and student loan status can result in tax residence and student loan status not aligning.

Overseas-based borrower but tax resident

Jeff is treated as being physically absent from New Zealand for 184 consecutive days starting from 16 January 2022 (the first full day he was away from New Zealand) and ending on 18 July 2022. This is because in that 184-day period, Jeff was in New Zealand for 31 days or less (16 days from 1 April 2022 to 16 April 2022). As such, he will be an overseas-based borrower and that status will apply from 16 January 2022. However, Jeff continues to be tax resident in New Zealand until 30 July 2022, as he has a permanent place of abode in New Zealand (the apartment he lives in when he is here).

Overseas-based borrower and tax non-resident

From 30 July 2022, Jeff will be both an overseas-based borrower and a tax non-resident in New Zealand. From this date, when the apartment is rented out, Jeff no longer has a permanent place of abode in New Zealand. Once he has been away from New Zealand for more than 325 days in a 12-month period (which occurs on 23 December 2022, his 326th day of absence from New Zealand in the 12-month period starting on 16 January 2022), his status as a tax non-resident is backdated to the first day he was absent from New Zealand and did not have a permanent place of abode in New Zealand (30 July 2022).

New Zealand-based borrower but tax non-resident

From 15 January 2025 to 16 July 2025, Jeff will be a New Zealand-based borrower again, as he is in New Zealand for 183 consecutive days. His status as a New Zealand-based borrower is backdated to the first day of his presence in New Zealand (15 January 2025). However, Jeff remains tax non-resident. He does not have a permanent place of abode in New Zealand during this period, and he is not in New Zealand for more than 183 days.

Overseas-based borrower and tax non-resident

From 17 July 2025, Jeff is an overseas-based borrower again. From that date, he is overseas permanently. His overseas-based borrower status applies from the first full day of his absence from New Zealand (17 July 2025). Jeff continues to be tax non-resident in New Zealand.

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Legislative references | Tohutoro whakatureture

Education and Training Act 2020

Section 452

Income Tax Act 2007

Sections RD 3(1) ("PAYE income payment") and YD 1

Student Loan Scheme Act 2011

Sections 22, 23, 24, 25, 26, 27A, 28, 36, 37, 107, 107A, 108, 110, 112, 133, 135, 139, 146 and sch 1

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Repaying my student loan when I earn salary or wages (webpage, Inland Revenue, 31 March 2025)

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ird.govt.nz/student-loans/tracking-my-student-loan-balance/student-loan-interest-and-fees

Appendix – Relevant provisions of the Student Loan Scheme Act 2011

22 Meaning of New Zealand-based

(1) A borrower is **New Zealand-based** if—

(a) the borrower is physically in New Zealand for a period of 183 consecutive days; or

(b) the borrower is treated as being physically in New Zealand for a period of 183 consecutive days because—

(i) the borrower is physically absent from New Zealand for a period, or aggregated periods, of no more than 31 days during a period of 183 consecutive days; and

(ii) the borrower is physically in New Zealand for the first day of that 183-day period.

(1A) A day on which a borrower is treated as being physically in New Zealand under section 24 or 25 counts in the same way as a day on which the borrower is actually physically in New Zealand.

(2) A period of 183 consecutive days may include any days before the day on which a person becomes a borrower.

(3) For the purposes of subsection (1), a borrower is treated as being New Zealand-based—

(a) from the later of—

(i) the day on which he or she became a borrower; and

(ii) the first day of the 183-day period; and

(b) for each subsequent day.

(4) A borrower ceases to be New Zealand-based if that borrower becomes overseas-based.

23 Meaning of overseas-based

(1) The following persons are **overseas-based**:

(a) a borrower who is not New Zealand-based under section 22:

(b) a New Zealand-based borrower who is physically absent from New Zealand for a period of 184 consecutive days:

(c) a New Zealand-based borrower who is treated as physically absent from New Zealand for a period of 184 consecutive days because—

(i) the borrower is physically in New Zealand for a period, or aggregated periods, of 31 days or less during a period of 184 consecutive days; and

(ii) the borrower is physically absent from New Zealand for the first day of that 184-day period.

(1A) A borrower must not be treated as being physically absent from New Zealand for any day on which that borrower is treated as being physically in New Zealand under section 22(1)(b).

(1B) A day on which a borrower is treated as being physically in New Zealand under section 24 or 25 counts in the same way as a day on which the borrower is actually physically in New Zealand.

(2) A period of 184 consecutive days may include any days before the day on which a person becomes a borrower.

(3) For the purposes of subsection (1), a borrower is treated as being overseas-based—

(a) from the later of—

(i) the day on which he or she became a borrower; and

(ii) the first day of the 184-day period; and

(b) for each subsequent day.

(4) A borrower ceases to be overseas-based if that borrower becomes New Zealand-based.

24 Treatment of partial days

For the purposes of sections 22 and 23, if a borrower is physically in New Zealand for part of a day, that borrower is treated as—

(a) being physically in New Zealand for the whole of that day; and

(b) not being physically absent from New Zealand for any part of that day.

25 Commissioner may treat certain borrowers as being physically in New Zealand

(1) On the application of a borrower, the Commissioner may, for the purposes of sections 22 to 24 and if the Commissioner considers that it is fair and reasonable to do so, treat a borrower as being physically in New Zealand if the principal reason that the borrower is not, was not, or will not be physically in New Zealand is because—

(a) the borrower is in the service in any capacity of the Government of New Zealand; or

(b) the borrower is working as a volunteer or for token payment for a charity; or

(c) of an unexpected delay; or

(d) of an unplanned personal absence; or

(e) the borrower is required to be overseas because of the borrower's employment or occupation; or

(f) the borrower is accompanying his or her spouse, civil union partner, or de facto partner overseas; or

(g) the borrower is undertaking study that meets the requirements of clause 7 of Schedule 1; or

(h) the borrower is undertaking study that meets the requirements of clause 8 of Schedule 1; or

(i) the borrower is undertaking study that meets the requirements of clause 9 of Schedule 1; or

(ia) the borrower is undertaking study that meets the requirements of clause 9A of Schedule 1; or

(ib) the borrower is undertaking an internship that meets the requirements of clause 9B of Schedule 1; or

(j) the borrower is in 1 or more of Niue, the Cook Islands, Tokelau, or the Ross Dependency.

(2) Subsection (1)(b) to (j) and subsection (3) are subject to the conditions set out in, as applicable, clauses 2 to 11 of Schedule 1.

(3) On application, the Commissioner may, for the purposes of sections 22 to 24 and if the Commissioner considers that it is fair and reasonable to do so, treat a borrower as being physically in New Zealand if the Commissioner is satisfied that the borrower—

(a) has a serious illness for the period to which the application relates; and

(b) is unable to meet their overseas-based repayment obligation for that period as a result of that serious illness.

(4) In subsection (3), **serious illness** means an injury, illness, or disability that—

(a) results in the borrower being unable to engage in paid work (other than work for which the person is paid a token payment or a very low wage); or

(b) poses a serious and imminent risk of death.

…

110 Repayment obligations of overseas-based borrowers

(1) This section applies to an overseas-based borrower who—

(a) is not or is no longer entitled to a temporary repayment suspension under section 107B or 108A(2); and

(b) has not had his or her overseas-based repayment obligation reassessed under section 115A.

(2) The borrower's repayment obligation for every full tax year during which this section applies to the borrower is—

(a) $1,000, if the relevant loan balance is less than or equal to $15,000:

(b) $2,000, if the relevant loan balance is more than $15,000 but less than or equal to $30,000:

(c) $3,000, if the relevant loan balance is more than $30,000 but less than or equal to $45,000:

(d) $4,000, if the relevant loan balance is more than $45,000 but less than or equal to $60,000:

(e) $5,000, if the relevant loan balance is more than $60,000.

(3) The borrower's repayment obligation for any portion of a tax year (being less than a full tax year) during which this section applies to the borrower must be calculated in accordance with the following formula:

(x ÷ 365) × y

where—

x is the number of days in the tax year during which this section applies to the borrower

y is the amount that would apply under subsection (2) if this section applied to the borrower for the full tax year.

(4) In this section—

existing borrower means a borrower who was overseas-based on 31 March 2014 and has been continuously overseas-based since that date

relevant loan balance means the borrower's consolidated loan balance on the start date or, if the borrower's consolidated loan balance increases, the greatest balance on any 31 March after the start date but before the last day of the tax year

start date means,—

(a) for an existing borrower, 31 March 2014:

(b) for any other borrower, the day when the borrower becomes overseas-based.

…

Schedule 1

Conditions to borrower being treated as being physically in New Zealand

1 Definitions

In this schedule,—

Crown agent means a statutory entity named in Part 1 of Schedule 1 of the Crown Entities Act 2004

ENZ means Education New Zealand continued by section 510 of the Education and Training Act 2020

government department means a public service agency as defined in section 5 of the Public Service Act 2020

NZQA means the New Zealand Qualifications Authority continued by section 430 of the Education and Training Act 2020

qualifying government-funded scholarship means a scholarship, in respect of study or an internship,—

(a) that is partially or fully funded by a government department or a Crown agent; and

(b) that is assessed by ENZ as being a qualifying scholarship for the purposes of this Act.

2 Conditions to charity application

(1) A borrower who makes an application under section 25(1)(b) must provide the Commissioner with evidence that the work the borrower is doing as a volunteer or for token payment for a charity is 1 or more of the following:

(a) work to relieve poverty, hunger, sickness, or the ravages of war or natural disaster; or

(b) work to improve the economy of a country that is on the Organisation for Economic Co-operation and Development's list of countries receiving development assistance; or

(c) work to raise the educational standards of a country that is on the Organisation for Economic Co-operation and Development's list of countries receiving development assistance.

(2) The charity must be listed as a charity under section 27A either—

(a) at the time the Commissioner grants the application; or

(b) if the work is completed before an application is made, for the period of work to which the application relates.

(3) The Commissioner may treat a borrower as being physically in New Zealand under section 25(1)(b) for a maximum aggregate period of up to 24 months.

3 Conditions to unexpected delay application

A borrower who makes an application under section 25(1)(c) must—

(a) have been a New Zealand resident for the period to which the application applies; and

(b) provide evidence—

(i) of the borrower's intended return to New Zealand; and

(ii) that, if the borrower had returned to New Zealand as intended, the borrower would have been New Zealand-based; and

(c) provide evidence of the unexpected delay that resulted in the borrower not being able to return to New Zealand as intended; and

(d) provide evidence that the unexpected delay was due to an event or to circumstances beyond the reasonable control of the borrower, like (for example)—

(i) an airline strike, a personal illness, or the death of a family member:

(ii) a fire, flood, storm, earthquake, landslide, volcanic eruption, or other act of God:

(iii) an explosion or nuclear, biological, or chemical contamination:

(iv) sabotage, terrorism, or an act of war (whether declared or not).

4 Conditions to unplanned personal absence application

A borrower who makes an application under section 25(1)(d) must—

(a) have been a New Zealand resident for the period to which the application applies; and

(b) provide evidence of the duration of the borrower's unplanned personal absence from New Zealand; and

(c) provide evidence that the borrower's unplanned personal absence was due to an event or to circumstances beyond the reasonable planning and control of the borrower, like (for example)—

(i) the illness or death of a family member who is overseas:

(ii) the borrower's employer requiring the borrower to attend a conference overseas.

5 Conditions to employment or occupation absence application

A borrower who makes an application under section 25(1)(e) must—

(a) be a New Zealand resident for the period to which the application applies; and

(b) have a permanent place of abode only in New Zealand; and

(c) provide evidence that the borrower derives either—

(i) a PAYE income payment as defined in section RD 3(1) of the Income Tax Act 2007, having a source in New Zealand; or

(ii) income from a business that has a permanent establishment in New Zealand; and

(d) provide evidence that the majority of the borrower's personal absences from New Zealand are because of the borrower's employment or occupation.

6 Conditions to marriage, civil union, or de facto application

(1) A borrower who makes an application under section 25(1)(f) must—

(a) be a New Zealand resident for the period to which the application applies; and

(b) provide evidence of the borrower's relationship with his or her spouse, civil union partner, or de facto partner (**partner**); and

(c) provide evidence that the borrower's personal absence from New Zealand is because the borrower is accompanying his or her partner overseas; and

(d) provide evidence that the borrower's partner—

(i) is physically absent from New Zealand in the service in any capacity of the Government of New Zealand; or

(ii) satisfies the conditions in clause 2, 5, 7, 8, 9, 9A, or 9B.

(2) The Commissioner may treat a borrower whose partner satisfies the conditions in clause 2 (working as a volunteer or for token payment for a charity) as being physically in New Zealand under section 25(1)(f) for a maximum aggregate period of up to 24 months.

7 Condition to study at postgraduate or undergraduate level overseas application

(1) A borrower who makes an application under section 25(1)(g) must—

(a) be undertaking study at postgraduate or undergraduate level; and

(b) provide the Commissioner with the following:

(i) evidence from the NZQA verifying that the borrower's course is study at postgraduate or undergraduate level; and

(ii) evidence from the borrower's overseas education provider verifying that the borrower is enrolled full-time in the course verified by the NZQA.

(2) In this clause, **study at postgraduate or undergraduate level** means study that is assessed by the NZQA as being equivalent to level 7, 8, 9, or 10 on the New Zealand Register of Quality Assured Qualifications developed by the NZQA under section 452(1)(c) of the Education and Training Act 2020.

8 Condition to full-time overseas study under formal exchange programme or formal agreement application

(1) A borrower who makes an application under section 25(1)(h) must—

(a) be undertaking study that—

(i) the borrower is enrolled in with a New Zealand tertiary education provider; and

(ii) if it is completed successfully, will count towards a qualification offered by a New Zealand tertiary education provider; and

(iii) is assessed by the NZQA as being equivalent to level 7 or above on the New Zealand Register of Quality Assured Qualifications developed by the NZQA under section 452(1)(c) of the Education and Training Act 2020; and

(iv) is full-time and undertaken overseas as part of either—

(A) a formal exchange programme approved by the New Zealand Government; or

(B) a formal agreement between a New Zealand tertiary education provider and an overseas tertiary provider; and

(b) provide the Commissioner with evidence from the borrower's New Zealand tertiary education provider verifying that the borrower's study meets the requirements of paragraph (a).

(2) In this clause, **overseas tertiary provider** means an institution or organisation that—

(a) provides tertiary education or training; and

(b) is based in a country other than New Zealand; and

(c) is registered by an appropriate education authority in that country.

9 Condition to full-time overseas study application

A borrower who makes an application under section 25(1)(i) must—

(a) be undertaking study that—

(i) the borrower is enrolled in with a New Zealand tertiary education provider; and

(ii) if it is completed successfully, will count towards a qualification offered by a New Zealand tertiary education provider; and

(iii) is assessed by the NZQA as being equivalent to level 8 or above on the New Zealand Register of Quality Assured Qualifications developed by the NZQA under section 452(1)(c) of the Education and Training Act 2020; and

(iv) is full-time and undertaken overseas; and

(v) cannot be completed in New Zealand; and

(b) provide the Commissioner with evidence from the borrower's New Zealand tertiary education provider verifying that the borrower's study meets the requirements of paragraph (a).

9A Condition to government-funded full-time overseas study application

A borrower who makes an application under section 25(1)(ia) must—

(a) be undertaking study that—

(i) the borrower is receiving a qualifying government-funded scholarship in respect of; and

(ii) is full-time and undertaken overseas; and

(b) provide the Commissioner with evidence from ENZ verifying that the borrower is receiving a qualifying government-funded scholarship in respect of the study.

9B Condition to government-funded overseas internship application

A borrower who makes an application under section 25(1)(ib) must—

(a) be undertaking an internship that—

(i) the borrower is receiving a qualifying government-funded scholarship in respect of; and

(ii) is—

(A) full-time; or

(B) if undertaken with part-time study, part-time; and

(iii) is undertaken overseas; and

(b) provide the Commissioner with evidence from ENZ verifying that the borrower is receiving a qualifying government-funded scholarship in respect of the internship.

10 Conditions to Niue, Cook Islands, Tokelau, and Ross Dependency application

A borrower who makes an application under section 25(1)(j) must—

(a) provide the Commissioner with evidence that he or she is physically in 1 or more of New Zealand, Niue, the Cook Islands, Tokelau, or the Ross Dependency for the period to which the application applies; and

(b) pay his or her repayment obligation in full when, or before, it falls due during the period he or she is treated as being physically in New Zealand.

11 Certain exempt borrowers must notify Commissioner of their worldwide income

(1) This clause applies to a borrower who is treated as being physically in New Zealand under any of paragraphs (b), (g), (h), (i), (ia), (ib), and (j) of section 25(1) or under section 25(3).

(2) The borrower must notify the Commissioner of the borrower's adjusted net income in accordance with section 114(2), and sections 114(3) and (4) and 114A apply accordingly.

GENERAL ARTICLE

Here you will find items of general interest.

GA 25/01: Tax on any fees paid to a member of a board, committee, panel, review group or task force

Issued: 18 August 2025

This item is an update of GA 21/01 which was prepared specifically in relation to the fees paid to a member of a board, committee, panel, review group or task force under the Cabinet Fees Framework published by the Cabinet Office.

How taxation applies to any fees paid to members depends on the personal circumstances of the individual member and the terms of their contract/appointment.

The purpose of this General Article is to assist board members with their withholding tax and GST obligations.

A board member is appointed in a governance role to a variety of entities, such as a board, committee, panel, review or task force[1] (the Organisation) and provides governance services. This can be contrasted with a director who is appointed in a governance role to provide directorship services to a company. Inland Revenue has existing published guidance to assist directors on how to comply with their tax obligations.

Withholding tax treatment of board members fees

A payment of fees to the member (the board member) of the Organisation is generally a schedular payment and therefore subject to withholding tax as the payment is either:

- A payment of examiners' fees[2], or honoraria or
- A payment for work or services performed by—
  - a) a local government elected representative:
  - b) an official of a community organisation, society or club:
  - c) a chair or member of a committee, board, or council:
  - d) an official, chair, or member of a body or organisation similar to one described in paragraph (b) or (c).[3]

For the purposes of (d) a body or organisation is similar to one described in paragraph (b) or (c) if that body or organisation is a finite group of two or more people organised to perform a specified function or purpose.[4]

Where the fee is classified as a schedular payment, the payer has an obligation to deduct withholding tax from the payments before they are made and pay that tax to Inland Revenue.

The withholding tax rate on the payment of a fee to the board member is 33 cents in the dollar unless Inland Revenue has issued an exemption certificate[5] or a special tax rate certificate to the recipient, or the recipient has chosen their own rate (a minimum of 10 cents in the dollar).[6]

1 And similar bodies. A board member may include a committee member, reviewer, advisor, assessor or task force panel member.

2 Examiners fees is a defined term in Part B of Schedule 4 of the Income Tax Act 2007. This means that if fees have a different description (e.g. Assessor's fees) they may still be subject to withholding tax.

3 Part B of Schedule 4 of the Income Tax Act 2007.

4 This means withholding tax ("WHT") applies equally to a committee, panel, review group or task force.

5 An exemption certificate for WHT can be applied for online using myIR. In myIR it is a tailored tax application in the income tax account.

6 The board member must complete a Tax Rate Notification for Contractors (IR330C) form. Select the appropriate rate activity number (can be ,11,16 or 22) and sign the form (which is given to the person paying them) otherwise WHT must be deducted at the non-notification rate of 45 cents in the dollar.

Tax credit

It is important to understand that if tax is withheld from a payment, a tax credit may arise for any tax withheld which may be offset against the total tax liability for the year. This is the same as what happens for PAYE.

Reimbursement

Reimbursement for expenses incurred in relation to work or services performed by a member is not subject to withholding tax.

Who is treated as receiving the fees?

Whether or not there is a withholding tax obligation in relation to the payment of fees will depend on who is treated as receiving that income for tax purposes.

The starting point is that when you engage an individual as the board member, they are receiving the income and so any withholding tax liability is determined on the basis that the payment is being made to them.

However, there are circumstances where the individual board member will not be receiving the fees as income for tax purposes. This means that they will not have a personal withholding tax liability. These are discussed below.

Another entity is the provider of the board member services

If the board member is performing the service (to which the payment of fees relates) as an agent or representative of another entity, which itself has contractually agreed to provide the board member's services in return for the fee, then the payment of fees is income of that entity and not the board member.

If the fees are income of an entity, such as a trust or partnership, the fees are also subject to withholding tax, unless the entity holds an exemption certificate.

If the fees are income of a company,[7] the payment is not subject to withholding tax.

Example 1: Partnership contracts with an Organisation to supply partner as a board member

A partnership, contracts with the Water Allocation Board, a statutory body, to supply a partner as the board member for the next financial year. Anderson is the partner chosen to serve on the Board and the engagement/contract reflects that Anderson is appointed as the representative of the partnership to provide the services to the Board.

In this case the fees are income of the partnership, and not Anderson, as it was the partnership which contracted with the Board to supply the board member.

The Water Allocation Board should deduct withholding tax from the payment of board fees unless the partnership holds an exemption certificate. Any tax withheld should be recorded against the partnership's IRD number.

The board member is an employee of the Organisation

A payment of fees to the board member who is also an employee, with a contractual arrangement with the contracting Organisation to provide governance services as part of his or her employment contract is not a schedular payment subject to withholding tax. Such a payment is salary or wages or an extra pay. Payment must be taxed using the PAYE calculator.

Example 2: Employee engaged as a board member

Silvia is the Chief Operating Officer of the Water Allocation Board and as part of her role she is a member of the Water Allocation Board.

As Silvia has been appointed to the Board as part of her employment by the Board any fees she receives as a board member are therefore part of the income arising from her employment and subject to PAYE.

7 This means a "company" as defined in section YA 1 of the Income Tax Act 2007.

The board member is required to account for the payment to another entity

Generally, board members are appointed based on their individual suitability for the role and they are not answerable to another entity for their decisions. Indeed, in some cases the empowering instruments make it clear that board members are appointed in their individual capacity.

However, that does not mean for tax purposes the fees are necessarily income of the individual.

If the board member is paid a fee or another amount in relation to their engagement in circumstances in which they are required to account for the payment to their employer or the other partners in a partnership, then the fee is the income of that entity and not the board member.

For example, partnerships which provide professional services often provide in their partnership agreements that partners appointed to an Organisation due to their professional expertise must account for fees received as income of the partnership. In that case the income is received by the partnership not the individual partner and withholding tax should be deducted unless the partnership has a certificate of exemption.

Example 3: Partner in a partnership is required to pay fees received to partnership

Harley is a partner in a legal partnership and in that capacity has been supplying legal services to the Water Allocation Board. During, and because of the legal work Harley undertakes for the Board, together with her good working relationships with the Board, she has been asked to serve a 12-month term on the Board.

As the offer of board membership arises from the provision of legal services, the partnership agreement provides that any fees she receives as a board member are therefore partnership income.

This means that for tax purposes the income is received by the partnership not the individual partner and any withholding tax liability is determined on that basis.

The partnership does not have a certificate of exemption and so withholding tax should be deducted from the fees paid to Harley by the Water Allocation Board. That withholding tax should be allocated to the partnership's IRD number.

In determining whether the required duty exists, Inland Revenue does not expect the payer to enquire into the legal agreements. Rather, confirmation from the board member and the third party at the time of appointment that such a duty exists will be enough.

Equally, when an employee of a third party is asked to join the Organisation, if that request arose because of their employment with that third party, then they may have a fiduciary duty to pay those fees to their employer. If such a fiduciary duty exists, then the fees will be income of the employer and WHT is determined on that basis.

Example 4: Employee of company supplying services to an Organisation is required to pay fees received to their employer

David is an employee of a management consultancy firm - the firm is a registered company. David (as an employee of the company) has been supplying services to the Water Allocation Board. Because of the management consultancy work David undertakes for the Board, together with his good working relationships with the Board, he has been asked to serve a 12-month term on the Board.

David will attend the board meetings in work time and David's employer will continue to pay him during that time. The parties agree that in that context David will pay any fees received to his employer.

The appointment to the Water Allocation Board arises out of David's work for the Board and David will be paid by the firm as an employee while undertaking Water Allocation Board activities.

This means that for tax purposes the fees are income that is received by the employer not the employee. No withholding tax needs to be deducted as companies are not subject to withholding tax.

The payer can accept that the required fiduciary duty exists between the employee and the employer if the employer confirms in writing that an agreement exists between the employer and employee that:

- the employee is required to remit any fees received to the employer,
- the employee and the employer agree that the appointment to board arises out of the employee's employment,
- the employer will continue to pay the person for time spent on board activities (if these happen during work time), and
- the employer recognises that the fees will form part of the employer's income for tax purposes.

In these circumstances the Commissioner accepts that the employer can provide the invoice for the board member's fees. If the employer is a company, the payment of fees is not subject to withholding tax.

Connection

If the payer considers that the reasons for appointing the board member to the Organisation might not have the required connection with the employer/partnership (e.g., the board member was appointed as a result of that board member's standing in their community), the payer should contact Inland Revenue or seek professional advice.

Simply because the board member has asked that a payment is directed to a third party does not by itself establish that the third party has the required duty to account for the tax arising on the fees.

If all that has happened is that the board member has asked the payer to pay someone else, the payer should still treat the payment as being received by the board member (being the person who provided the services). The board member cannot avoid having withholding tax deducted by simply directing the payment to a third party.

A flowchart that illustrates the WHT treatment of board members' fees from an Organisation's perspective is in Appendix 1.

GST treatment of board members fees

The Commissioner has published Public Rulings BR PUB 23/01 to 23/03 **Goods and Services Tax – Directors' fees** (BR PUB 23/01 to 23/03) and associated commentary to address the GST treatment of directors' fees and board members' fees.
A flowchart that illustrates the GST treatment of board members' fees from a board member's perspective is on page 36 of BR PUB 23/01 to 23/03. The Rulings have an associated fact sheet **BR Pub 23/01 to 23/03 FS 1** which provides a summary of the content. There is also an associated Questions we've been asked **QB 23/07** which covers the use of personal services companies by directors and board members.

The GST treatment of board members fees is outlined below in very broad terms. Please refer to BR Pub 23/01 to 23/03 and associated commentary, the related fact sheet, and QB 23/07 for comprehensive coverage of these issues.

The board member supplies services in their personal capacity

A payment of fees to the board member, in respect of their personal capacity as a board member, is not subject to GST. However, if a person is carrying on a separate taxable activity[8] and accepts the appointment to the Organisation as part of that taxable activity[9] (accepts the office), then any service supplied by that person (as the board member) is deemed to be supplied in the course or furtherance of their taxable activity. In that circumstance the member must charge GST on the services provided to the Organisation.

8 GST will not apply unless the board member accepts the office in carrying on some other taxable activity separate to the holding of board memberships.

9 See section 6 of the Goods and Services Tax Act 1985 for the meaning of "taxable activity."

The board member is contracted to supply services to an Organisation by a third party

A third party may agree to provide the services of the board member to an Organisation. This results in the board member providing their services to a third party, and the third party providing the board member's services to an Organisation.

The board member's liability for GST

If the board member does not accept the office in the course or furtherance of any taxable activity they may have, when supplying services on behalf of a third party, GST would not apply. This is because the board member's services are not supplied as part of carrying on a taxable activity. Therefore, there will be no taxable supply for GST purposes between the board member and the third party.

If the board member accepts the office in the course or furtherance of their taxable activity, when supplying services on behalf of a third party, GST would apply. This is because the board member's services are supplied as part of carrying on a taxable activity. Therefore, the board member is required to account for GST on the supply of their services to the third party.

The third party's liability for GST

The third party as the entity which provided the board member's services, will invoice the Organisation. If the third party is registered or liable to be registered for GST, they are required to account for GST on the supply of the board member's services.

The board member supplies services as an employee

If the board member accepts the office in their capacity as an employee of a third party, the fee income is not received by the board member, it is received by the employer who is treated as making the supply of services (section 6(4).

Where it is considered that an employer will have received the fees for income tax purposes, Inland Revenue accepts that it will be the employer making the supply for GST purposes. Therefore, if the employer is registered for GST, or liable to be registered for GST, the employer will be required to account for GST on the supply of the board member's services.

The board member supplies services as a partner in a partnership

If the board member accepts the office in their capacity as a partner in a partnership the fee income is not received by the board member, it is received by the partnership who is treated as making the supply of services.

Where it is considered that a partnership will have received the fees for income tax purposes, Inland Revenue accepts that it will be the partnership making the supply for GST purposes. Therefore, if the partnership is registered for GST, or liable to be registered for GST, the partnership will be required to account for GST on the supply of the board member's services.

Recommended Practical Action

The tax treatment of fees paid to members depends on the personal circumstances of the individual member and duties that they have to a third party. Therefore, Inland Revenue recommends that as part of the process of appointing and inducting a new member, the tax treatment of payments to them is clarified at that point (rather than at the time the first payment is due).

Contact

If you have queries about the correct tax treatment of particular fees paid contact Denise Birdling, Team Leader, Crown, Significant Enterprises, Inland Revenue **denise.birdling@ird.govt.nz**.

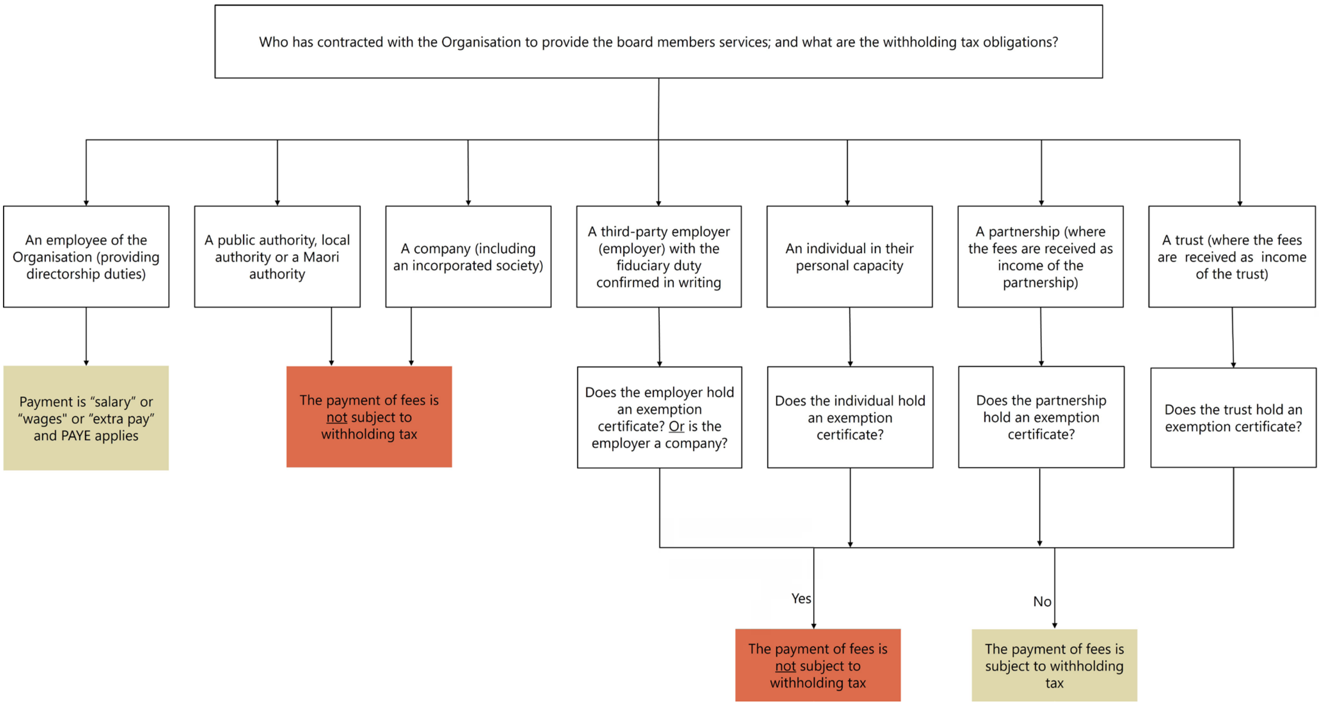
Existing guidance

Inland Revenue's existing published statements of relevance to the above discussion include the following:

- Public Rulings BR PUB 23/01 to 23/03: **GST – Director's fees**. In particular, BR PUB 23/02: considers the application of GST in relation to the payment of fees to a board member of an organisation where the board member is not appointed by the Governor-General or the Governor-General in Council.
- BR Pub 23/01 to 23/03 FS 1: **GST– Directors' fees and board members' fees (fact sheet)** which accompanies Public Rulings BR Pub 23/01 to 23/03 which consider the GST treatment of directors' fees and board members' fees. This fact sheet summarises the key conclusions in those three public rulings and the associated commentary.
- OP 23/02: **Commissioner's operational position on professional directors and board members incorrectly registered for GST** which gives guidance on how the Public Rulings BR Pub 23/01 to 23/03 will be applied.
- Questions we've been asked QB 23/07: **GST- Directors and board members providing their services through a personal services company** considers the GST treatment of a director or board member who provides their services through a personal services company.

Appendix 1 – Considerations when making schedular payments to board members

Who is treated as receiving the board members fees for withholding tax purposes?



TECHNICAL DECISION SUMMARIES

Technical decision summaries (TDS) are summaries of technical decisions made by the Tax Counsel Office. As this is a summary of the original technical decision, it may not contain all the facts or assumptions relevant to that decision. A TDS is made available for information only and is not advice, guidance or a "Commissioner's official opinion" (as defined in s 3(1) of the Tax Administration Act 1994). **You cannot rely on this document as setting out the Commissioner's position more generally or in relation to your own circumstances or tax affairs**. It is not binding and provides you with no protection (including from underpaid tax, penalty or interest).

TDS 25/21: Omitted income and shortfall penalty

Decision date | Rā o te Whakatau: 16 May 2025

Issue date | Rā Tuku: 19 August 2025

Subjects | Kaupapa

GST: omitted income; imposition of shortfall penalty.

Taxation laws | Ture tāke

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

Summary of facts | Whakarāpopoto o Meka

1. This dispute concerned a general partnership (**Taxpayer**) that purchased a property (**Property**) to develop. Land Information New Zealand (**LINZ**) records showed that title to the Property was registered in the names of the two partners, as to a half share each.
2. The Taxpayer claimed the purchase price of the Property as an input tax deduction in its GST return.
3. LINZ records showed a half share of the Property was transferred to B Ltd (an associated person) the following year.
4. Customer and Compliance Services, Inland Revenue (**CCS**) conducted an audit and considered that:
   - a half share of the Property had been disposed of to B Ltd for less than market value;
   - the other half share had been disposed of to one of the Taxpayer's partners (an associated person) for less than market value;
   - GST output tax should have been returned on these supplies at market value; and
   - the Taxpayer had ended its taxable activity after disposing of the Property.
5. CCS issued a notice of proposed adjustment for the GST taxable period in which it considered the Property had been disposed of. CCS proposed:
   - output tax at the standard rate on the supply of the Property at market value; and
   - a shortfall penalty for gross carelessness or not taking reasonable care, which in either case would be reduced by 50% for previous behaviour.
6. CCS also proposed cancelling the Taxpayer's GST registration at the end of the following GST period.
7. The Taxpayer issued a notice of response rejecting CCS's proposed adjustments. A facilitated conference was held. However, the dispute continued unresolved. The parties exchanged statements of position and the dispute was referred to the Tax Counsel Office, Inland Revenue (**TCO**) for adjudication.

Issues | Take

8. The main issues considered in this dispute were:
   - whether the Taxpayer was liable for GST output tax at the standard rate on the supply of the Property at market value in the GST period in dispute;[1]
   - whether the Taxpayer's GST registration should be cancelled at the end of the GST period immediately following the period in dispute;[2] and
   - whether the Taxpayer was liable for a shortfall penalty for gross carelessness or not taking reasonable care.[3]

9. There was also a preliminary issue on the onus and standard of proof.

Decisions | Whakatau

10. TCO decided:
    - the Taxpayer was liable for GST output tax at the standard rate on the supply of one half of the Property at market value in the GST period in dispute;
    - the Taxpayer's GST registration should not be cancelled at the end of the GST period immediately following the period in dispute; and
    - the Taxpayer was liable for a shortfall penalty for gross carelessness.

Reasons for decisions | Pūnga o ngā whakatau

Preliminary issue | Take tōmua: Onus and standard of proof

11. Except for proceedings relating to evasion or a similar act or obstruction, the onus is on the taxpayer to show that an assessment is wrong, why it is wrong and by how much it is wrong.[4] If the taxpayer proves, on the balance of probabilities, that the amount of an assessment is excessive by a specific amount, the taxpayer's assessment must be reduced by the specific amount.[5]

12. The standard of proof required is the balance of probabilities.[6]

Issue 1 | Take tuatahi: Liability for GST output tax

Taxable supplies

13. A taxable supply is a supply charged with GST under s 8 at the rate of 15% on the supply of goods and services by a registered person in the course or furtherance of carrying on a taxable activity.

14. Under s 11, a supply of land chargeable with tax under s 8 must be charged at the rate of 0% if the supply is to a GST-registered person intending to use the land to make taxable supplies.

Value of a supply

15. Generally, to the extent that the consideration for the supply of goods and services is consideration in money, the value of the supply is the amount of money.[7] However, an "associated supply" made for a consideration less than its market value is treated as having been made at market value.[8] An "associated supply" is a supply made between associated persons.[9]

1 Sections 8, 11(1)(mb) and 57.

2 Section 52(5).

3 Sections 141C and 141A, respectively, and s 141FB of the Tax Administration Act 1994 (**TAA**).

4 Section 149A(2) of the TAA. See also *Case V17* (2002) 20 NZTC 10,192; *Accent Management Ltd v CIR* (2005) 22 NZTC 19,027 (HC); and *Vinelight Nominees Ltd v CIR (No 2)* (2005) 22 NZTC 19,519 (HC).

5 Section 138P(1B) of the TAA.

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

7 Section 10(2).

8 Section 10(3).

9 Section 2A.

Taxable activity

16. Under s 6, a taxable activity is any activity carried on continuously or regularly by any person that involves or is intended to involve the supply of goods and services.
17. Anything done in connection with the ending of a taxable activity is treated as being carried out in the course or furtherance of the taxable activity .[10]
18. Assets disposed in the connection with the ending of a taxable activity may be subject to GST.

Application

Contractual arrangements

19. The provisions of the GST Act are directed to the contractual arrangements between the supplier and the recipient of the supply.[11] This is because GST is a transaction-based tax.
20. Therefore, TCO needed to consider the nature of the relevant contractual arrangements and then apply the law to those the arrangements.
21. Taking all the evidence into account, TCO considered that the nature of the relevant contractual arrangements was that the Taxpayer:
    - sold a half share of the Property to B Ltd in the GST period in dispute and sold the remaining half share to B Ltd in a later period that was not in dispute; and
    - continued after the first sale of a half share of the Property to B Ltd as the same GST registered partnership.

Liability for GST output tax

22. Applying the law to the contractual arrangements, TCO found as follows:
    - The Taxpayer made the first sale of a half share of the Property to B Ltd in the course or furtherance of carrying on its taxable activity.
    - The supply was not zero-rated because it was not made to a GST registered person. B Ltd was not GST registered, and the Taxpayer had not shown B Ltd was liable to be GST registered. Nor had the Taxpayer shown the supply was treated as zero-rated. It appeared the Taxpayer simply did not charge GST on the supply.
    - The Taxpayer had the onus of proving that the supply was treated as zero-rated. As the Taxpayer had not shown it was, the relevant version of s 5(23) would not apply to treat B Ltd as having made the supply and liable for the GST output tax instead of the Taxpayer.
    - The supply was made for less than market value based on the capital value of the Property for rating purposes. As the Taxpayer and B Ltd were associated, the supply was an associated supply treated as made for market value. The Taxpayer had not shown the market value of the supply was anything other than that determined by using the capital value of the Property for rating purposes.
23. Therefore, the Taxpayer was liable for GST output tax at 15% on the supply of a half of the Property at market value in the GST period in dispute.

Issue 2 | Take tuarua: Cancellation of GST registration

24. Where the Commissioner is satisfied a registered person's taxable activity has ended, the Commissioner may cancel that person's registration under s 52.
25. Cancellation of a person's GST registration takes effect from the last day of the taxable period in which the Commissioner was so satisfied or from any other date determined by the Commissioner.
26. Taking all the evidence into account, TCO considered that the nature of the relevant contractual arrangements was that:
    - After the first sale of a half share of the Property to B Ltd, there was evidence the Taxpayer continued as the same GST registered partnership. It continued to file GST returns.
    - The Taxpayer retained the other half share of the Property until at least nearly a year later, when it agreed to sell the remaining half share to B Ltd.

10 Section 6(2).

11 *Wilson & Horton Ltd v CIR* (1995) 17 NZTC 12,325 (CA) at 12,328

27. The sale of the remaining half share of the Property to B Ltd was something done in connection with the ending of the Taxpayer's activity and treated as being carried out in the course or furtherance of its taxable activity. It followed that the Taxpayer's GST registration should continue until after that sale. Therefore, TCO concluded that the Taxpayer's GST registration should not be cancelled as proposed by CCS. The GST period in which the remaining half share of the Property was sold to B Ltd was not in dispute.

Issue 3 | Take tuatoru: Shortfall penalty

Shortfall penalty for gross carelessness

28. Section 141C of the Tax Administration Act 1994 (**TAA**) imposes a shortfall penalty for gross carelessness on a taxpayer if the following requirements are satisfied:[12]
    - The taxpayer has taken a tax position.
    - Taking the tax position has resulted in a tax shortfall.
    - The taxpayer has been grossly careless in taking the taxpayer's tax position. Gross carelessness means doing or not doing something in a way that, in all of the circumstances, suggests or implies a complete or high level of disregard for the consequences.[13] In summary:
        - Gross carelessness is characterised by conduct which creates a high risk of a tax shortfall occurring where that risk and its consequences would have been foreseen by a reasonable person in the circumstances.[14]
        - The test for gross carelessness is not whether the taxpayer actually foresaw the probability that their act or omission would cause a tax shortfall but whether a reasonable person would have foreseen that probability. Whether the taxpayer has acted intentionally is not a consideration.[15]
        - A person who takes reasonable care is not grossly careless.[16]

29. The penalty payable for gross carelessness is 40% of the resulting tax shortfall.

Application of the penalty

30. The Taxpayer took a tax position that resulted in a tax shortfall in the GST period in dispute. The Taxpayer was grossly careless when it took the tax position for these reasons:
    - There was evidence that the Taxpayer's partners were experienced in business and knew the GST consequences of buying and selling property.
    - The Taxpayer had claimed GST input tax on acquiring the Property and for other expenses incurred in respect of it.
    - The Taxpayer's tax position was that it was not liable for GST output tax on the first sale of a half share of the Property to B Ltd. The Taxpayer argued that, when it took the tax position, it believed the supply was zero-rated. However, it did not record the supply as zero-rated in its GST return, nor did it provide any documentation showing it had treated the supply as zero-rated.
    - A reasonable person in the Taxpayer's position would have foreseen that taking that tax position without corroborating documentary evidence created a high risk of a tax shortfall occurring. A reasonable person would also have foreseen they would be expected to keep and provide documents to support why they believed they were not liable for output tax on the first sale of a half share of the Property to B Ltd. For example, this could have included an agreement for sale and purchase, a record of B Ltd having advised the Taxpayer it was GST registered, or any other records showing the supply was treated as zero-rated.
    - The Taxpayer had not shown it kept any records substantiating the tax position it took, suggesting a high level of disregard for the risk of a tax shortfall occurring.

12 The shortfall penalty for gross carelessness is considered in the Interpretation Statement: Shortfall Penalty for Gross Carelessness as published in *Tax Information Bulletin* Vol 16, No 8 (September 2004).

13 Section 141C(3) of the TAA.

14 *Case W4* (2003) 21 NZTC 11,034 at [44].

15 *Case W4* at [60]; *Case 9/2014* (2014) 26 NZTC 2-019 at [88].

16 *Case W4*; *Re Carlaw and FCT* 95 ATC 2166 (AAT); *Re Sparks and FCT* [2000] AATA 28. See also *Pech v Tilgals* [1994] ATC 4206.

- The Taxpayer had not shown it adequately informed and followed the advice of its tax agent. Nor was the Taxpayer's tax position an "acceptable tax position".[17] Because B Ltd was not a GST registered person (and no evidence was provided supporting the position that the supply was treated as zero-rated), the Taxpayer's tax position, that the first sale of a half share of the Property was zero-rated, could not be argued on rational grounds to be right. The Taxpayer had also not shown that the supply was incorrectly zero-rated such that B Ltd as the purchaser should have been liable for GST.[18]

31. Therefore, TCO concluded that the Taxpayer was liable for a shortfall penalty for gross carelessness, reduced by 50% for previous behaviour.

17 A taxpayer who takes an "acceptable tax position" is also a taxpayer who has taken reasonable care in taking the taxpayer's tax position (s 141A(3) of the TAA).

18 Section 5(23).

TECHNICAL DECISION SUMMARIES

Technical decision summaries (TDS) are summaries of technical decisions made by the Tax Counsel Office. As this is a summary of the original technical decision, it may not contain all the facts or assumptions relevant to that decision. A TDS is made available for information only and is not advice, guidance or a "Commissioner's official opinion" (as defined in s 3(1) of the Tax Administration Act 1994). **You cannot rely on this document as setting out the Commissioner's position more generally or in relation to your own circumstances or tax affairs**. It is not binding and provides you with no protection (including from underpaid tax, penalty or interest).

TDS 25/22: GST – supply of accommodation

Decision date | Rā o te Whakatau: 10 June 2025

Issue date | Rā Tuku: 4 September 2025

Subjects | Kaupapa

This item summarises a private ruling that considered the GST treatment of the provision of accommodation in a building.

Taxation laws | Ture tāke

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

Summary of facts | Whakarāpopoto o Meka

1. The Applicant in the ruling is registered for GST and is carrying on a taxable activity.
2. The Applicant plans to build a new building to be used to provide residential accommodation and associated services.
3. The building will provide accommodation in over 100 rooms. Each room will be fully furnished and self-contained. The building will provide shared facilities such as a laundry (for a cost), communal kitchens and lounges, a staffed reception area, meeting rooms, a games room and large dining rooms. Residents will pay a single fee that includes rent and utilities. The building will have staff onsite at all times responsible for concierge services, maintenance, cleaning, and organising events and functions.
4. It is expected that most residents will occupy rooms for short to medium-length stays. Some residents may choose to stay longer. Guests of residents cannot stay in residents' rooms and must book separate rooms.
5. The residence agreement will be similar to a boarding house tenancy agreement under the Residential Tenancies Act 1986. Residents will have quiet enjoyment of their room but there will be strict rules around noise levels. The agreement will outline the process for dealing with breaches of agreements and the eviction process.

Issues | Take

6. The main issues considered in this ruling were whether:
   - the building is a "commercial dwelling" as defined in s 2, so the supply of accommodation in the building is not an exempt supply under s 14(1)(c); and
   - the Applicant is entitled to input tax deductions for all GST charged in respect of the building's construction and subsequent operation.

Decisions | Whakatau

7. The Tax Counsel Office (TCO) decided:
   - the building is a "commercial dwelling", so the supply of accommodation in the building is not an exempt supply; and
   - the Applicant is entitled to input tax deductions in relation to the building's construction and subsequent operation.

Reasons for decisions | Pūnga o ngā whakatau

Issue 1 | Take tuatahi: Commercial dwelling and exempt supply

8. Section 8(1) states that GST shall be charged on the supply (but not an exempt supply) in New Zealand of goods and services by a registered person in the course or furtherance of a taxable activity.
9. Under s 14(1)(c), the supply of accommodation in any dwelling is exempt from tax for GST purposes.
10. "Dwelling" is defined in s 2. A commercial dwelling is explicitly excluded from the definition of dwelling. This means the supply of accommodation in the building will not be exempt if the building is a commercial dwelling.
11. Relevantly, "commercial dwelling" is defined in s 2 to mean a hotel, motel, homestay, farmstay, bed and breakfast establishment, inn, hostel, or boarding house or premises of a similar kind to the types of premises listed.
12. TCO considered the types of premises listed and concluded that the building shares many facilities in common with boarding houses and shares some facilities in common with other categories of commercial dwelling.
13. From case law, TCO determined that a boarding house has the following features:[1]
    - It provides shared accommodation on a large scale for multiple separate occupants.
    - Occupants usually stay on a short-term basis (weeks or months), although some occupants may stay longer.
    - It provides lodging (rather than tenancy) and may also provide board (that is, meals). The provision of board is not an essential requirement.
    - It has common areas such as shared kitchens, bathrooms and living areas.
    - The owners have a high level of control or management, and often they or their representatives live on site.
    - It provides maintenance services and may provide other services such as cleaning.
14. Comparing different listed categories of commercial dwelling, TCO concluded that the building will be closer to a boarding house than to other categories for the following reasons:
    - The building will be of a very large scale, providing accommodation in over 100 rooms.
    - Residents will stay for a short period, although some occupants may stay longer.
    - The building will have many common areas, including large communal kitchens and multiple communal living areas.
    - There will be a moderate level of control or management with staff on site at all times managing the property and strict noise limitations. Residents will also not be able to have guests stay in their rooms; guests must book separate rooms.
    - Utilities and communal services will be included in the price of the accommodation, and all communal spaces will be regularly cleaned and maintained.
15. The building will also have some elements in common with other specified types of accommodation:
    - The provision of reception and concierge services will be similar to that provided in a hotel, motel or inn.[2]
    - The size of the rooms will be similar to the size of hotel or motel rooms and inconsistent with the type of accommodation designed for permanent living.
    - The short-term duration of expected stays will be in line with the duration of stays in a hotel, motel or inn. People staying short term will be likely to have a principal place of residence elsewhere.

1 *Case L75* (1989) 11 NZTC 1,435 (TRA); *Case Q46* (1993) 15 NZTC 5,227 (TRA); *Karmel & Co Pty Ltd (as trustee for Urbanski Property Trust) v FCT* [2004] AATA 418; [2004] ATC 2,075; *South Steyne Hotel Pty Ltd & Ors v FCT* [2009] FCAFC 155; [2009] ATC 20,145.

2 *ECC Southbank Pty Ltd as Trustee for Nest Southbank Unit Trust & Anor v FCT* (2012) ATC 20-336 (FCA).

- Residents will not be able to alter their rooms or have pets, and utilities will be included in the price of the accommodation. This is similar to the situation with a hostel or other specified categories of commercial dwelling.[3]
- The communal facilities will share similarities with hostels but the building will not be a low-cost establishment or aimed at people on a budget. This factor suggests the building will not necessarily be similar to a hostel specifically but will still be consistent with commercial dwellings in general.

16. It was noted that the building could be a commercial dwelling even if it does not meet all the requirements for a boarding house, provided it is similar to one or similar to the types of accommodation in the definition of "commercial dwelling" generally.
17. Accordingly, TCO concluded that the building will share enough features in common with the listed categories in the definition of "commercial dwelling" to either meet the requirements of a boarding house or to be a premises of a similar kind to those listed categories.
18. As the definition of "dwelling" excludes a commercial dwelling, the provision of accommodation in the building will, therefore, not be an exempt supply under s 14(1)(c) and GST will be charged on the supply.

Issue 2 | Take tuarua: Input tax deductions

19. This issue concerns whether the Applicant is entitled to claim input tax for the costs incurred in the construction of the building and the subsequent provision of accommodation and other services.
20. A GST-registered person is entitled to deduct input tax on goods and services they acquire to the extent that they are used for making taxable supplies (ss 3A(1)(a) and 20(3C)).
21. The Applicant is a GST-registered person carrying on a taxable activity. The provision of accommodation and related services in the building will be taxable supplies made in the course or furtherance of the Applicant's taxable activity.
22. The building will be used for making taxable supplies, and the construction of the building is necessary for making those supplies. It follows that the Applicant is entitled to an input tax deduction for GST paid on goods and services acquired for the building's construction and subsequent operation as these goods and services will be used for, or are intended to be used in, the making of taxable supplies.

3 *Wynnum Holdings No 1 Ltd & Anor v FCT* 2012 ATC 10-274 (AAT).

REGULAR CONTRIBUTORS TO THE TIB

Tax Counsel Office

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

Legal Services

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

Technical Standards

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

Policy

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