

Subpart NE—Tax on resident passive income

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Introductory provisions

NE 1 RWT rules and their application

Meaning

- (1) The **RWT rules** means—
- (a) section GC 19 (Resident withholding tax); and
 - (b) section GC 20 (Agreements not to make resident withholding tax deductions to be void); and
 - (c) section LD 3 (Resident withholding tax deductions to be credited against income tax assessed); and
 - (d) this subpart; and
 - (e) sections 15T, 25 to 28, 32E to 32L, 50 to 55, Part 9, sections 170 to 172, and 185 of the Tax Administration Act 1994.

Application

- (2) The RWT rules apply to a person who pays an amount of resident passive income.

Defined in this Act: amount, resident passive income, RWT rules

Origin: 2004 No 35 s OB 1 “RWT rules”

NE 2 Resident passive income

Interest, dividends, and certain distributions

- (1) **Resident passive income** means an amount paid to a person resident in New Zealand to the extent to which it consists of—
- (a) interest:
 - (b) a dividend:
 - (c) a taxable Maori authority distribution:
 - (d) a replacement payment paid to a person under a share-lending arrangement.

Exclusions and inclusions

- (2) Subsections (3) to (5) override subsection (1).

Exclusions from interest

- (3) The following amounts are excluded from interest under this section:
- (a) exempt interest:

- (b) interest derived by a person who holds a certificate of exemption issued under section NE 27:
- (c) interest that is non-resident passive income paid to a person resident in New Zealand who is acting as the agent or nominee of a non-resident:
- (d) interest derived from outside New Zealand by a non-resident:
- (e) interest paid by a company and derived by another company when both companies are members of the same group of companies at the time of the payment:
- (f) interest paid to an intermediary—
 - (i) by a client in relation to the operation of a tax pooling account; or
 - (ii) by the Commissioner under section NP 18 (Deposits in tax pooling accounts):
- (g) interest payable under the Tax Administration Act 1994 under section 120D or Part 7 of that Act.

Inclusions in interest

- (4) For the purposes of this section, the following amounts are treated as interest and not as a dividend:
 - (a) a dividend that a building society pays to a member in relation to a withdrawable share in the society:
 - (b) a dividend that a friendly society pays to its member in relation to a share in the society.

Exclusions from dividends

- (5) The following amounts are excluded from a dividend under this section:
 - (a) a dividend that is exempt income—
 - (i) through the application of any of sections CW 9 to CW 11 (which relate to income from equity); or
 - (ii) under section CW 50 (Exemption under other Acts):
 - (b) an amount treated as a dividend under—
 - (i) section GD 3 or GD 5 (which relate to excessive remuneration); or
 - (ii) section HF 1(5) (Profits of mutual associations in respect of transactions with members):
 - (c) an amount of attributed repatriation:
 - (d) a dividend derived by a person who holds a certificate of exemption issued under section NE 27:
 - (e) a dividend that is non-resident passive income:
 - (f) a dividend derived by a non-resident other than a dividend derived from New Zealand:
 - (g) a dividend paid by a company and derived by another company when both are members of the same group of companies at the time of the payment.

Beneficiary income

- (6) If a person derives an amount described in this section in their capacity as trustee and the amount is beneficiary income, the amount is treated as not derived by the trustee.

Defined in this Act: amount, attributed repatriation, beneficiary income, building society, certificate of exemption, Commissioner, company, dividend, derived from New Zealand, exempt income, friendly society, group of companies, interest, New Zealand, nominee, non-resident, non-resident passive income, pay, replacement payment, resident in New Zealand, resident passive income, share, share-lending arrangement, tax pooling account, taxable Maori authority distribution, trustee, withdrawable share

Origin: 2004 No 35 s NF 1(2), (4), (5)

Withholding obligations

NE 3 Obligation to withhold amounts of tax for resident passive income

Obligation to withhold and pay

- (1) A person to whom section NE 1(2) applies is liable to withhold the amount of tax for a payment of resident passive income and pay the amount to the Commissioner if—
- (a) they make the payment and are not excluded under sections NE 5 and NE 6 from the obligation to withhold:
 - (b) they are an RWT proxy in relation to the payment.

Non-cash dividends

- (2) For the purposes of subsection (1), if the payment is a non-cash dividend, the person must calculate the amount of tax under section NE 14 and pay the amount to the Commissioner.

Defined in this Act: amount of tax, Commissioner, non-cash dividend, pay, resident passive income, RWT proxy

Origin: 2004 No 35 s NF 2(1A), (1AB)

NE 4 Persons who have withholding obligations

Requirements

- (1) A person referred to in section NE 3(1)(a) must meet at least 1 requirement under each of subsections (2) and (3) in relation to an amount of resident passive income.

Requirement for person

- (2) The person must be, at the time the payment is made,—
- (a) resident in New Zealand; or
 - (b) if not resident in New Zealand,—
 - (i) carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand; and
 - (ii) not excluded under subsection (4).

Requirements for person and payment

- (3) In addition to meeting a requirement under subsection (2), 1 of the following requirements must be met at the time the payment is made:
- (a) the person holds a certificate of exemption;
 - (b) the payment is made in whole or in part in carrying on a taxable activity, whether or not the person acts as agent or trustee for another person;
 - (c) the payment is a dividend;
 - (d) the payment is a taxable Maori authority distribution;
 - (e) the payment is a replacement payment under a share-lending arrangement.

When person not treated as resident or carrying on taxable activity

- (4) For the purposes of subsection (2), a person who is not resident in New Zealand and is carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand, is treated as not meeting the requirements of the subsection if they establish that, at the time the payment is made,—
- (a) either,—
 - (i) for interest or a dividend, the payment is attributable to or effectively connected with a fixed establishment of the person outside New Zealand; or
 - (ii) for a dividend, the company is not resident in New Zealand; and
 - (b) all amounts payable in relation to money lent or shares to which the payment relates are payable in a currency other than New Zealand currency.

Defined in this Act: amount, certificate of exemption, dividend, fixed establishment, interest, money lent, New Zealand, pay, replacement payment, resident in New Zealand, resident passive income, share, share-lending arrangement, taxable activity, taxable Maori authority distribution, trustee

NE 5 No withholding obligation in certain circumstances

When this section applies

- (1) This section applies when a person (**person A**)—
 - (a) pays an amount to another person (**person B**); or
 - (b) receives a payment while acting as agent or bare trustee for person B.

No obligation if person B exempt

- (2) For the purposes of determining whether person A is required under section NE 4 to withhold an amount of tax, the payment is treated as not consisting of resident passive income if person A has established that person B holds a certificate of exemption issued under section NE 27.

Defined in this Act: amount, amount of tax, certificate of exemption, pay, resident passive income, trustee

Origin: 2004 No 35 s NF 2(7)

NE 6 When obligation to withhold unreasonable

When this section applies

- (1) This section applies when a person (**person A**) who is a person listed in a paragraph in section 32E(2)(a) to (h) of the Tax Administration Act 1994—
 - (a) receives an amount from another person (**person B**); or
 - (b) makes a payment at person B's request.

No obligation if unreasonable

- (2) For the purposes of determining whether person A is required under section NE 4 to withhold an amount of tax, the payment is treated as not consisting of resident passive income of person B to the extent to which—
 - (a) person A could not reasonably be expected to be aware that the payment was resident passive income; or
 - (b) for an amount that is a redemption payment, person A could not reasonably be expected to be aware of the amount that consisted of resident passive income.

Defined in this Act: amount, amount of tax, pay, redemption payment, resident passive income

Origin: 2004 No 35 s NF 2(8)

NE 7 When resident passive income paid to trustees

Who this section applies to

- (1) This section applies when—
- (a) an amount is paid to a person (**person A**) who is acting as trustee for another person (**person B**) at the time; and
 - (b) some or all of the amount is resident passive income other than a replacement payment under a share-lending arrangement; and
 - (c) person A—
 - (i) does not hold a certificate of exemption at the time of the payment; and
 - (ii) is paid the amount in the conduct of a taxable activity carried on by them.

Obligation to withhold

- (2) At the time the payment is made and to the extent to which it has not already been withheld, person A must withhold the amount of tax for the payment and pay it to the Commissioner.

Relationship with section NE 9

- (3) Section NE 9 overrides this section.

Defined in this Act: amount, amount of tax, certificate of exemption, Commissioner, pay, replacement payment, resident passive income, share-lending arrangement, taxable activity, trustee

Origin: 2004 No 35 s NF 3(1), (2)

NE 8 When resident passive income paid to agents

Who this section applies to

- (1) This section applies when—
- (a) an amount is paid to a person (**person A**) who is acting as agent for another person (**person B**) at the time; and
 - (b) some or all of the amount is resident passive income; and
 - (c) person A—
 - (i) holds a certificate of exemption at the time of the payment; or
 - (ii) is paid the amount in the conduct of a taxable activity carried on by them.

Obligation to withhold

- (2) At the time the payment is received and to the extent to which it has not already been withheld, person A must withhold the amount of tax for the payment and pay it to the Commissioner.

Relationship with section NE 9

- (3) Section NE 9 overrides this section.

Defined in this Act: amount, amount of tax, certificate of exemption, Commissioner, pay, resident passive income, taxable activity

Origin: 2004 No 35 s NF 3(1)

NE 9 Agents' or trustees' obligations in relation to certain dividends

When this section applies

- (1) This section applies for the purposes of sections NE 7 and NE 8 when an agent or trustee is required to withhold an amount of tax for resident passive income.

Dividends other than specified dividends

- (2) To the extent to which the resident passive income consists of a dividend other than a dividend having the nature of interest, an amount of tax that must be withheld under section NE 3 is treated as an amount to which the RWT rules apply and not as an amount to which the FDP rules apply.

Non-cash dividends

- (3) To the extent to which the resident passive income consists of a non-cash dividend, the trustee or agent must pay to the Commissioner an amount equal to the amount of tax for the dividend as if it were the amount of tax required to be withheld and paid under the RWT rules.

Obligation of person paying not overridden

- (4) This section does not override the obligation of the person who pays the resident passive income to the agent or trustee to withhold the amount of tax for the payment under section NE 4.

Defined in this Act: amount, amount of tax, dividend, dividend having the nature of interest, FDP rules, non-cash dividend, pay, resident passive income, RWT rules, trustee

Origin: 2004 No 35 s NF 3(3), (4), (5)

NE 10 Special rule relating to payments of interest

Threshold for amounts of interest

- (1) This section applies to a person who—
(a) pays resident passive income consisting of interest; and

- (b) either does not hold a certificate of exemption at the time of the payment, or is described in section 32E(2)(k) or (l) of the Tax Administration Act 1994 or holds a certificate under section 32I of that Act; and
- (c) has paid an amount of resident passive income consisting of interest that totals less than \$5,000 in the tax year immediately before the tax year in which the payment is made; and
- (d) would be liable to withhold the amount of tax for the resident passive income if this section did not exist.

Minimum amount

- (2) Despite section NE 4(3), the person is required to withhold the amount of tax for the payment only if the total resident passive income consisting of interest paid by the person in the tax year in which the payment is made is more than \$5,000.

Defined in this Act: amount of tax, certificate of exemption, interest, pay, resident passive income, tax year

Origin: 2004 No 35 s NF 2(5)

NE 11 Notification by companies

When this section applies

- (1) This section applies when a company that is not a trustee or a Maori authority is entitled to receive a payment of resident passive income other than a replacement payment under a share-lending arrangement.

Notification required

- (2) The company must notify the person making the payment that they are a company.

Withholding rate

- (3) The person making the payment must withhold the amount of tax for the payment at the applicable rate set out in schedule 14, clause 1C (Basic amounts of tax for resident passive income) for a payment made on or after the date of notification.

Consequence of failure to notify

- (4) If the company does not notify the person making the payment, the person must apply the higher withholding rate set out in section NE 19(3).

Defined in this Act: amount of tax, company, Maori authority, notify, pay, replacement payment, resident passive income, share-lending arrangement, trustee

Origin: 2004 No 35 s NF 2B

Calculating amounts of tax

NE 12 Interest

When this section applies

- (1) This section applies when a person makes a payment of resident passive income that consists of interest.

Calculation of amount of tax

- (2) The amount of tax for the payment that the person must withhold and pay to the Commissioner is calculated using the formula—

$$(\text{rate} \times (\text{interest paid} + \text{foreign withholding tax})) - \text{foreign withholding tax.}$$

Definition of items in formula

- (3) In the formula,—
- (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 1 or 1C (Basic amounts of tax for resident passive income):
 - (b) **interest paid** is the interest paid before the amount of tax is determined:
 - (c) **foreign withholding tax** is the amount of foreign withholding tax paid or payable on the interest paid.

Defined in this Act: amount of tax, Commissioner, foreign withholding tax, interest, pay, resident passive income

Origin: 2004 No 35 s NF 2(1)(a)

NE 13 Dividends other than non-cash dividends

When this section applies

- (1) This section applies when a person makes a payment of resident passive income that consists of a dividend other than a non-cash dividend.

Calculation of amount of tax

- (2) The amount of tax for the payment that the person must withhold and pay to the Commissioner is calculated using the formula—

$$(\text{rate} \times (\text{dividend paid} + \text{tax paid or credit attached})) - \text{tax paid or credit attached.}$$

Definition of items in formula

- (3) In the formula,—
- (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 2 (Basic amounts of tax for resident passive income):
 - (b) **dividend paid** is the amount of the dividend paid before the amount of tax is determined:
 - (c) **tax paid or credit attached** is the total of the following amounts:
 - (i) if the dividend is paid in relation to shares issued by an ICA company, the amount of an imputation credit attached to the dividend:
 - (ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable on the amount of dividend:
 - (iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of an FDP credit attached to the dividend.

Defined in this Act: amount, amount of tax, Commissioner, dividend, FDP credit, foreign withholding tax, ICA company, imputation credit, non-cash dividend, pay, resident in New Zealand, resident passive income, share

Origin: 2004 No 35 s NF 2(1)(b)

NE 14 Non-cash dividends other than bonus issues in lieu

When this section applies

- (1) This section applies when a person makes a payment of resident passive income that consists of a non-cash dividend other than a bonus issue in lieu.

Calculation of amount of tax

- (2) The amount of tax for the payment that the person must pay under subsection (4) to the Commissioner is calculated using the formula—

$$\left(\frac{\text{rate}}{1 - \text{rate}} \times \text{dividend paid} \right) - \text{tax paid or credit attached.}$$

Definition of items in formula

- (3) In the formula,—
- (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 2 (Basic amounts of tax for resident passive income):
 - (b) **dividend paid** is the amount of the dividend paid before the amount of tax is determined:

- (c) **tax paid or credit attached** is the total of the following amounts:
- (i) if the dividend is paid in relation to shares issued by an ICA company, the amount of an imputation credit attached to the dividend:
 - (ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable on the amount of dividend:
 - (iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of an FDP credit attached to the dividend.

Treatment as if amount of tax withheld

- (4) For the purposes of subsection (2), the person must pay to the Commissioner the amount calculated as if it were the amount of tax required to be withheld and paid under the RWT rules.

Defined in this Act: amount, amount of tax, bonus issue in lieu, Commissioner, FDP credit, foreign withholding tax, ICA company, imputation credit, non-cash dividend, pay, resident in New Zealand, resident passive income, RWT rules, share

Origin: 2004 No 35 s NF 2(1)(c), (2)

NE 15 Bonus issues in lieu

When this section applies

- (1) This section applies when a person makes a payment of resident passive income that consists of a dividend that is a bonus issue in lieu.

Calculation of amount of tax

- (2) The amount of tax for the payment is calculated using the formula—
- $$(\text{rate} \times (\text{alternative amount} + \text{tax paid or credit attached})) - \text{tax paid or credit attached}.$$

Definition of items in formula

- (3) In the formula,—
- (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 2 (Basic amounts of tax for resident passive income):
 - (b) **alternative amount** is the amount of money offered as an alternative to the bonus issue before the amount of tax is determined:
 - (c) **tax paid or credit attached** is the total of the following amounts:
 - (i) if the dividend is paid in relation to shares issued by an ICA company, the amount of an imputation credit attached to the dividend:

- (ii) if the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable on the amount of dividend:
- (iii) if the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of an FDP credit attached to the dividend.

Defined in this Act: amount, amount of tax, bonus issue in lieu, dividend, FDP credit, foreign withholding tax, ICA company, imputation credit, pay, resident in New Zealand, resident passive income, share

Origin: 2004 No 35 s NF 2(1)(d)

NE 16 Taxable Maori authority distributions

When this section applies

- (1) This section applies when a Maori authority makes a payment of resident passive income that consists of a taxable Maori authority distribution in the form of a sum of money or an amount of a credit in the balance of an account with the Maori authority.

Calculation of amount of tax

- (2) The amount of tax for the payment that the Maori authority must withhold and pay to the Commissioner is calculated using the formula—

$$(\text{rate} \times (\text{distribution amount} + \text{credit attached})) - \text{credit attached}.$$

Non-cash amounts

- (3) Despite subsection (2), if the resident passive income is not paid in cash, the amount of tax for the payment that the Maori authority must pay to the Commissioner is calculated using the formula—

$$\left(\frac{\text{rate}}{1 - \text{rate}} \times \text{distribution amount} \right) - \text{credit attached}.$$

Definition of items in formulas

- (4) In the formulas in subsections (2) and (3),—
 - (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 3 (Basic amounts of tax for resident passive income):
 - (b) **distribution amount** is the amount of the distribution before the amount of tax is determined:
 - (c) **credit attached** is the amount of the Maori authority credit attached to the distribution.

Defined in this Act: amount, amount of tax, bonus issue, Commissioner, Maori authority, Maori authority credit, pay, resident passive income, taxable Maori authority distribution,

Origin: 2004 No 35 s NF 2(1)(e), (f)

NE 17 Replacement payments under share-lending arrangements

When this section applies

- (1) This section applies when a person makes a payment of resident passive income that consists of a replacement payment under a share-lending arrangement.

Calculation of amount of tax

- (2) The amount of tax for the payment is calculated using the formula—

$$\frac{\text{rate} \times \text{payment}}{1 - \text{rate}} - \text{credit attached} - \text{credit transferred} - \text{FDP credit transferred}.$$

Definition of items in formula

- (3) In the formula,—
- (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 2 (Basic amounts of tax for resident passive income):
 - (b) **payment** is the amount of the replacement payment excluding an imputation credit attached under section ME 6B (Share user may attach imputation credit to replacement payment):
 - (c) **credit attached** is the amount of an imputation credit attached to the replacement payment under section ME 6B:
 - (d) **credit transferred** is the amount of an imputation credit shown in a credit transfer notice relating to the replacement payment:
 - (e) **FDP credit transferred** is the amount of an FDP credit shown in a credit transfer notice relating to the replacement payment.

Defined in this Act: amount of tax, credit transfer notice, imputation credit, pay, replacement payment, resident passive income, share-lending arrangement

Origin: 2004 No 35 s NF 2(1)(g)

NE 18 Payments made by RWT proxies

Calculation of amount of tax

- (1) A person who is an RWT proxy for a person paying resident passive income that consists of a dividend must withhold an amount of tax for the payment calculated using the formula—

$$\frac{\text{rate} \times \text{amount paid}}{1 - \text{rate}}$$

Definition of items in formula

- (2) In the formula,—
- (a) **rate** is the percentage that is the applicable rate set out in schedule 14, clause 1 (Basic amounts of tax for resident passive income):
 - (b) **amount paid** is the amount of the dividend paid.

Defined in this Act: amount, amount of tax, dividend, pay, resident passive income, RWT proxy

Origin: 2004 No 35 s NF 2(1B)

NE 19 Choosing higher rates

When this section applies

- (1) This section applies when a person (**person A**) is entitled to receive resident passive income other than a replacement payment under a share-lending arrangement.

Person choosing rate

- (2) Person A may notify the person who is required to withhold the amount of tax for the payment to use 1 of the rates set out in schedule 14, clause 1(a), (b), or (c) (Basic amounts of tax for resident passive income).

Company choosing rate

- (3) Despite subsection (1), if person A is a company, they may notify the person making the payment to withhold the amount of tax for the payment at the rate set out in schedule 14, clause 1C (a) or (b).

Application of rate

- (4) The rate chosen under subsection (1) or (2) applies to amounts of tax withheld from the date on which notice is given.

Defined in this Act: amount of tax, company, notify, pay, replacement payment, resident passive income, share-lending arrangement

Origin: 2004 No 35 ss NF 2A, NF 2D

Paying amounts of tax

NE 20 Paying amounts of tax for resident passive income

A person who is required under the RWT rules to withhold an amount of tax for a payment of resident passive income must pay the amount of tax to the Commissioner under sections NA 15 and NA 16 (which relate to payment dates and the basis on which the payment dates are set).

Defined in this Act: amount of tax, Commissioner, pay, resident passive income, RWT rules

Origin: 2004 No 35

NE 21 Basis for payment of amounts of tax for resident passive income

When this section applies

- (1) Subsections (2) to (5) apply for the purposes of section NA 6(1) (Withholding and payment obligations for passive income) to a person who is required under the RWT rules to withhold an amount of tax for a payment of resident passive income consisting of interest.

Interest of more than \$500 in total

- (2) If the person estimates for a tax year that they will be required to withhold more than \$500 in total for each month of the tax year, they must pay the amount of tax to the Commissioner on a monthly basis.

Interest of less than \$500 in total

- (3) If the person estimates for a tax year that they will be required to withhold less than \$500 in total for each month of the tax year, they must pay the amount of tax to the Commissioner in 2 instalments as described in section NA 15 (Payment dates for interim and other tax payments).

When subsection (5) applies

- (4) Subsection (5) applies when the person has withheld more than \$500 in total amounts of tax for a 2 month-period from the start of 1 month in a tax year to the end of the month following that month.

Total in 2-month period

- (5) Despite subsections (2) and (3), the person must pay the total amount of tax to the Commissioner for the 2 month-period by the 20th day of the month following the end of the period.

When subsection (7) applies

- (6) Subsection (7) applies for the purposes of section NA 6(1) to a person who is required under the RWT rules to withhold an amount of tax for a payment of resident passive income consisting of a dividend, a replacement payment, or a taxable Maori authority distribution.

Dividends, replacement payments, and taxable Maori authority distributions

- (7) The person must pay the amount of tax to the Commissioner on a monthly basis.

Defined in this Act: amount of tax, Commissioner, dividend, interest, pay, replacement payment, resident passive income, RWT rules, tax year, taxable Maori authority distribution

Origin: 2004 No 35 s NF 4

NE 22 When payment treated as non-resident passive income

When this section applies

- (1) This section applies when—
- (a) a person (**person A**) is liable to pay resident passive income to a person not resident in New Zealand (**person B**); or
 - (b) person A receives resident passive income as agent or trustee for person B.

No liability

- (2) If person A concludes on reasonable grounds after making reasonable inquiries that an amount is non-resident passive income derived by person B, and person A has complied with their obligations under this Act and the Tax Administration Act 1994 in relation to paying to the Commissioner an amount of tax for non-resident passive income, they have no liability under the RWT rules in relation to the amount.

Payment derived by non-resident

- (3) For the purposes of determining person A's liability under the RWT rules, the amount is treated as derived by a non-resident.

Defined in this Act: amount, Commissioner, pay, non-resident, non-resident passive income, resident in New Zealand, resident passive income, RWT rules, this Act, trustee

Origin: 2004 No 35 s NF 5

NE 23 When amount of tax treated as FDP credit

When this section applies

- (1) This section applies when a company withholds an amount of tax for resident passive income that consists of a dividend other than a dividend having the nature of interest.

FDP credit

- (2) The amount is treated as an FDP credit attached to the dividend by the company which is treated as a FDP account company for the purposes of sections LB 1 (Determination of amount of credit in certain cases), and LD 9 (Refund to non-resident or exempt shareholders), and section 185 of the Tax Administration Act 1994.

Defined in this Act: amount of tax, company, dividend, dividend having the nature of interest, FDP account company, FDP credit, resident passive income

Origin: 2004 No 35 s NF 8(1)

NE 24 When amount of tax treated as Maori authority credit

When this section applies

- (1) This section applies when a Maori authority withholds an amount of tax for a taxable Maori authority distribution.

Maori authority credit

- (2) The amount is treated as a Maori authority credit attached to the distribution by the Maori authority for the purposes of sections LB 1, LD 3A, and MK 7 (which relate to the amount and treatment of Maori authority credits).

Defined in this Act: amount of tax, Maori authority, Maori authority credit, taxable Maori authority distribution

Origin: 2004 No 35 s NF 8A(1)

NE 25 When amount of tax treated as imputation credit

When this section applies

- (1) This section applies when a share user under a share-lending arrangement withholds under the RWT rules an amount of tax for a replacement payment.

Imputation credit

- (2) The amount of tax withheld—
- (a) is treated for the share supplier as an imputation credit attached to the replacement payment in addition to an imputation credit that the share user attached to the payment under section ME 6B (Share user may attach imputation credit to replacement payment); and
 - (b) does not give rise under section LD 3 (Resident withholding tax deductions to be credited against income tax assessed) to a credit of tax or refund for the share supplier.

Defined in this Act: amount of tax, imputation credit, replacement payment, RWT rules, share-lending arrangement, share supplier, share user

Origin: 2004 No 35 s NF 8B

NE 26 Payment by proxy

An RWT proxy who is required to withhold an amount of tax for resident passive income is treated as having withheld the amount from the payment at the time the payment is made.

Defined in this Act: amount of tax, pay, resident passive income, RWT proxy

Origin: 2004 No 35 s NF 4(9)

Certificates of exemption

NE 27 Certificates of exemption

Application

- (1) A person may apply to the Commissioner for a certificate of exemption if—
 - (a) they are a person listed in section 32E(2) of the Tax Administration Act 1994; and
 - (b) they meet the requirements of section 32G of that Act.

When certificate expires

- (2) A certificate of exemption expires if—
 - (a) the holder loses the basis of their exemption; or
 - (b) the Commissioner cancels the certificate under section 32L of the Tax Administration Act 1994.

Notifying Commissioner

- (3) If the holder of a certificate of exemption becomes aware they no longer meet the requirements, they must notify the Commissioner under section 32K of the Tax Administration Act 1994.

Defined in this Act: certificate of exemption, Commissioner, notify

Origin: 2004 No 35 ss NF 9(1), NF 11(1), (2)

NE 28 When certificates of exemption expire

When this section applies

- (1) This section applies in a month when a person's certification of exemption expires. But the section does not apply if the person continues to be required to withhold an amount of tax for resident passive income in the course of carrying out a taxable activity.

Payment of outstanding amounts of tax

- (2) The person must pay to the Commissioner all amounts of tax for resident passive income withheld and not paid to the Commissioner by the 20th day of the month following the month in which the certificate of exemption expired.

Defined in this Act: amount of tax, certificate of exemption, Commissioner, resident passive income, taxable activity

Origin: 2004 No 35 s NF 4(6)

NE 29 Establishing whether person holds certificate of exemption

When this section applies

- (1) This section applies for the purposes of section NE 5(2) to set out the ways available to person A to establish whether person B is a person holding a certificate of exemption.

Requirements

- (2) Person A may establish that—
 - (a) they have taken reasonable steps to confirm that person B is a person listed in section 32E(2)(a) to (h) of the Tax Administration Act 1994; or
 - (b) except in relation to a person listed in section 32E(2)(k) or (l) or to whom a certificate has been provided under section 32I, they have been given person B's tax file number and have been notified that person B holds a certificate of exemption; or
 - (c) they have seen person B's certificate of exemption and have taken reasonable steps to confirm that person B is the person named in the certificate.

Additional requirements

- (3) In addition to the requirements set out in subsection (2), the following requirements must be met in relation to person B's certificate of exemption:
 - (a) no notice of cancellation has been published in the Gazette—

- (i) for interest, more than 5 working days before the date on which the money was lent:
- (ii) for a dividend or a taxable Maori authority distribution, more than 5 working days before the date on which payment was made:
- (b) person A has not been advised by the Commissioner or person B of a cancellation of a certificate more than 5 working days before the date on which payment is made:
- (c) person A has no other grounds for believing that person B is not eligible for a certificate.

Later certificate

- (4) For the purposes of subsection (3)(a) and (b), if a notice of cancellation has been published or if person A has been advised as described, the requirements are still met if—
- (a) a certificate has been provided to person B and notified in the Gazette in the period that is after the notice of cancellation and more than 5 working days before the date on which the payment is made; or
 - (b) person A has seen a certificate provided to person B after the date of publication of the notice of cancellation.

When person B listed or income of particular type

- (5) For the purposes of this section, person A has no ground for believing that the payment is income derived by a person other than person B when—
- (a) person B is a person listed in section 32E(2)(a) to (h) of the Tax Administration Act 1994; and
 - (b) the payment is not interest, a dividend, or a taxable Maori authority distribution derived by person B as trustee on behalf of a third person.

Defined in this Act: certificate of exemption, Commissioner, dividend, interest, notice, pay, tax file number, taxable Maori authority distribution, trustee

Origin: 2004 No 35 s NF 2(7)

NE 30 When unincorporated bodies hold certificates of exemption

When this section applies

- (1) This section applies when—
- (a) an unincorporated body that is carrying on a taxable activity holds a certificate of exemption; and
 - (b) the exemption relates to the carrying on of the taxable activity.

Treatment of payments made by unincorporated bodies

- (2) For the purposes of the RWT rules, a payment that the body makes in the course of carrying on the taxable activity is treated as a payment made by the body and not by a member of the body. This subsection overrides subsection (7).

Treatment of payments to members of unincorporated bodies

- (3) For the purposes of the RWT rules, a payment made to a member of the body in their capacity as a member and in the course of carrying on the taxable activity of the body is treated as a payment made to the body and not to the member.

Joint and several liability for amounts of tax

- (4) Each member of the body is jointly and severally liable for the amount of tax for resident passive income that the body is required to pay for as long as the member remains part of the body.

Natural persons, partnerships, joint ventures, trustees

- (5) For the purposes of subsection (4),—
- (a) if the member is a natural person, their estate is liable after their death for an amount payable that remains unpaid:
 - (b) if the body is a partnership, joint venture, or the trustees of a trust, a member continues as a member until the date the Commissioner is notified of a change of membership.

Members and committees

- (6) Subsection (7) applies to an unincorporated body other than a partnership, joint venture, or the trustees of a trust, when the business of the body is managed by the members or a committee of its members.

Responsibility of committee officers and members

- (7) If something is required to be done under the RWT rules by or on behalf of the body, each member holding office as president, chair, treasurer, secretary, or a similar office is jointly and severally responsible. In default, each member holding office bears the responsibility. Action taken by 1 officer or committee member is sufficient.

Joint and several liability for actions required

- (8) If something is required to be done under the RWT rules by or on behalf of the body, each member is jointly and severally liable to do it. However, action taken by 1 member is sufficient. Subsection (7) overrides this subsection.

Changes in membership

- (9) A change in membership of the unincorporated body has no effect for the purposes of the RWT rules. Subsection (5)(b) overrides this subsection.

Some definitions

- (10) In this section,—

member means a partner, joint venturer, a trustee, or a member of a body

partnership and **partner** have the meanings given in the Partnership Act 1908.

Defined in this Act: amount of tax, certificate of exemption, member, partnership, pay, RWT rules, taxable activity, trustee

Origin: 2004 No 35 s NF 10