

# Hon Deborah Russell, Associate Minister of Revenue

## Information Release

### Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2022-23 Income Year) Order 2023

July 2023

#### Availability

This information release is available on Inland Revenue's tax policy website at <https://taxpolicy.ird.govt.nz/publications/2023/2023-ir-cab-leg-23-sub-0086>

#### Documents in this information release

#	Reference	Type	Title	Date
1	IR2023-149	Tax policy report	Cabinet Paper Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2022-23 Income Year) Order 2023	10 May 2023
2	LEG-23-SUB-0086	Cabinet paper	Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2022-23 Income Year) Order 2023	8 June 2023
3	LEG-23-MIN-0086	Minute	Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2022-23 Income Year) Order 2023	8 June 2023

#### Additional information

The Cabinet paper was considered by Cabinet Legislation Committee on 8 June 2023 and confirmed by Cabinet on 12 June 2023.

#### Information withheld

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply are identified. Where information is withheld, no public interest was identified that would outweigh the reasons for withholding it.

Sections of the Act under which information was withheld:

9(2)(a) to protect the privacy of natural persons, including deceased people

#### Accessibility

Inland Revenue can provide an alternate HTML version of this material if requested. Please cite this document's title, website address, or PDF file name when you email a request to [policy.webmaster@ird.govt.nz](mailto:policy.webmaster@ird.govt.nz)

## Copyright and licensing

Cabinet material and advice to Ministers from the Inland Revenue Department and other agencies are © Crown copyright but are licensed for re-use under the Creative Commons Attribution 4.0 International (CC BY 4.0) licence (<https://creativecommons.org/licenses/by/4.0/>).





## POLICY AND REGULATORY STEWARDSHIP

**Tax policy report:** **Cabinet paper: Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2022-23 Income Year) Order 2023**

---

<b>Date:</b>	10 May 2023	<b>Priority:</b>	Medium
<b>Security level:</b>	In Confidence	<b>Report number:</b>	IR2023/149

### Action sought

---

	<b>Action sought</b>	<b>Deadline</b>
Associate Minister of Revenue	<p><b>Agree</b> to set the deemed rate of return as set out in the report</p> <p><b>Sign</b> and <b>refer</b> the attached paper to the Cabinet Office for consideration at the LEG meeting on 8 June 2023</p>	25 May 2023

### Contact for telephone discussion (if required)

---

<b>Name</b>	<b>Position</b>	<b>Telephone</b>
Paul Fulton	Principal Policy Advisor	s 9(2)(a)
Andrew Paynter	Policy Advisor	s 9(2)(a)

10 May 2023

Associate Minister of Revenue

## **Cabinet paper: Income tax (Deemed Rate of Return on Attributing Interests in Foreign Investment funds, 2022-23 Income Year) Order 2023**

### **Purpose**

1. This report informs you about the required annual change to the deemed rate of return on attributing interests in foreign investment funds. Attached is a Cabinet paper that recommends an Order in Council be made to set the deemed rate of return for the 2022-23 income year.

### **Background**

2. The Income Tax Act 2007 requires the deemed rate of return under foreign investment fund (FIF) rules for each income year to be set by Order in Council.
3. New Zealand's FIF rules tax New Zealand residents on attributed income from non-controlling investments in foreign companies, life insurance policies, and certain superannuation schemes. Since 1 April 2014, most interests in foreign superannuation schemes are taxed on transfer rather than under the FIF rules.
4. The Act provides different methods to calculate FIF income or losses for tax purposes, one of which is the deemed rate of return method. An investor must use the deemed rate of return where:
  - 4.1 The interest consists of certain non-ordinary shares that have debt characteristics; and
  - 4.2 The comparative value method cannot be used because the end-of-year market value of the interest cannot be determined.
5. Under the deemed rate of return method, income from a FIF is calculated each year by multiplying the opening value of the investment by the rate set annually by Order in Council.
6. An Order in Council is now required to set the deemed rate of return for the 2022-23 income year.

### **Calculation**

7. The method for calculating the annual deemed rate of return was established and approved in 1994 (*CAB (94) M 35/3 C(vi)* refers). The calculation involves taking an average of the five-year "risk-free" Government bond rate at the end of each quarter of the income year and adding a risk premium margin of four percentage points. If the last day of a quarter falls on a weekend or statutory holiday, the rate on the next business day is used.
8. Officials recommend that the current method for calculating the deemed rate of return be used again for the 2022-23 income year. It is a simple way of approximating the expected return on foreign equities, incorporating a risk premium of four percentage points above the return on "risk-free" debt such as Government bonds. The method has been used for every income year since 1994.

9. The average of the quarterly five-year Government bond interest rates for the 2022–23 income year is 4.15%. This means that the deemed rate of return for the 2022–23 income year will be 8.15% (4.15% plus four percent). This is an increase from last year's deemed rate of return, which was 6.01%.
10. Despite an increase of 2.14%, the deemed rate of return method is used by a very small number of taxpayers, therefore, this change will have no quantifiable fiscal impact.

### **Regulatory Impact Analysis**

11. A Regulatory Impact Analysis is not required for this Cabinet paper because no policy decision is being sought. The deemed rate of return has been calculated in accordance with a formula that was approved by Cabinet in 1994 (*CAB (94) M 35/3 C(vi)* refers).

### **Timing**

12. Because the deemed rate of return is based on five-year Government bond rates from across the year for which the rate applies, it must always be calculated after the end of the income year but apply retrospectively from the beginning of that year.
13. This Order in Council will enable taxpayers using the deemed rate of return method to calculate their FIF income for the 2022–23 income year and therefore needs to apply retrospectively from 1 April 2022.
14. Officials recommend that a waiver of the 28-day rule for regulations is sought for this Order in Council. Taxpayers that use the deemed rate of return are not able to use the old rate to file a return for the 2022–23 year; they must wait for the new rate to come into force. A waiver would be taxpayer-friendly and beneficial to the Government, as without a waiver some taxpayers would have to wait an extra 28 days to file a return because they are waiting on the rate to come into force.
15. The attached Cabinet paper is drafted on the basis that a waiver is sought for the Order in Council. This will mean the Order comes into force on 16 June 2023. If you do not agree to recommend a waiver, we will supply you with an updated Cabinet paper.

### **Cabinet paper and associated materials**

16. The Cabinet paper and the advice sheet for the Order in Council are attached to this report. These should be signed and referred to the Cabinet Office by 10am, Thursday June 1, 2023, for consideration at the Cabinet Legislation Committee's meeting on 8 June 2023.
17. The Parliamentary Council Office will provide copies of the finalised Order in Council directly to the Cabinet Office.
18. The rate will be published on the Inland Revenue website once the Order in Council has been made.

### **Consultation**

19. The Treasury was consulted on the Cabinet paper and agrees with its recommendation.

**Proactive release**

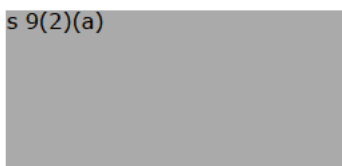
20. The Cabinet paper, associated minutes, and key advice papers should be proactively released within 30 working days of Cabinet making final decisions, subject to minor redactions under the Official Information Act 1982.

**Recommended action**

---

21. **agree** for the Income Tax (Deemed rate of Return on Attributing Interests in Foreign Investment Funds, 2022-23 Income Year) Order 2023 to set the deemed rate of return for the 2022-23 income year at 8.15%.  
Agreed/Not agreed
22. **agree** for the Order to have a commencement date of 16 June 2023, requiring a waiver of the 28-day rule to be agreed to by Cabinet.  
Agreed/Not agreed
23. **direct** officials to provide drafting instructions to the Parliamentary Counsel Office  
Directed/Not directed
24. **sign** and **refer** the attached Cabinet paper to the Cabinet Office by 10am Thursday 1 June 2023 for consideration at the Cabinet Legislation Committee meeting on Thursday 8 June 2023.  
Approved/Not approved
25. **agree** to the release of the Cabinet paper, associated minutes, and key advice papers within 30 working days of Cabinet making final decisions.  
Agreed/Not agreed
26. **refer** a copy of this report to the Minister of Revenue for their information.  
Referred/Not referred

s 9(2)(a)



**Paul Fulton**  
Principal Policy Advisor  
Policy and Regulatory Stewardship

**Hon Dr Deborah Russell**  
Associate Minister of Revenue  
/ /2023

In Confidence

Office of the Associate Minister of Revenue

Chair, Cabinet Legislation Committee

## **INCOME TAX (DEEMED RATE OF RETURN ON ATTRIBUTING INTERESTS IN FOREIGN INVESTMENT FUNDS, 2022-23 INCOME YEAR) ORDER 2023**

### **Proposal**

- 1 This paper proposes that Cabinet Legislation Committee authorise the submission to the Executive Council of the attached Order in Council, which will set the deemed rate of return on attributing interests in foreign investment funds at 8.15% for the 2022–23 income year.

### **Background**

- 2 New Zealand's foreign investment fund (FIF) rules tax New Zealand residents on income from certain foreign investments. There are several methods for calculating a taxpayer's income or loss from these investments, as set out in legislation. One of these is the deemed rate of return method.
- 3 The deemed rate of return method is used to calculate FIF income or loss from non-ordinary shares with debt-like properties, such as shares that guarantee a return. The method can only be used if the market value of the foreign investment cannot be determined at the end of the income year. Under the deemed rate of return method, income from a FIF is calculated each year by multiplying the opening book value of the investment by a deemed rate set annually by Order in Council.
- 4 The method for calculating the annual deemed rate of return was established and approved in 1994 (*CAB Min (94) 35/3 C(vi)* refers). The calculation takes an average of the five-year "risk-free" Government bond rates at the end of each quarter of the income year and then adds a risk premium margin of four percentage points. The current method is a suitable way of approximating the expected return on foreign equities and has been used for every income year since 1994.

## **Comment**

- 5 The average of the quarterly five-year Government bond interest rates for the 2022-23 income year is 4.15%. The attached Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2022–23 Income Year) Order 2023 therefore sets the deemed rate of return for the 2022–23 income year at 8.15% (4.15% plus four percent) in accordance with the current method of calculation. This is an increase from last year’s deemed rate of return, which was 6.01%.

## **Timing and 28-Day Rule**

- 6 The new deemed rate of return should come into force as soon as practicable to allow taxpayers using this rate to file their tax returns as soon as they can. I therefore recommend that the new rate comes into force on 16 June 2023.
- 7 To ensure a commencement date of 16 June 2023, I recommend that the 28-day rule be waived for the coming into force of this Order. This will ensure that taxpayers using the deemed rate of return method for calculating their income are able to promptly file their tax return using the correct rate for the 2022–23 income year.
- 8 If a waiver is not agreed to, then taxpayers that use the deemed rate of return method will not be able to file a return until the 28-day period has been satisfied. Taxpayers in this situation are unable to use last year’s deemed rate of return to file for the 2022–23 income year and must wait for the current year’s rate to come into force.
- 9 It is of no benefit to taxpayers nor the Government to require taxpayers using the deemed rate of return method to wait an extra 28 days to file their tax return. This would be a source of frustration for taxpayers who want to file their tax returns quickly but are unable to do so. Therefore, I recommend that the 28-day rule be waived.

## **Consultation**

- 10 The Treasury has been consulted in the preparation of this paper and agrees with its recommendations.



## **Compliance**

- 11 The Order complies with each of the following:
- 11.1 the principles of the Treaty of Waitangi;
  - 11.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 11.3 the principles and guidelines set out in the Privacy Act 1993;
  - 11.4 relevant international standards and obligations; and
  - 11.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

## **Legislative Implications**

- 12 The proposal of this Cabinet paper is that the attached Order in Council be submitted to the Executive Council.

## **Impact Analysis**

- 13 A Regulatory Impact Analysis is not required because no policy decision is being sought. The deemed rate of return has been calculated in accordance with a formula that was approved by Cabinet in 1994 (*CAB Min (94) 35/3 C(vi)* refers).

## **Regulations Review Committee**

- 14 There are no anticipated grounds for the Regulations Review Committee to draw the Order in Council to the attention of the House.

## **Certification by Parliamentary Counsel**

- 15 The Parliamentary Counsel Office has certified that the attached Order in Council is in order for submission to Cabinet.

## **Publicity**

- 16 Once the Order in Council is made, Inland Revenue will publish the new rate on their website.

## **Proactive Release**

- 17 I propose to proactively release this Cabinet paper, associated minutes, and key advice papers within 30 working days of Cabinet making final decisions, subject to minor redactions under the Official Information Act 1982.

## Recommendations

The Associate Minister of Revenue recommends that the Cabinet Legislation Committee:

- 1 **note** that the attached Order in Council sets the deemed rate of return on attributing interests in foreign investment funds at 8.15% for the 2022–23 income year;
- 2 **note** that a waiver of the 28-day rule is sought:
  - 2.1 so that the Order can come into force on 16 June 2023;
  - 2.2 on the grounds that taxpayers using the deemed rate of return method for calculating their income must wait for the 2022–23 rate to come into force, and that it is of no benefit to taxpayers or the Government to require taxpayers using the rate to wait an extra 28 days to be able to file their tax return;
- 3 **agree** to waive the 28-day rule so that the Order comes into force on 16 June 2023;
- 4 **authorise** the submission to the Executive Council of the Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2022–23 Income Year) Order 2023.

Authorised for lodgement

Dr Deborah Russell

Associate Minister of Revenue



# Cabinet Legislation Committee

## Minute of Decision

---

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

---

### Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2022-23 Income year) Order 2023

**Portfolio**                      **Associate Revenue**

On 8 June 2023, the Cabinet Legislation Committee:

- 1        **noted** that the Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2022-23 Income Year) Order 2023 (the Order) sets the deemed rate of return on attributing interests in foreign investment funds at 8.15% for the 2022–23 income year;
- 2        **noted** that a waiver of the 28-day rule is sought:
  - 2.1      so that the Order can come into force on 16 June 2023;
  - 2.2      on the grounds that taxpayers using the deemed rate of return method for calculating their income must wait for the 2022–23 rate to come into force, and that it is of no benefit to taxpayers or the Government to require taxpayers using the rate to wait an extra 28 days to be able to file their tax return;
- 3        **agreed** to waive the 28-day rule so that the Order comes into force on 16 June 2023;
- 4        **authorised** the submission to the Executive Council of the Income Tax (Deemed Rate of Return on Attributing Interests in Foreign Investment Funds, 2022–23 Income Year) Order 2023 [PCO 25557/2.0].

Rebecca Davies  
Committee Secretary

---

**Present:**

Hon Michael Wood  
Hon Andrew Little  
Hon Kieran McAnulty (Chair)  
Hon Willow-Jean Prime  
Hon Dr Duncan Webb  
Hon Dr Deborah Russell  
Tangi Utikere, MP (Chief Government Whip)

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG