

2 October 2018

Public Rulings
Office of the Chief Tax Counsel
Inland Revenue
Wellington

By email: (philip.marshall@ird.govt.nz; grant.haley@ird.govt.nz)

How schedular payment rules apply to non-resident directors' fees

The Institute of Directors (IoD) appreciates the opportunity to provide feedback on Inland Revenue's [exposure draft](#) of *Interpretation Statement: IS 18/XX Income tax – how schedular payment rules apply to non-resident directors' fees* (the draft statement). This will complement the following publications on directors' fees:

- *IS 17/06: Income tax – application of schedular payment rules to directors' fees (2017)*
- *BR Pub 15/10: Goods and services tax – directors fees (2015)*.

Interpretation statements set out Inland Revenue's view of the taxation laws in relation to a particular set of circumstances in cases when a binding public ruling cannot be issued or is considered to be inappropriate. This guidance can provide taxpayers (and their advisors) greater certainty in conducting their affairs.

About the Institute of Directors

The IoD is a non-partisan voluntary membership organisation committed to driving excellence in governance. We represent a diverse membership of over 8,900 members drawn from listed issuers, large private organisations, small and medium enterprises, state sector organisations, not-for-profits and charities.

Our Chartered Membership pathway aims to raise the bar for director professionalism in New Zealand, including through continuing professional development to support good corporate governance.

Overview

Withholding tax regimes are a common feature of effective tax systems. Such regimes impose an obligation on a party (eg an employer) to withhold an amount of tax from a payment of *income*. "Schedular payments" are a withholding tax in New Zealand.

The payment of directors' fees to non-residents can be schedular payments for the purposes of the Income Tax Act 2007. As a consequence of being a schedular payment, tax must be withheld by the payer and paid to Inland Revenue. However, not all payments of directors' fees to non-residents are schedular payments. Whether a payment of a director's fee is a schedular payment largely depends on *who* has contracted to provide the directorship services (eg individuals or entities) and, in some cases, *where* those services are performed.

The draft statement considers the situations in which tax must be withheld from directors' fees paid to non-residents. It also considers when and how much tax must be withheld and paid to the Commissioner.

IoD comments

Interpretation statements are intended to provide greater certainty for taxpayers, and a statement on the withholding tax treatment of fees paid to non-resident directors is helpful. We support the use of flowcharts and examples throughout the draft statement, however it could be enhanced by providing:

- guidance in relation to apportionment. The draft statement notes that it will, in some instances, be necessary to apportion amounts of directors' fees to a New Zealand source. However, it does not go into detail into the apportionment methods or calculations that would be appropriate, especially in complex situations. Given that issues of apportionment may arise in many situations where a director performs directorship services from multiple locations, or for a company that has a presence in multiple jurisdictions, we encourage guidance.
- guidance in relation to companies that operate in New Zealand that are dual residents for income tax purposes. Many companies that operate in New Zealand are also active in other countries (particularly in Australia) and may be dual residents for income tax purposes. Some commentary on the tax treatment of fees paid to non-resident directors in such cases, at least at a high-level given the complexity of this issue, would be helpful.
- guidance in relation to the GST treatment of fees paid to non-resident directors as this is an area of some complexity.
- in addition to the draft statement which is technical and likely to be used by tax advisors, an upfront summary and/or simplified version to provide greater access for directors, payers and others.

We appreciate the opportunity to comment on behalf of our members and would be happy to discuss this submission with you.

Yours sincerely



Felicity Caird
General Manager, Governance Leadership Centre
Institute of Directors