



**THE INCOME TAX (WITHHOLDING PAYMENTS)
REGULATIONS 1979**

KEITH HOLYOAKE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 3rd day of December
1979

Present:

THE RIGHT HON. R. D. MULDOON PRESIDING IN COUNCIL

PURSUANT to the Income Tax Act 1976, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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REGULATIONS

1. Title, commencement, and application—(1) These regulations may be cited as the Income Tax (Withholding Payments) Regulations 1979.

(2) These regulations shall come into force on the 1st day of April 1980.

(3) These regulations shall apply with respect to every withholding payment made on or after the date of the commencement of these regulations, whether made in respect of any date before or after or any period commencing before or after the date of the commencement of these regulations.

2. Interpretation—(1) In these regulations, unless the context otherwise requires,—

“The Act” means the Income Tax Act 1976:

“Auctioneer or dealer”, in relation to any class of goods, means a person carrying on a business which comprises or includes the sale by auction or otherwise of goods of that class as auctioneer or agent on behalf of the seller, or the purchase of goods of that class as agent for a buyer or buyers:

“Game” means deer, pigs, or goats killed, taken, or captured in a wild state; and includes meat, antlers, tails, sinews, skins or pelts, or any other part of any such animals:

“Licensed dealer”, in relation to any class of goods, means—

(a) Any broker, dealer, or trader in goods of that class who is licensed as such under any Act or regulation:

(b) Any person who is carrying on a business which comprises or includes the purchase of goods of that class, and who holds a certificate from the Commissioner that he is a licensed dealer in goods of that class for the purposes of these regulations:

(c) Any other person who holds a certificate from the Commissioner that he is a licensed dealer in goods of that class for the purposes of these regulations:

“Non-resident entertainer” means any person who is not deemed to be resident in New Zealand within the meaning of Part IV of the Act and who, during the course of a visit to New Zealand, performs or participates in any specified activity, and includes any company or firm or other person in any case where that first-mentioned person is an employee or an officer of the company or a principal or employee of the firm or an employee of the other person, being a company, firm, or other person which provides the services of that first-mentioned person, during a visit to New Zealand of that first-mentioned person, in performing or participating in any specified activity:

“Opossum” includes the meat, tail, skin, or pelt or any other part of such animal:

“Payment made”, in relation to any sale, means the net amount paid after deducting from the purchase price (including any subsidy) all commission, insurance, freight, classing charges, and other expenses incurred in connection with the sale and properly charged against the seller:

“Resident entertainer” means any person who is deemed to be resident in New Zealand within the meaning of Part IV of the Act and who performs or participates in any specified activity:

“Seller” includes an agent selling on behalf of a seller:

“Specified activity”, in relation to any non-resident entertainer or resident entertainer, means any activity or performance, including performances or appearances on or for radio, television, or any film—

(a) In connection with any sporting event or competition of any nature, including motor racing, motorcar rallies, motor cycle racing, motor boat racing, and horse racing and trotting:

(b) In connection with lectures, speeches, or talks for any purpose, whether on a regular or casual basis:

(c) In connection with any performance by actors, entertainers, musicians, singers, dancers, comperes or other artistes, whether regular or casual performers, and whether alone or with any other person or persons in choirs, choruses, bands, orchestras, ballets, or other entertainment groups, and whether for the purpose of education or culture or religion or entertainment or any other purpose whatsoever—
but, in relation to any non-resident entertainer, does not include any such activity or performance—

(d) Pursuant to a cultural programme of, or partially sponsored by, any overseas government or the Government of New Zealand; or

(e) Pursuant to a programme of a foundation, trust, or other organisation, being a foundation, trust, or other organisation which exists for the promotion, whether in whole or in part, of any cultural activity and which is not carried on for the private pecuniary profit of any proprietor, member, or shareholder; or

(f) In relation to any game or sport where the participants are the official representatives of an association, league, union, or other body which administers the game or sport in an overseas country:

“Specified payment”, in relation to any person, being a non-resident entertainer or resident entertainer, and to any specified activity, means any payment made to that person or his agent or any other person acting on his behalf, being a payment paid in respect of or in relation to any services rendered or provided by him in connection with that specified activity, whether that payment is paid as fees, remuneration, prize, or appearance money, or otherwise howsoever:

“Withholding payment” means a payment which is declared by these regulations to be a withholding payment for the purposes of Part XI of the Act.

(2) For the purposes of the definition of the term “licensed dealer” in subclause (1) of this regulation—

(a) A certificate under paragraph (b) of the definition shall be granted by the Commissioner as of right and without payment of any fee upon written application by any person who is carrying on a business referred to in paragraph (b); and any such certificate may be revoked by the Commissioner when the holder thereof is no longer carrying on any such business:

(b) A certificate under paragraph (c) of the definition may be granted by the Commissioner in his discretion without payment of any fee upon written application; and any such certificate may be revoked by the Commissioner at any time.

3. Payments declared not to be extra emoluments or salary or wages—

For the purposes of Part XI of the Act and of these regulations, all payments of the class specified in clause 6 of Part B of the Schedule to these regulations are hereby declared to be excluded from the definitions of the terms “extra emolument” and “salary or wages” in section 2 of the Act.

4. Payments declared to be withholding payments—(1) Subject to the provisions of these regulations, all payments of the classes specified in the Schedule to these regulations are hereby declared to be withholding payments for the purposes of Part XI of the Act.

(2) Notwithstanding anything in subclause (1) of this regulation, the following payments shall not be withholding payments for the purposes of Part XI of the Act, namely:

- (a) Any payment that is salary or wages or an extra emolument:
- (b) Any payment made in respect of or in relation to work done or services rendered by any public authority, local authority, Maori authority, or company, not being a company which is a non-resident entertainer:
- (c) Any payment exempted by an exemption certificate under regulation 5 of these regulations which bears the signature of the person to whom it is addressed and is produced to the person making the payment at the time when he makes the payment.

5. Exemption certificates—(1) The Commissioner may in his discretion issue to any person an exemption certificate addressed to that person specifying any payments to be made to that person during the period specified in the certificate in respect of which no tax deductions shall be made, being payments which, but for the certificate, would be withholding payments:

Provided that this subclause shall not apply with respect to any payment to any non-resident entertainer.

(2) The Commissioner may at any time cancel any exemption certificate.

(3) Not later than 7 days after the Commissioner has given notice of the cancellation of an exemption certificate to the person to whom it is addressed, that person shall return the certificate to the Commissioner at the office of the Inland Revenue Department from which the certificate was issued.

(4) No person shall alter any exemption certificate issued by the Commissioner under this regulation, or falsely pretend to be the person to whom any such certificate is addressed, or have in his possession, without lawful justification or excuse, a colourable imitation of any such certificate, or cause or attempt to cause any person to refrain from making a tax deduction by the production of any such certificate which is not for the time being in force.

6. Amounts of tax deductions—(1) Subject to the provisions of these regulations, every tax deduction from a withholding payment shall be of the amount calculated according to the amount of the payment at the appropriate rate specified in the Schedule to these regulations.

(2) Subject to the provisions of these regulations, every tax deduction from a withholding payment shall be calculated according to the gross amount of the payment, whether or not the payment consists wholly or partly of income, and whether the amount of the tax deduction relates exclusively to the income tax payable by the person receiving the payment or relates partly to that income tax and partly to income tax payable by any employee or subcontractor of that person.

(3) Where the Commissioner makes a determination under regulation 7 of these regulations that part of any withholding payment shall be regarded as expenditure incurred in the production of the payment, the tax deduction shall be calculated according to so much of the payment as remains after the subtraction therefrom of that part.

7. Expenditure incurred in the production of a withholding payment—For the purposes of these regulations, the Commissioner may from time to time determine, on such basis as he thinks fit, what amount or proportion of any specified withholding payment, or withholding payments of any specified class, shall be regarded as expenditure incurred in the production of the payment or payments, and for the purposes of these regulations every such determination shall be final and conclusive, subject to any further determination by the Commissioner. Any determination made by the Commissioner under this regulation may be from time to time varied or at any time revoked by him.

8. Tax deductions from protected payments—Every tax deduction required by the Act to be made from any withholding payment shall be made, notwithstanding that the payment may be protected against assignment or charge.

9. Where tax to be determined by amount of tax deductions—Where in any year a person has derived withholding payments, and that person would have been a pay period taxpayer if all the withholding payments derived by him in that year had been income from employment, all such payments so derived by him shall for the purposes of sections 356 and 357 of the Act (but not for the purpose of determining the amount of any tax deductions required to be made therefrom) be deemed to be income from employment.

10. Income tax liability of a non-resident entertainer to be determined exclusively and finally by the total amount of tax deductions—Where the income derived from New Zealand by a non-resident entertainer consists solely of specified payments from which tax deductions have been made in accordance with these regulations, the amount of income tax for which the non-resident entertainer is liable in respect of that income shall be determined exclusively and finally by the total amount of the tax deductions made under these regulations.

Provided that where in any case that non-resident entertainer furnishes a return of income under Part II of the Act in respect of that income, the income tax for which that non-resident entertainer is liable in respect of that income shall be determined in accordance with Part IV of the Act.

11. Non-resident entertainer liable to pay withholding tax deductions to Commissioner where tax is not deducted at source—In any case where a non-resident entertainer is in receipt of any specified payment which is subject to a tax deduction in accordance with these regulations and no tax deduction was made at the time of payment, the non-resident entertainer shall pay to the Commissioner an amount equal to the tax deduction that should have been made, not later than the 20th day of the month following the month in which the deduction should have been made, or the date of departure from New Zealand, whichever is the earlier, and any amount so paid shall be deemed to be a tax deduction from that specified payment.

12. Tax deductions from payments made by contractors to employees or subcontractors—Where a tax deduction has been made, or will be required to be made, from a withholding payment made under a contract to the contractor undertaking to do work or render services in relation to that contract, and the contractor is liable to make any payment to any employee or subcontractor of the contractor for work done or services rendered in relation to that contract, the following provisions shall apply:

(a) Subject to the provisions of paragraph (b) of this regulation, the contractor shall comply with the provisions of Part XI of the Act (including section 353 thereof) and of these regulations in respect of any tax deduction required to be made by the contractor from any payment made by him to any employee or subcontractor of the contractor for work done or services rendered in relation to that contract:

(b) Where the withholding payment relates to a shearing contract, the contractor shall not be liable to comply with section 353 (1) (a) of the Act in respect of any tax deduction made by him from any payment to any employee or subcontractor for work done or services rendered in relation to that contract, and may retain the amount of every such tax deduction. In all other respects he shall comply with the provisions of Part XI of the Act in respect of all such tax deductions, except that it shall be sufficient compliance with section 353 (1) (e) of the Act for him to deliver to the Commissioner in accordance with that paragraph all documents specified in that behalf in that paragraph other than the reconciliation statement:

(c) Where the Commissioner receives from a shearing contractor any tax deduction certificates in respect of tax deductions made in an income year from withholding payments made to the contractor in respect of any shearing contracts, or receives the amount of any tax deduction so made and not included in any tax deduction certificate—

(i) No part of the amounts of the tax deductions shown in the certificates or received as aforesaid shall be applied in accordance with section 362 of the Act in payment of any income tax payable by the contractor, or in making any refund to the contractor, until the Commissioner is satisfied that the contractor has complied with paragraphs (a) and

(b) of this regulation in respect of all tax deductions required to be made by the contractor from payments made by him to employees and subcontractors in relation to any of the shearing contracts; and

(ii) Where the Commissioner is so satisfied, the amount to be so applied as aforesaid under section 362 of the Act shall be the residue of the aggregate of the amounts of the tax deductions shown in the certificates, and received as aforesaid, after subtracting from that aggregate the total of the amounts of the tax deductions which the contractor is required to make from payments made by him to employees and subcontractors in relation to any of those shearing contracts.

13. Revocation—The Income Tax (Withholding Payments) Regulations 1975 and the Income Tax (Withholding Payments) Regulations 1975, Amendment No. 1, are hereby revoked.

SCHEDULE

TAX DEDUCTIONS FROM WITHHOLDING PAYMENTS

PART A

Class of Payment	Rate of Tax Deduction
1. Commissions or other remuneration to insurance agents or sub-agents, or to salesmen	20c per \$1.
2. Company directors' fees	35c per \$1.
3. Payments for—	
(a) Shearing:	
(b) Droving	15c per \$1.
4. Payments for agricultural work, maintenance work, development work of any of the kinds referred to in section 127 of the Act, or other work on or in connection with land used or intended to be used for farming or agriculture, being other work of the nature of any of the following, namely:	
(a) Firewood cutting or post or rail splitting, including the incidental cutting down of trees:	
(b) Grass or grass seed cutting:	
(c) Hedge cutting:	
(d) Planting trees:	
(e) Planting or cutting flax:	
(f) Threshing, chaffcutting, hay making, hay baling, or harvesting or gathering crops	15c per \$1.

SCHEDULE—*continued*

Class of Payment	Rate of Tax Deduction
5. Payments for—	
(a) Planting, sowing, or gathering potatoes or vegetables:	
(b) Forestry or bush work of any kind, including bush felling, road and tramway work, removal of timber, undergrowth cutting, burning, and clearing:	
(c) Planting or cutting flax:	
(d) Mail delivery or collection:	
(e) Transport of school children:	
(f) Milk delivery:	
(g) Refuse removal:	
(h) Caretaking or acting as watchman:	
(i) Street or road cleaning 	15c per \$1.
6. Payments for work done or services rendered (other than in, or on, or in connection with land used for farming or agriculture purposes, or a dwellinghouse or other premises used exclusively by the occupier or occupiers thereof for his or their own residential purpose), being work or services of the nature of the following, namely:	
(a) Cleaning of office, business, institutional, or other premises or any part of any such premises including windows:	
(b) Cleaning or laundering of plant, vehicles, furniture, furnishings, fittings, or equipment:	
(c) Gardening, including grass cutting and hedge cutting:	
(d) Vermin destruction:	
(e) Weed destruction 	20c per \$1.
7. Fees or other remuneration for or in relation to examining candidates for examinations, being for work or services of the nature of any of the following, namely:	
(a) Setting examination papers or questions:	
(b) Marking candidates' answers:	
(c) Examining candidates orally:	
(d) Examining candidates' practical work or performance 	35c per \$1.
8. Payments for work done or services rendered under contracts or arrangements which are wholly or substantially for the supply of labour in or in connection with the erection, extension, protection, insulation, decoration, repair, or renewal of buildings or other constructions (including the erection, extension, protection, or decoration of	

SCHEDULE—*continued*

Class of Payment	Rate of Tax Deduction
prefabricated or precut parts of buildings or other constructions) being work or services of any nature—	
(a) That customarily can form part of the work or services of a carpenter under a building contract; or	
(b) That is undertaken in connection with the fixing of roofs, the fixing of steel, the erection of fences, or the laying of concrete, bricks, blocks, tiles, slabs, or stones of any description with regard to any building or other construction (not being a construction to which clause 4 this Part applies); or	
(c) That is undertaken in connection with the hanging of wallpaper, other decorative wall coverings or furnishings, or the painting or decoration (including plastering) of the exterior or interior of any buildings or other construction; or	
(d) That is undertaken in connection with the installation of any fibrous plaster, wall-board, insulating material, interior tiles, or other interior lining, including floor tiles, carpets, or linoleums or other floor coverings of any description	20c per \$1.
9. Payments for work done or services rendered under contracts or arrangements or profit sharing agreements which are wholly or substantially for the supply of labour in or in connection with the operation or maintenance of any fishing boat required to be registered under section 5 of the Fisheries Amendment Act 1963	20c per \$1.
PART B	
1. Fees or other remuneration for or in relation to contributions (including photographs, illustrations, and cartoons) by free-lance journalists, writers, artists, or other regular or casual contributors—	
(a) To newspapers, magazines, journals, pamphlets, circulars, handbills, or other like publications:	
(b) For radio, television, theatrical, or stage productions or presentations, or other like productions or presentations	25c per \$1.
2. Fees or other remuneration for or in relation to personal attendances exhibiting or demonstrating appliances, equipment, goods, or merchandise	25c per \$1.

SCHEDULE—*continued*

Class of Payment	Rate of Tax Deduction
3. Fees or other remuneration for or in relation to modelling for the purposes of display or advertising or for art purposes, including attendances for photographing, or for or in relation to the supply of personal photographs, testimonials, recommendations, or other statements for use in advertising, or promoting the sale of appliances, equipment, goods, or merchandise, or for any other purpose	20c per \$1.
4. Specified payments to—	
(a) Resident entertainers (other than apprentice jockeys or apprentice drivers in respect of shares of riding or driving fees	20c per \$1.
(b) Non-resident entertainers	20c per \$1.
(c) Resident apprentice jockeys or resident apprentice drivers in respect of shares of riding or driving fees	15c per \$1.
5. Honoraria (including payments to Mayors of cities and boroughs and to Chairmen and members of Councils, Boards, committees, and other like bodies, and to officials of societies, clubs, and other like organisations)	35c per \$1.
6. Payments to Deputy Returning Officers, poll clerks, interpreters, ushers, and other persons engaged for—	
(a) Any election or poll which is held or conducted under the provisions of the Electoral Act 1956, or the Local Elections and Polls Act 1976, or the Licensing Act 1908, or to which any of the provisions of any of those Acts apply; or	
(b) Any election or poll held or conducted simultaneously with and in the same premises as any election or poll specified in paragraph (a) of this clause,—	
where the payment is made by the authority controlling the election or poll and is exclusively for work done or services rendered immediately before, on, or immediately after the day on which the election or poll is held or taken	15c per \$1.

PART C

1. Jurors' fees	15c per \$1.
2. Witnesses' fees	15c per \$1.

SCHEDULE—*continued*

Class of Payment	Rate of Tax Deduction
PART D	
1. Payments made to the seller of—	
(a) Greenstone (nephrite):	
(b) Eels:	
(c) Opossums:	
(d) Whitebait—	
in respect of the purchase thereof from the seller, being payments made by a purchaser, or by an auctioneer or dealer (whether acting on behalf of the seller or on behalf of the purchaser), but not including any payment—	
(i) Made to a licensed dealer; or	
(ii) Made on a sale of the goods by any person after the sale or disposal thereof by a licensed dealer; or	
(iii) Made to an auctioneer or dealer acting as agent for the seller; or	
(iv) Made in respect of goods purchased by retail in a shop	25c per \$1.
2. Payments made to the seller of any game in respect of the purchase thereof from the seller, being payments made by a purchaser, or by an auc- tioneer or dealer (whether acting on behalf of the seller or on behalf of the purchaser)	25c per \$1.

P. G. MILLEN,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations consolidate and amend the Income Tax (Withholding Payments) Regulations 1975 and the amendments thereto.

Most of the tax deductions from withholding payments have been increased.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 6 December 1979.

These regulations are administered in the Inland Revenue Department.