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**INCOME TAX (WITHHOLDING PAYMENTS)
REGULATIONS 1979, AMENDMENT NO. 11**

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 18th day of December 1996

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section NC 21 of the Income Tax Act 1994 and sections 224 and 225 of the Tax Administration Act 1994, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

ANALYSIS

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Income Tax (Withholding Payments) Regulations 1979, Amendment No. 11, and shall be read together with and deemed part of the Income Tax (Withholding Payments) Regulations 1979* (hereinafter referred to as the principal regulations).

(2) These regulations apply with respect to withholding payments made during the 1997–98 income year and subsequent years.

2. Interpretation—The principal regulations are hereby amended by revoking regulation 2, and substituting the following regulation:

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

“‘The Act’ means the Income Tax Act 1994:

“‘Associated persons’ has the same meaning as in paragraph (a) of the definition of that term in section OB 1 of the Act:

“‘Auctioneer or dealer’, in relation to a 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:

“‘Contract activity’, in relation to a non-resident contractor, means—

“(a) The performing or rendering of any work or contract service in New Zealand, being work or a contract service in connection with, or in relation to, a contract project:

“(b) The performing or rendering of any work or contract service in New Zealand, whether or not the work or contract service is carried on or carried out in connection with, or in relation to, a contract project:

“(c) The granting, providing, or supplying of the use, or the right to use, in New Zealand (whether or not in connection with or in relation to a contract project), any personal property or services of a person, being a person other than the non-resident contractor:

“‘Contract payment’, in relation to a non-resident contractor, and to a contract activity in relation to the non-resident contractor, means any payment, not being—

“(a) A payment that is a royalty within the meaning of section OB 1 of the Act; or

“(b) A cost reimbursing payment; or

“(c) A payment to which clause 8 or clause 9 of Part A of the Schedule to these regulations applies,—
made for the contract activity to the non-resident contractor, or to the non-resident contractor’s agent or other person acting on the non-resident contractor’s behalf:

“‘Contract project’, in relation to a non-resident contractor, means any undertaking, project, or scheme, being an undertaking,

*S.R. 1979/259

Amendment No. 1: (*Revoked by Act 1995, No. 25, s. 53 (3)*)

Amendment No. 2: S.R. 1980/203

Amendment No. 3: S.R. 1981/304

Amendment No. 4: S.R. 1982/266

Amendment No. 5: S.R. 1986/298

Amendment No. 6: S.R. 1988/6

Amendment No. 7: S.R. 1988/256

Amendment No. 8: S.R. 1990/30

Amendment No. 9: S.R. 1991/299

Amendment No. 10: S.R. 1992/28

project, or scheme carried on, carried out, or performed in New Zealand, that involves construction, erection, manufacture, fabrication, installation, fitting, outfitting, refitting, refurbishing, restoration, preparation, preparatory activity, commissioning, levelling, drilling, sinking, dredging, sluicing, drainage, excavation, embankment, contouring, landscaping, repair, maintenance, salvaging, enlarging, extension, reinforcing, cleaning, clearing, painting, renewal, removal, alteration, diversion, dismantling, demolition, exploring, searching, or exploitation of or in connection with or for—

“(a) Any building, erection, edifice, structure, foundation, basement, wall, fence, tower, pylon, silo, tank, or chimney:

“(b) Any petroleum production installation, and any petroleum well (whether exploratory or otherwise), gathering tank, storage tank, refinery, processing facility, or distribution facility:

“(c) Any vehicle, vessel, aircraft, or hovercraft:

“(d) Any road, motorway, railway, cableway, tramway, aerial way, yard, ramp, causeway, slipway, floating dock, wharf, jetty, loading buoy, harbour, dockyard, shipyard, canal, channel, river, stream, snowfield, skifield, aerodrome, landing strip, heliport, or helipad;

“(e) Any drainage or irrigation system:

“(f) Any system for the generation, production, storage, extraction, reticulation, conveyance, carriage, transmission, distribution, translation, or reception of electricity, water, gas, steam, telephone, telegraph, radio, or television:

“(g) Any bridge, ford, viaduct, subway, dam, reservoir, well, earthworks, pipeline, conveyor system, aqueduct, culvert, drive, shaft, mineshaft, tunnel, pit, quarry, mine, platform, or reclamation:

“(h) Any scaffolding:

“(i) Any site, being land or sea bed or subsoil, and including any airspace or water above any land, sea bed, or subsoil:

“(j) Any living or non-living natural resource:

“(k) Any plant or machinery of any kind not referred to in the preceding paragraphs of this definition:

“‘Contract service’, in relation to a non-resident contractor, means a service of any kind and, without limiting that meaning, includes any advisory, analytical, architectural, consultancy, designing, diving, drilling, engineering, inspection, management, procurement, professional, scientific, surveying, technical, or weather-forecasting service, and any service in respect of or in relation to a feasibility, financial, or marketing study or evaluation:

“‘Cost reimbursing payment’, in relation to a non-resident contractor, means any payment, made to the non-resident contractor by or on behalf of any other person (that non-resident contractor and that other person not being associated persons), to the extent (if any) that the payment constitutes reimbursement of expenditure incurred, in relation to the payment, by the non-resident contractor:

- “ ‘Double tax agreement’ has the same meaning as in section OB 1 of the Act:
- “ ‘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 such animals:
- “ ‘Income tax liability’ has the same meaning as in section OB 1 of the Act:
- “ ‘Licensed dealer’, in relation to a 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 the person 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 the person is a licensed dealer in goods of that class for the purposes of these regulations:
- “ ‘Non-resident contractor’ means any person (within the meaning of section OB 1 of the Act) who is not deemed to be resident in New Zealand within the meaning of Subpart OE of the Act and who, under a contract (not being a contract of service or apprenticeship) or an agreement or arrangement undertakes (otherwise than as an employee) any contract activity:
- “ ‘Non-resident entertainer’ means any person who is not deemed to be resident in New Zealand within the meaning of section Subpart OE 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 the 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 the first-mentioned person, during a visit to New Zealand of the first-mentioned person, in performing or participating in any specified activity:
- “ ‘PAYE rules’ has the same meaning as in section OB 1 of the Act:”
- “ ‘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 property charged against the seller:
- “ ‘Resident entertainer’ means a person who is deemed to be resident in New Zealand within the meaning of Subpart OE 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 a non-resident entertainer or resident entertainer, means any activity or performance, including performances or appearances on or for radio, television, or a 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;—

but, in relation to a non-resident entertainer, does not include any such activity or performance—

“(d) Pursuant to a cultural programme of, or partially sponsored by, an 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 outside New Zealand 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 to that person’s agent or any other person acting on the person’s behalf, being a payment paid in respect of or in relation to any services rendered or provided by the person in connection with that specified activity, whether that payment is paid as fees, remuneration, prize, or appearance money, or otherwise:

“‘Withholding payment’ means a payment that is declared by these regulations to be a withholding payment for the purposes of the PAYE rules.

“(2) For the purposes of the definition of ‘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 a person who is carrying on a business referred to in paragraph (b); and any such certificate may be revoked by the Commissioner when its holder is no longer carrying on any such business:

“(b) A certificate under paragraph (c) of the definition may be granted by the Commissioner in the Commissioner’s 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 to be withholding payments—Regulation 4 of the principal regulations is hereby amended by omitting from both subclause (1) and subclause (2) the words “Part XI of the Act”, and substituting in each case the words “the PAYE rules”.

4. Exemption certificates—The principal regulations are hereby amended by revoking regulation 5, and substituting the following regulation:

“5. (1) Subject to subclause (2), the Commissioner may in the Commissioner’s 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.

“(2) Subclause (1) of this regulation shall not apply with respect to any payment to a non-resident entertainer.

“(3) On application made in writing to the Commissioner by a non-resident contractor, the Commissioner may issue, subject to such terms and conditions as the Commissioner considers appropriate and as are specified by the Commissioner, an exemption certificate addressed to the non-resident contractor specifying that any contract payment to be made to the non-resident contractor (or to the non-resident contractor’s agent or any other person acting on the non-resident contractor’s behalf), for any contract activity specified in the certificate, is a contract payment in respect of which no tax deductions shall be made, in any case where—

“(a) The Commissioner is satisfied that any amount derived, or which may be derived, by the non-resident contractor from that contract activity is not or will not be gross income, whether by reason of any double tax agreement or for any other reason; or

“(b) The non-resident contractor gives to the Commissioner a bond or other form of security, satisfactory to the Commissioner, securing the payment on terms acceptable to the Commissioner of any income tax payable or which may become payable by the non-resident contractor on any amount derived or which may be derived by the non-resident contractor from that contract activity; or

“(c) The Commissioner is satisfied that—

“(i) The non-resident contractor has, in the period of 24 months immediately preceding the date on which the application is made, paid every amount of income tax payable by the non-resident contractor, in that period, under the Act and has in all other respects complied with the non-resident contractor’s obligations arising in that period under the Act and the Tax Administration Act 1994; and

“(ii) The non-resident contractor will, on and after that date, pay every amount of income tax payable or which may become payable by the non-resident contractor under the Act and will, in all other respects, comply with the non-resident contractor’s obligations arising under the Act and the Tax Administration Act 1994.

“(4) The Commissioner may at any time cancel an exemption certificate.

“(5) 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.

“(6) 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 their 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.”

5. Amounts of tax deductions—Regulation 6 of the principal regulations is hereby amended by revoking subclause (2), and substituting the following subclause:

“(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 liability of the person receiving the payment or relates partly to that income tax liability and partly to the income tax liability of an employee or subcontractor of the person.

“Provided that where the gross amount of the payment includes any amount of goods and services tax and the payer holds a tax invoice issued by the payee pursuant to section 24 of the Goods and Services Tax Act 1985, that amount of goods and services tax shall not be included as part of the gross amount of that payment.”

6. Special tax rate certificates—Regulation 6A of the principal regulations (as inserted by regulation 2 (1) of the Income Tax (Withholding Payments) Regulations 1979, Amendment No. 2) is hereby amended—

(a) By omitting from subclause (1) the words “, in his discretion,”:

(b) By omitting from subclause (4) the word “his”, and substituting the word “their”.

7. Expenditure incurred in production of withholding payment—Regulation 7 of the principal regulations is hereby amended by omitting both the word “he” and the word “him”, and substituting in each case the words “the Commissioner”.

8. Where tax to be determined by amount of tax deductions—The principal regulations are hereby amended by revoking regulation 9.

9. Income tax liability of non-resident entertainer to be determined exclusively and finally by total amount of tax deductions—The principal regulations are hereby amended by revoking regulation 10, and substituting the following regulation:

“10. 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 income tax liability of the non-resident entertainer is deemed to equal the total amount of the tax deductions made under these regulations.

“Provided that if in any case the non-resident entertainer furnishes a return of income under the Tax Administration Act 1994 in respect of that income, the income tax liability of the non-resident entertainer shall be determined in accordance with the Act.”

10. Tax deductions from payments made by contractors to employees or subcontractors—The principal regulations are hereby

amended by revoking regulation 12, and substituting the following regulation:

“12. 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 the contract, the following provisions shall apply:

“(a) Subject to paragraph (b) of this regulation, the contractor shall comply with the provisions of the PAYE rules and of these regulations in respect of any tax deduction required to be made by the contractor from any payment made by the contractor to any employee or subcontractor of the contractor for work done or services rendered in relation to the contract:

“(b) If the withholding payment relates to a shearing contract—

“(i) The contractor shall not be liable to comply with section NC 15 (1) (a) of the Act in respect of any tax deduction made by the contractor from any payment to any employee or subcontractor for work done or services rendered in relation to the contract, and may retain the amount of every such tax deduction; but

“(ii) In all other respects the contractor shall comply with the PAYE rules in respect of all such tax deductions, except that it shall be sufficient compliance with paragraph (g) of section NC 15 (1) of the Act for the contractor to deliver to the Commissioner in accordance with that paragraph all documents referred to 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 by the Commissioner shall be applied in accordance with section LD 1 of the Act in satisfaction of any income tax liability of 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 the contractor to employees and subcontractors in relation to any of the shearing contracts; and

“(ii) Where the Commissioner is so satisfied, the amount to be applied under section LD 1 of the Act shall be the residue of the aggregate of the amounts of the tax deductions shown in the certificates, and received by the Commissioner, 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 the contractor to employees and subcontractors in relation to any of those shearing contracts.”

11. Schedule—Part A of the Schedule to the principal regulations is hereby amended by omitting from item 4 the expression “section 127”, and substituting the expression “section DO 3 or section DZ 3”.

12. Revocations—The following regulations are hereby consequently revoked:

- (a) Regulation 3 of the Income Tax (Withholding Payments) Regulations 1979, Amendment No. 2 (S.R. 1980/203);
- (b) Regulations 2 and 4 of the Income Tax (Withholding Payments) Regulations 1979, Amendment No. 3 (S.R. 1981/304);
- (c) The Income Tax (Withholding Payments) Regulations 1979, Amendment No. 4 (S.R. 1982/266);
- (d) The Income Tax (Withholding Payments) Regulations 1979, Amendment No. 6 (S.R. 1988/6);
- (e) The Income Tax (Withholding Payments) Regulations 1979, Amendment No. 8 (S.R. 1990/30).

MARIE SHROFF,
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 amend the Income Tax (Withholding Payments) Regulations 1979 to—

- (a) Reflect the changes in nomenclature effected by the Taxation (Core Provisions) Act 1996, with its shift to the global/gross approach to the calculation of income tax liabilities; and
- (b) Update existing references to the 1976 Act to now refer to relevant provisions of the Income Tax Act 1994 and the Tax Administration Act 1994.

The amendments are not intended to affect the substance of the principal regulations.

The opportunity has also been taken to remove gender-specific and archaic language from the principal regulations, to revoke spent provisions, and to make other minor changes of a similar nature.

The amendments take effect from the 1997–98 income year.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 19 December 1996.
These regulations are administered in the Inland Revenue Department.