



**THE INCOME TAX (WITHHOLDING PAYMENTS)
REGULATIONS 1979, AMENDMENT NO. 3**

DAVID BEATTIE, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 27th day of October 1981

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL 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.

REGULATIONS

1. Title, commencement, and application—(1) These regulations may be cited as the Income Tax (Withholding Payments) Regulations 1979, Amendment No. 3, 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 shall come into force on the 1st day of January 1982.

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

*S.R. 1979/259
Amendment No. 1: S.R. 1980/191
Amendment No. 2: S.R. 1980/203

2. Interpretation—Regulation 2 (1) of the principal regulations is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Associated persons’ has the same meaning as in section 8 of the Act:

“‘Contract activity’, in relation to any 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, any contract project:

“(b) 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 any contract project), any personal property or any services of any person, being a person other than the non-resident contractor:

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

“(a) A payment that is a royalty within the meaning of section 2 of the Act:

“(b) A cost reimbursing payment:

“(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 that non-resident contractor or his agent or any other person acting on his behalf:

“‘Contract project’, in relation to any non-resident contractor, means any undertaking, project, or scheme, being an undertaking, 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, aquaduct, 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 foregoing paragraphs of this definition:

“‘Contract service’, in relation to any non-resident contractor, means any 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 any feasibility, financial, or marketing study or evaluation:

“‘Cost reimbursing payment’, in relation to any non-resident contractor, means any payment, made to that 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 that non-resident contractor:

“‘Non-resident contractor’ means any person (within the meaning of section 2 of the Act) who is not deemed to be resident in New Zealand within the meaning of Part IV 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:”.

3. Payments declared to be withholding payments—Regulation 4 (2) (b) of the principal regulations is hereby amended by adding, after the words “a non-resident entertainer”, the words “or a non-resident contractor”.

4. Exemption certificates—Regulation 5 of the principal regulations is hereby amended by inserting, after subclause (1), the following subclause:

“(1A) On application made in writing to the Commissioner by any non-resident contractor, the Commissioner may issue, subject to such terms and conditions as he considers appropriate and as are specified by him, an exemption certificate addressed to the non-resident contractor specifying that any contract payment to be made to the non-resident contractor (or to his agent or any other person acting on his 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 income derived, or which may be derived, by the non-resident contractor from that contract activity is or will be, whether by reason of any arrangement specified in an Order in Council made under section 294 of the Act or for any other reason, not subject to income tax under the Act; 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 him of any income tax payable or which may become payable under the Act by the non-resident contractor on any income derived or which may be derived by him 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 said application is so made, paid every amount of income tax payable by him, in that period, under the Act and has in all other respects complied with his obligations arising in that period under the Act; and
- “(ii) The non-resident contractor will, on and after the said date, pay every amount of income tax payable or which may become payable by him under the Act and will, in all other respects, comply with his obligations arising under the Act.”

5. Tax deductions from contract payments—The principal regulations are hereby further amended by adding to the Schedule thereto, after Part D, the following Part:

“PART E

Contract payments to non-resident contractors ... 15c 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 provide that withholding tax at the rate of 15 cents in each \$1 is to be paid on payments made to non-resident contractors in respect of certain specified activities.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 29 October 1981.

These regulations are administered in the Inland Revenue Department.