

Massey University

Tax Manual
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Tax Manual

Introduction

As an employer and GST registered entity, Massey University is subject to obligations imposed under the Income Tax Act 2007 and the Goods & Services Tax Act 1985 ("GSTA 1985"). Failure to meet these obligations exposes the University to penalties which can be imposed under the relevant Revenue legislation.

It is therefore important that the University meet its tax compliance obligations thereby ensuring penalties are not imposed for failure to meet its obligations, either as a result of oversight or uncertainty of the law.

For these reasons this manual has been prepared as a reference and guide in order that all Departments can assist the University in meeting its tax obligations thereby minimising the risk of incurring unnecessary costs in the nature of penalties.

1. PAYE/FBT

1.1 Administration Guidelines

All employees paid salary and wages will have PAYE deducted. At all times the University remains liable for any non-compliance. Allowances and reimbursements paid will be either, non-taxable if they are a reimbursing allowance or, a taxable allowance subject to PAYE. Any payments on behalf of an employee are subject to PAYE. Any non-cash benefits provided to employees will normally be a fringe benefit and subject to Fringe Benefit Tax ("FBT"). The University treats the following payments as outlined. In cases of uncertainty enquiries should be directed to:

- ▶ Deputy Vice Chancellor – People and Culture, (regarding employment contract matters).
- ▶ Chief Financial Officer.

Issues regarding FBT should be referred to the Chief Financial Officer.

1.2 Salary and Wages

The following items paid to a person in connection with their employment will be considered salary and wages and will therefore be subject to PAYE:

- ▶ Salary
- ▶ Wages
- ▶ Retirement allowances
- ▶ Holiday pay
- ▶ Sick leave
- ▶ Redundancy payment
- ▶ The market rental value of accommodation received in connection with employment
- ▶ Vouchers redeemable for cash provided in lieu of wages
- ▶ Overseas leave pay
- ▶ Overtime and bonus payments
- ▶ Paid parental leave (made under the Parental Leave and Employment Protection Act 1987)
- ▶ A payment of expenditure on account of an employee

1.3 Personal Grievance Claims/Settlements

Personal grievance claims and settlements are those arising from actions taken by employees under s 123(1)(c)(i) of the Employment Relations Act 2000 ("ERA 2000"). Payments for humiliation, loss of dignity and injury to feelings may also be paid under section 92M(1)(c) of the Human Rights Act 1993. Inland Revenue has issued binding rulings confirming payments that are genuinely and entirely for compensation for humiliation, loss of dignity, or injury to feelings are free of tax and PAYE is not required to be deducted from them.

To determine whether there is a genuine personal grievance, an inquiry should be made regarding how Massey acted and whether Massey's actions were what a fair and reasonable employer would have done in all circumstances at the time of dismissal or action.

However, payments that are in reality for lost wages or other income (such as redundancy), but labelled as being for humiliation, loss of dignity, or injury to feelings (irrespective of whether such an agreement is signed by a mediator under the ERA 2000), will be subject to PAYE.

1.4 Taxable Allowances

The following payments/allowances qualify as taxable allowances:

- ▶ Any expenditure on account of an employee where the account paid is in the name of the employee, unless the expenditure is necessarily incurred in performing an obligation required by the employee's employment.
- ▶ Any Grant in Aid payments used for Non-University expenditure or purchases which are retained by employees.
- ▶ Market rental value of accommodation provided in connection with employment.

1.5 Reimbursing Payments and Allowances – Non Taxable

The following payments/allowances qualify as non-taxable reimbursing allowances:

- ▶ Mileage reimbursements at approved rates (see Appendix II)
- ▶ Accommodation received in connection with carrying out the University's activities (sections 3.6 & 3.7)
- ▶ Eligible relocation expenditure (see section 3.4)
- ▶ Overtime meals and certain work-related meals (see section 3.5)
- ▶ Protective clothing
- ▶ Tool allowances (section 1.8)
- ▶ Grant in aid payments (section 3.2)
- ▶ Professional or academic association fees where membership of the association is:
 - ▶ An employment or occupational requirement or
 - ▶ Related to a speciality or field of employment exercised by the employee.

With the exception of eligible relocation expenses, a Determination is not required from the Commissioner of Inland Revenue to confirm the nature and amount of non-taxable allowances. Other employee related payments which are employment related and not listed above, may also qualify as being non-taxable.

However reimbursing payments and allowances not on the above list or discussed at sections 3.2 or 6.5 must be referred in the first instance to the Deputy Vice Chancellor – People and Culture, or the Chief Financial Officer.

1.6 Fringe Benefits

FBT applies to non-cash benefits provided to individuals who are or have been in receipt of PAYE income payments. PAYE income payments are those made to employees as salary and wages, and schedular payments made to independent contractors. FBT applies during the employment/contracting relationship and after it has ended.

Generally, if a fringe benefit is provided by someone other than the employer, but according to some arrangement with the employer, it will be deemed to have been provided by the employer.

Therefore benefits which are provided to employees and some independent contractors and which attract FBT include the following:

- ▶ Loans at nil or concessional rates of interest.
- ▶ Private use or availability for private use of motor vehicles.
- ▶ Any other benefit or gift to an employee paid for by the University.

- ▶ Any expenditure on account of an employee where the account paid is in the name of the University and the expenditure has not been incurred in carrying out the University's activities.
- ▶ Vouchers not redeemable for cash and short-term charge facilities provided in lieu of wages.
- ▶ Insurance premiums on life, personal accident or sickness insurance policies.
- ▶ Payment of Koru Club subscriptions for the benefit of employees where travel is not work-related.
- ▶ Benefits to employees arising from frequent flyer schemes where the University has entered into an arrangement with the scheme's promoter. (Note that FBT will not arise where the employee joins a scheme in his or her own capacity.)
- ▶ Provision of a car park to an employee on land not owned or leased by the employer as part of business premises. Car parks provided on Massey University grounds will not be subject to FBT.
- ▶ Payment of rental charges relating to telephones provided by Massey University to Residential Assistants in the course of their employment will not be subject to FBT.
- ▶ Some Koha received in Goods.

It is not University policy to meet the travel costs and expenses of an employee's spouse and/or children for short term absences (e.g., overseas conferences, etc.) or overseas leave expenses for employees' spouses and/or children. However, where these costs are met by the University, FBT will not apply if the value of the travel does not exceed the amount that would have been provided as a tax-free allowance to the employee had the employee travelled home instead.

1.7 Alternate Rates of FBT

Massey has the option of using the FBT single rate or applying the FBT alternate rate calculation rules to the extent that benefits can be attributed to individual employees. As at the date of this manual, Massey adopts the FBT single rate.

The FBT single rate of 49.25% reflects the top personal tax rate (equating to 33% on an after tax basis).

If Massey adopts the alternate rate method of calculation, Massey will pay FBT at the alternate rate of 43% for the first three quarters. In the final quarter, Massey will be required to pay FBT using the alternate rate calculation. The alternate rate calculation requires Massey to attribute certain benefits to the individual employee to whom the benefit is provided or granted. FBT is payable on these benefits at progressive tax rates. Non-attributed benefits (e.g. pooled motor vehicles) are taxed at a flat rate of 42.86%.

1.8 FBT Exemption for Unclassified Benefits

An exemption from FBT is available in respect of unclassified benefits provided to an employee as long as the aggregate taxable value of the benefits provided to that particular employee does not exceed \$300 per quarter, and the total value of benefits provided by the University to all employees for the last four quarters does not exceed \$22,500.

This exemption does not apply in respect of the following benefits and consequently they are not required to be taken into account when determining the applicability of this exemption (i.e. the \$300 and \$22,500 thresholds):

- ▶ Private use or availability for private use of motor vehicles.
- ▶ Loans to employees.
- ▶ Subsidised transport provided by employers whose business consists of transportation.
- ▶ Contribution to any fund established for the benefit of the employees of any employer or of the members of any incorporated society or for the benefit of surviving spouses and dependants of any

deceased employees of any employer or of any deceased members of any incorporated society, and approved for the time being by the Commissioner.

- ▶ Insurance premiums on certain policies of life insurance, pension insurance and personal accident or sickness insurance or contributions to an insurance fund of a friendly society.

The private use of an employer owned or leased business tool, such as a cellphone or laptop, is exempt from FBT where the tool is provided mainly for business purposes. The GST-inclusive cost price of such tools must not exceed \$5,000.

1.9 FBT Exemption for Benefits Provided “On Premises”

Benefits (other than free, discounted or subsidised travel, accommodation or clothing) used or consumed by an employee on the premises of an employer or another company in the same group of companies as the employer are exempt from FBT.

Examples of benefits that fall within the “on premises” exemption include:

- ▶ Flu vaccinations
- ▶ Tea and coffee
- ▶ Education/training provided to staff
- ▶ Car parks
- ▶ Childcare services

As discussed above, the “on premises” exemption includes instances where an employer provides car parks or child care services to employees if the car parks are part of, or the childcare services are provided on, the employer’s premises.

The critical issue that arises in respect of the FBT treatment of benefits provided “on premises” is what constitutes ‘employer premises’ for the purposes of the exemption. There is no definition of the phrase “premises of the employer” in the Act.

Inland Revenue’s public ruling (“BR Pub 15/11”) clarifies that the premises of an employer will not usually include a car park that an employer is licenced to use, unless the employer can show that they have a substantially exclusive right to use the car park.

For example, if Massey has employees who use parking facilities provided by a nearby commercial car park and has a licence agreement with the proprietor to use the whole top floor of the car park, no FBT is payable in respect of the parking on the top floor. For the exemption to apply, Massey must have a substantially exclusive right to use the car park and the car park proprietor must only retain a minimal degree of control over the floor.

The ruling also confirms that the FBT exemption continues to apply to a car park provided to an employee where the car park is on land or in a building owned or leased by the employer.

For example, if Massey provides its employees with car parks on their premises (i.e., land owned by Massey) the cost of the car parks is not subject to FBT. Also, if Massey provides car parks to their employees on land leased by Massey, the cost would not be subject to FBT provided Massey has an exclusive right to occupy the leased property.

With respect to the free bus service in Manawatu that is available to staff, FBT will not apply on the basis that the free buses are not provided by Massey University or under an arrangement entered into between Massey University and the bus operators.

1.10 FBT and Motor Vehicles

A fringe benefit arises from the provision of a motor vehicle by an employer to an employee for:

- ▶ Private use; or
- ▶ Availability for private use.

"Private use" includes travel by any person (i.e., the employee, their family, friends, etc) to or from their home and any other travel conferring a private benefit on the person (see TIB Vol 16:10 (November 2004) Travel by Motor Vehicle Between Home and Work – Deductibility of Expenditure and FBT Implications, which contains guidelines that the Commissioner considers relevant in determining whether travel between home and work is work-related or undertaken for business reasons for deductibility and FBT purposes).

For example, where an employee takes a pool vehicle home to enable the employee to travel on business early the next day, this will give rise to a fringe benefit tax liability for the day the vehicle is taken home (irrespective of whether the employee's home is en route to the destination). The day the vehicle is used for business travel will not attract fringe benefit tax provided the vehicle is not taken home by the employee that day.

A motor vehicle will not be available for private use on any day, when:

- ▶ An employee attends an emergency call;
- ▶ An employee is absent from home on business; or
- ▶ The vehicle is a work-related vehicle.

A motor vehicle is a work-related vehicle on a particular day if it:

- ▶ Is not a motor car;
- ▶ Has Massey University's name or logo prominently and permanently displayed on the exterior of the motor vehicle (where the work-related vehicle is rented from any person, either the company name or logo of that person or Massey University must be similarly displayed); and
- ▶ Is not available for the employee's private use, except for travel to or from their home that is necessary in and as a condition of their employment or other travel in the course of their employment incidental to the business use.

A motor car is one designed principally for the carriage of passengers, but does not include taxi cabs or mini-buses. Inland Revenue accepts that if the rear seats are removed from a station wagon or are welded down, it may be classified as a work-related vehicle. Extra cab and double cab utilities can also be work-related vehicles.

IRD's Interpretation Statement IS 17/07 – Fringe Benefit Tax – Motor Vehicles outlines the IRD's views on the FBT treatment of certain scenarios. In particular, where a motor vehicle provided to an employee is left at the airport while the employee is overseas on holiday. The IRD's position is that the vehicle is still available for the employee's use and subject to FBT irrespective of the fact the employee cannot use it while they are overseas. The employee's actions have resulted in them being unable to access the vehicle while they are on holiday and does not change the fact that the employer made the vehicle available to the employee for private use. However, where the car is left at the airport while the employee is on a business trip, there will be no FBT liability.

If the employee is provided with a utility vehicle with a Massey logo permanently affixed which is available for private use after an employee has returned home, the vehicle will not be a work-related vehicle on that day and therefore will give rise to a taxable benefit on that day. If Massey allows private use at weekends then a liability to FBT would arise on those days.

1.11 Taxable value of fringe benefit arising from motor vehicle

The value of the benefit is calculated according to a formula set out in the ITA 2007. Where FBT is calculated on a quarterly basis the value of the benefit is equal to:

$$(Y \times Z) / 90$$

where:

- Y = Number of days in the quarter on which the motor vehicle was available for the private use or enjoyment of the employee, assuming a maximum of 90 days per quarter;
- Z = Either the cost or tax value (being the GST-inclusive tax book value at the beginning of the relevant income year)

If the cost option is applied, Z is deemed to be 5% of the cost of the vehicle. If the tax book value method is applied, Z is deemed to be 9% of the tax value of the vehicle (i.e. the value recorded in the financial accounts).

Where the value of the benefit is calculated on an annual basis, it is equal to:

$$(Y \times Z) / 365$$

where:

- Y = Number of days in the tax year on which the motor vehicle was available for private use or enjoyment of the employee;
- Z = 20% of the cost price or 36% of the tax book value.

The cost price of the vehicle includes the purchase price of the vehicle (GST inclusive). Also included in the cost price are any extras attached or fitted to the vehicle, such as a radio or towbar, and the costs of CNG or LPG conversion, the cost of the initial registration and licence plate fees and the cost of transporting the vehicle. All amounts are GST inclusive [see Public Ruling BR PUB09/08: Cost Price of the Motor Vehicle – Meaning of the Term for Fringe Benefit Tax (FBT) Purposes].

Where a pool of cars is available for the private use of an employee, the value of the fringe benefit is ascertained according to the use made of the different vehicles:

- ▶ Where the same vehicle is primarily used by one employee, the value of the benefit is determined on that vehicle.
- ▶ Where the above does not apply, the value of the benefit is determined on the basis of the most valuable vehicle the employee uses.

Election of the commencement of a 24-hours period

For the purposes of calculating FBT on motor vehicles, a “day” is a 24-hour period starting from the default time of midnight or a time in the day chosen by Massey. To elect a start time other than midnight, the start time elected must be written on an FBT return.

The election will normally apply for a minimum period of two income years unless circumstances have changed in a way that:

- ▶ Is more than minor
- ▶ The starting time is no longer relevant to the business of Massey

The start time of the 24-hour period chosen by Massey is midnight.

1.12 FBT Records for Motor Vehicles

The records Inland Revenue require to be kept are summarised as follows:

- ▶ Invoice regarding purchase price of vehicle
- ▶ Invoices for any fitted extras
- ▶ Records of emergency calls
- ▶ Records of regular absences from home of employee

Work Related Vehicle

Vehicle not available for private use or enjoyment

- ▶ Copy of advice to employee that vehicle is not available for private use other than travel from home to work or incidental travel undertaken in the course of employment
- ▶ Record of periodic checks undertaken at least quarterly by employer to ensure no private use of vehicle
- ▶ Description of vehicle to establish that it can qualify as a work related vehicle

Vehicle available for some private use

- ▶ Copy of advice to employee stating the days on which the vehicle is available for private use
- ▶ Record identifying the days used for private travel
- ▶ Record of periodic checks
- ▶ Records to substantiate the use of the vehicle
 - i On an emergency call or
 - ii By an employee regularly absent from home for 24 hours or more or
 - iii Available for private use

Not a Work Related Vehicle

Vehicle not available for private

- ▶ Copy of advice to employee stating vehicle is not available for any private use
- ▶ Written record of checks carried out at least quarterly on employers garaging facility to ensure vehicle is not taken home

Vehicle available for some private use

- ▶ Copy of advice to employee stating the days on which the vehicle is not available for any private use
- ▶ Record identifying the days on which the vehicle is used for business and private purposes
- ▶ Record of periodic checks by the employer to confirm vehicle is not used for any private use on prohibited days

1.13 FBT on Eye Care

Where the University incurs and pays expenditure in relation to eye care, the expenditure will be subject to FBT. However, any portion of the expenditure that relates to an employee undergoing an eye test will not be subject to FBT to the extent:

- ▶ It relates to the employee's health or safety and
- ▶ Is aimed at hazard management in the workplace as contemplated in the Health and Safety in Employment Act 1992 and
- ▶ Is aimed at managing risks to health and safety in the workplace as provided under the Health and Safety at Work Act 2015 and
- ▶ Would be excluded from being a fringe benefit if provided on the employer's premises.

Inland Revenue's view is that the FBT health and safety exemption does not apply to expenditure that relates to eyewear.

1.14 Residential Assistants

The University employs people as Residential Assistants to the University Halls of residence. In return for the duties performed the University pays the Residential Assistants an hourly rate from which PAYE is deducted. The University also provides the Residential Assistants with accommodation for which the University charges a market rental. The University deducts the market rental of the accommodation provided from the net after tax amount payable to Residential Assistants.

Where the net after tax amount paid to Residential Assistants is not sufficient to meet the rent due, an invoice is generated and issued to the Residential Assistants for the unpaid amount.

1.15 Koru Club Membership

Payment of Koru Club subscriptions for staff members will not be subject to FBT provided the memberships are not used in connection with private, non work-related travel.

1.16 Reimbursements and Honoraria Paid to Volunteers

Reimbursement payments to cover actual expenses incurred by volunteers undertaking a voluntary activity are exempt income of the volunteer.

The following criteria must be met by the recipient in order for the payment to be exempt income:

- ▶ The person freely undertakes an activity in New Zealand:
 - i Chosen either by themselves or a group of which they are a member and
 - ii That provides a benefit to another person and
 - iii For which there is no purpose or intention of private pecuniary profit for the person
- ▶ The reimbursement must relate to actual expenses or a reasonable estimate of the amount of expenditure likely to be incurred by the recipient of the payment.

If Massey makes a combined payment to a volunteer that consists partly of a reimbursement and partly of honorarium, the portion identified as reimbursement can be treated as exempt income and not subject to withholding tax. The remainder is a schedular payment and subject to withholding tax.

Payments of an amount in money's worth, such as vouchers, may also be taxable income where they consist only partly a reimbursement of expenses. Where an amount (or part of an amount) is taxable, withholding tax will need to be calculated on a gross up basis.

As a general rule, where vouchers worth \$25-\$40 are provided in respect of a full day's work, the vouchers should be treated as a reasonable estimate of the amount of expenditure likely to be incurred by the volunteer (and are therefore exempt income of the volunteer).

Where the research activity is carried out in which survey participants (who may for example spend 20 minutes answering questions) are provided with goodies or vouchers, with no expectation of receiving a reward, the provision of vouchers should be seen as a gift.

2. Independent Contractor vs Employee

2.1 Administration Guidelines

The University pays for services provided by employees and independent contractors. The tax status of such payments differs and it is necessary to distinguish between the two. In making this distinction it is important to apply the tests outlined below according to the facts in each particular set of circumstances. The IRD's interpretation guideline (IG 16/01) is intended to help taxpayers determine their employment status correctly. A copy of the latest interpretation guideline is attached as Appendix VIII.

It may be possible that not all elements of a particular test will be present. Therefore a decision must be made based on the overall circumstances. However the general emphasis is on whether the person to be engaged is carrying on business on their own account, what degree of control is or will be exercised by the University over the person's activities, and the true intention of the parties as recorded in the engagement agreement or contract.

This is an important matter which can impact on the University in terms of PAYE or withholding tax obligations. Therefore, prospective contracts must be constructed correctly to ensure the University's compliance functions are fulfilled. In some limited circumstances independent contractors trading as individuals (i.e., sole proprietors) or partnerships may not be subject to withholding tax because the nature of the services they provide is not listed in Schedule 4 of the Income Tax Act 2007. In those instances, a deduction of withholding tax is not required from payments made to them by the University. However, please note that from 1 April 2017 these independent contractors can opt to have tax deducted from their payments.

Circumstances where the matter is not clear should be referred in the first instance to the Manager - Remuneration and Reporting, or the Chief Financial Officer. The Payments Supervisor and Payments Office staff will actively enforce compliance on this matter and where the circumstances are not made clear withholding tax will be deducted.

2.2 An employee is a person where the University

- ▶ Controls:
 - ▶ What the person does
 - ▶ How the person does it
 - ▶ Where the person does it
- ▶ Provides sick leave
- ▶ Provides annual leave / holiday pay
- ▶ Pays a regular salary or hourly wages
- ▶ Includes casual employees

The employee has a "Contract of Service".

2.3 An Independent contractor is a person who

- ▶ Is not supervised by the University
- ▶ Is not part of the formal organisational structure of the University
- ▶ Is not paid a salary

- ▶ Is generally paid on a monthly invoice, or at the completion of an assignment or contract
- ▶ Provides their own equipment
- ▶ Is personally liable to the University for substandard work
- ▶ Is not paid holiday pay or sick leave
- ▶ Is not forbidden to work for people other than the University
- ▶ Can be an individual, partnership, trust or company

The Independent Contractor has a "Contract for Service".

2.4 Taxation Consequences: Employee

PAYE is deducted from the employee's salary or wages. FBT is paid on non-cash benefits provided to the employee.

2.5 Taxation Consequences: Independent Contractors

The independent contractor (refer to section 2.2) gives the University an IR330C Tax Code Declaration or a Certificate of Exemption. Withholding tax must normally be deducted from schedular payments (see Appendix I) made to independent contractors except when:

- ▶ A Certificate of Exemption is provided or
- ▶ A Tailored Tax Rate Certificate is provided or
- ▶ The contractor is a New Zealand resident limited liability company (other than an agricultural, horticultural or viticultural company) or
- ▶ The contractor is a public, local or Maori Authority.

Certificates of Exemption and Tailored Tax Rate Certificates must be sighted and copies held by the University before payments are made to independent contractors.

From 1 April 2017, independent contractors can elect to use the standard withholding rate for their type of work (refer to Appendix I) or pick their own rate provided it is not less than 10% (or 15% if they have a temporary entrance class visa). Independent contractors receiving non-schedular payments can also voluntarily choose to have tax deducted if agreed between payee and payer.

All independent contractors must submit invoices, and if the independent contractor is registered for GST they must provide a GST Tax Invoice. The University requires all independent contractors to confirm whether they are registered for GST or not.

The supply by a contractor of a GST Tax Invoice does not negate the need for an IR330C, an Exemption Certificate or Tailored Tax Rate Certificate.

FBT is payable by the University on benefits provided to independent contractors who are subject to the withholding payments rules (except where the contractors are non-resident contractors or where a contractor has elected to treat a non-schedular payment as a voluntary schedular payment).

In the case of New Zealand resident practising professionals and consultants who provide services to the University, the need to withhold tax will depend on the type of services and the channel through which they are provided.

For example, where a registered psychologist provides counselling services to the University, the payment will not be subject to withholding tax. Where, on the other hand, the same psychologist is paid to set or mark examinations, the payment will be subject to withholding tax.

Note that all services provided by non-resident practising professionals and consultants will be subject to withholding tax. Conversely, where the service provider is not an individual, but a New Zealand resident limited liability company, payments will not be subject to withholding tax unless the company is an agricultural, horticultural or viticultural company or voluntarily elects to treat payments as schedular payments.

Facilitators used by the University are independent contractors and not employees; therefore PAYE does not need to be accounted for. Withholding tax is not required to be deducted from payments made by the University to the Facilitators for the particular services they perform (provided they are New Zealand residents) unless the Facilitators elect to have withholding tax withheld.

2.6 Payments made to Contractors who are also Employees

Where Massey makes payments to independent contractors who are also employees of the University in a different capacity, there is no obligation to deduct PAYE from the contract payments. Withholding tax may need to be deducted depending on the type of services provided under the contracting relationship.

If the payments do not relate to the employment of the individual and are not for independent contracts of a type included in Appendix I (Schedule 4 of the ITA 2007), Massey will not be under obligation to make any withholding deductions from these payments (PAYE or otherwise). However, the individual can opt to have tax withheld by completing an IR330C.

Because of the existing employment relationship, Massey should make it very certain that the individual is, in fact, acting as an independent contractor (see Appendix VIII) when acting in the separate capacity before making payments without deduction of PAYE (as opposed to withholding tax deductions or no deductions at all).

2.7 Home Stay Payments

The University arranges home stays for groups attending the University short term.

Payments made by the University to home stay providers are not subject to PAYE or withholding tax.

3. Employees

3.1 Administration Guidelines

All Departments with responsibility for making the following payments are responsible for compliance in regard to:

- ▶ Deductions for PAYE (where required)
- ▶ Ensuring invoice requirements are met

All enquiries regarding compliance requirements and responsibilities should be directed to the Manager – Remuneration and Reporting, or the Chief Financial Officer (invoices).

3.2 Travel Reimbursements and Grants in Aid for Travel

University Expenditure

The following travel reimbursements and Grant in Aid payments will be treated as University expenditure and not taxable to the employee provided that the travel is for the benefit of the University.

- Travel to
- University Conferences
 - Overseas Lectures
 - Overseas Research and Overseas Leave

Travel on University related matters.

Salary and Wages

The following Grant in Aid payments will be treated as salary and wages and subject to PAYE:

- ▶ Purchases by the employee which are retained by the employee such as books, computer software, etc.
- ▶ It is not University policy to apply Grant in Aid payments to the costs of private travel and accommodation for a spouse or other family member accompanying an employee, or for accommodation and travel expenditure for a holiday taken by an employee in conjunction with University travel. However, where this does occur, PAYE must be deducted from the Grant in Aid payment(s).

All Grant in Aid payments where the invoices are in the name of the employee will be treated as salary and wages unless substantiated as University expenditure. Receipts are also necessary for GST purposes (see section 10.2 regarding GST claims on such amounts).

3.3 Staff Courses

University staff complete educational courses at the University which are related to their particular field of employment. No tuition fees are paid by staff for such courses. The value of such courses is not subject to PAYE or FBT.

If the study were not primarily for the benefit of the University as an employer the waiving of any tuition fees will give rise to a fringe benefit, however where the benefit is supplied on the University premises an exemption from FBT is available.

3.4 Relocation Expenses

Work-related relocation payments for new and existing employees are exempt from income tax. Work-related relocation means a relocation of the place where an employee lives that is required:

- a. because the employee's existing home is not within reasonable travelling distance of the new workplace; and
- b. as a result of the employee:
 - i Taking up new employment with a new employer or
 - ii Taking up new duties at a new location for an existing employer or
 - iii Continuing in the current job at a new location with an existing employer

However, there is an exemption from the distance test. Where an employee's accommodation forms an integral part of their work, the requirement for an employee's workplace to be beyond reasonable travelling distance of their residence does not apply.

The income tax exemption is limited to the actual cost incurred by the employee in relocating.

The exemption applies only to expenditure incurred for the period from the start of the income year in which the employee relocates or undertakes work at the new location to the end of the next income year. An exception to the time limit exists where a temporary move by an employee has not been treated as a work-related location.

Determination DET 09/04 sets out the list of eligible relocation expenses which is included in Appendix X.

Expenditure which relates to the cost of accommodation or the value of employer-provided accommodation once the employee has arrived in the new location will be exempt for up to three months after the employee's arrival. This is irrespective of whether a home is being maintained by the employee elsewhere. Furthermore, the reimbursement of utility and maintenance costs for duplicate housing will be exempt from income tax for up to 12 months but only if despite reasonable efforts the house is unable to be sold or rented, or where for example, the relocation is temporary and the house is unable to be rented.

The Commissioner of Inland Revenue has acknowledged that the new specific provisions for work-related relocation payments do not preclude application of general reimbursement provisions if particular items of expenditure do not fall within the list of eligible relocation expenses.

3.5 Overtime meals and certain work-related meals

Overtime meals

Overtime meal allowances are exempt from income tax if:

- ▶ The employee has worked at least 2 hours' overtime on the day of the meal and
- ▶ The employee's employment contract specifies that the employee is eligible for a payment in relation to overtime hours worked or
- ▶ The employer has an established policy or practice of paying an overtime meal allowance.

The amount paid must reflect actual expenditure incurred by the employee with documentation required for amounts over \$20 per meal or a reasonable estimate of the expected costs likely to be incurred.

Overtime for a person and a day is defined as time worked for an employer on the day beyond the person's ordinary hours of work as set out in their employment agreement.

Work-related meals

Rules regarding the taxation of work-related meals have been in place since 1 April 2015.

Expenditure that Massey incurs for or on behalf of an employee (including a reimbursing payment or meal allowance) for a "meal" is exempt income of the employee when their employment duties require them to work away from their employer's workplace.

A meal includes:

- (a) Food and drink consumed as part of a working meal arranged as part of or as an alternative to a formal meeting for business discussions.
- (b) Food and drink that the employee consumes at a conference or training course.
- (c) Light refreshments provided for the employee if their employment duties require them to be away from their employment base for most of the day and the employer would normally provide refreshments to the employee on the day and it is not practicable for the employer to provide refreshments on that day.
- (d) Food and drink that the employee consumes when their employment duties require them to work away from their employer's workplace.

There is no time limit with respect to expenditure on meals described in paragraphs (a) to (c) above. However, for all other meals the exemption covers the period from the date the employee starts working away from their employer's work place until the date the employee returns, up to a maximum time limit of three months.

Meal allowances and reimbursements will be tax-free where the employee works away from their normal workplace, provided each period of absence does not exceed 3 months.

3.6 Tax Exempt Accommodation

Accommodation provided by employers – the general position

Accommodation provided by an employer in connection with employment is generally income of the employee and subject to PAYE unless an exemption applies.

Accommodation includes:

- ▶ Board or lodging.
- ▶ The use of a house or living premises, or the use of part of a house or living premises, whether permanent or temporary.

However, accommodation does not include:

- ▶ A berth, room, or other lodging provided on a mobile workplace, for example, a ship, a truck, an oil rig, or other similar workplace.
- ▶ A station in Antarctica.
- ▶ A room or lodging that is provided for a shift worker who is required in the performance of their employment duties periodically to sleep at their workplace when the accommodation is provided only for the duration of the performance of those duties.
- ▶ The use of a room or other dwelling provided at a remote location outside New Zealand when a person's employment duties require them to work at the location for a period and also require them to be absent from the location for a period.

The value of accommodation

Where accommodation is provided to an employee in connection with their employment, the value of the accommodation is income of the employee. The value of the accommodation is the market rental of the accommodation.

The IRD's Commissioner's statement CS 16/02 - Determining "Market Rental Value" of Employer-Provided Accommodation outlines the factors the Commissioner will take into account when determining market rental value. These include:

- ▶ The location of the accommodation, taking into account aspects such as its desirability, access to amenities (such as transport, shopping etc.), relative building values and security.
- ▶ The specific functional characteristics of the particular accommodation, such as the number of bedrooms, overall size, availability of parking, laundry facilities etc., and the quality of the build.
- ▶ The overall, relative, condition of the accommodation, including whether it is rundown or, conversely, a luxury or high quality dwelling.
- ▶ The ease of travel to and from places of work, schools, shopping etc., including the availability of public transport.
- ▶ Restrictions on use of the accommodation, or access to it, where such restrictions substantially inhibit the rights of use that would normally be available to a lessee. The Commissioner considers it unlikely that minor, or reasonable, restrictions, such as in respect of pets or smoking, would have a more than de minimis effect on the market rental value of accommodation, if at all.

Estimating the market rental value of employer-provided accommodation involves a process. Whilst absolute accuracy is not expected, it will be necessary to show that a reasonable and appropriate process has been followed, and the factors taken into account have been documented.

Where an accommodation allowance is paid to an employee in connection with their employment, the value of the allowance is income of the employee. The value of the allowance is the amount of the allowance paid to the employee.

Where an employer pays an amount towards the provision of accommodation for an employee in connection with their employment, either as expenditure on account of an employee or as a reimbursement, the amount paid is income of the employee.

However, the value of accommodation provided to an employee can be adjusted in the following ways:

- ▶ Where more than one employee shares the accommodation, the value can be apportioned equally between the number of people sharing the accommodation or on some other reasonable basis agreed between the employees and the employer.
- ▶ When the employee has contributed towards the cost of the accommodation, the value of the accommodation provided may be reduced by the amount of the contribution (this may also be used to adjust the value of an accommodation allowance or a payment made by an employer towards accommodation)
- ▶ Where part of the accommodation provided is used by the employee wholly or mainly for work purposes relating to their employment, the value of the accommodation may be apportioned between business and private use (this may also be used to adjust the value of an accommodation allowance or a payment made by an employer towards accommodation).

Where the accommodation is provided at or near an overseas work location, the value of the accommodation is the relevant market rental value of accommodation in New Zealand, taking into consideration:

- ▶ The location where the person would be likely to work for their employer in New Zealand and
- ▶ The equivalent accommodation in New Zealand that the person would be likely to occupy and
- ▶ The average or median market rental value in the vicinity of where the person would be likely to work for their employer in New Zealand.

However, if the value of the accommodation in the overseas location is less than the New Zealand equivalent market rental value, the overseas value must be used.

If the location where the person would be likely to work for their employer in New Zealand is uncertain then the relevant market rental value is taken as either the average or median market rental value across the whole of New Zealand.

Exemption: Out-of-town secondments and projects

Employer-provided accommodation or an accommodation payment provided because an employee needs to work at another work location that is not within reasonable daily travelling distance of their home (“a distant workplace”) is tax exempt provided the following conditions are met:

- ▶ The employer expects at the start of the secondment that the employee's secondment to that work location will be for a period of two years or less, in which case the payment will be exempt for up to two years or
- ▶ The move is to work on a project of limited duration whose principal purpose is to create, build, develop, restore, replace or demolish a capital asset and which is carried out under a contract between an employer and a non-associated party. The employee's involvement in the project must be exclusive (barring incidental activities), and from the outset there must be clear start and end dates and the employer must expect that it will last no more than three years. In this case the maximum exemption period is for up to three years.

However, the payment or the employer-provided accommodation will cease to be tax-exempt before the respective maximum periods of two or three years if any of the following occur:

- ▶ The employer pays the employee's costs associated with buying a house in or near the new work location, as an eligible relocation expense that is exempt income of the employee
- ▶ There is a change in the employer's expectation such that the employee is expected to be at the new location for more than two years or three years (as applicable) or
- ▶ The employee's involvement in the secondment or project comes to an end before the maximum time is up

There are also particular conditions to be met with respect to new employees going on out-of-town secondments.

Extensions to the maximum time periods may be available in exceptional circumstances.

Employees with multiple workplaces

When an employee has to work at more than one workplace (excluding a home office) on an ongoing basis, employer-provided accommodation or accommodation payments in relation to a distant workplace are tax-exempt without an upper time limit.

The multiple workplace rule can also apply when an employee is sent on a short-term business trip to another location. In these circumstances the employee will continue to have ongoing duties at their normal place of work while they are working at the other work location during the business trip.

Meetings, conferences and training courses

When an employee needs to attend a work-related meeting, conference or training course that requires at least an overnight stay, employer-provided accommodation or accommodation payments are tax-exempt without an upper time limit.

While the need for accommodation would normally arise because the work-related meeting, conference or training course is beyond reasonable daily traveling distance from the employee's home, this need not be the case. Some courses may be held locally but may require employees to stay overnight for reasons such as networking and team-building.

There are exclusions to the above exemptions where employees are entitled to choose between greater employment income or employer-provided accommodation / accommodation payments.

3.7 Subsidised and Free Accommodation in University Dwellings

Subsidised or free accommodation provided to University employees

Subsidised or free accommodation provided to University employees (including tutors and deputy wardens) residing in University dwellings (e.g., residential supervisors, farm employees, etc.) is salary or wages and the market rental value of the accommodation provided is subject to PAYE to the extent that the amount is not exempt income (refer to section 3.6).

Where the University pays an accommodation allowance to employees, this amount will be taxable income and subject to PAYE.

Students paid for Work by Free Board

Some students are given free board or concessionary board in return for supervising or acting as a Deputy Warden for the hostel they are staying in.

The market rental value of the board is salary or wages and subject to PAYE to the extent that the amount is not exempt income (refer to section 3.6).

3.8 Tutors

Any students paid as Tutors are employees, and PAYE is to be deducted from the payments.

3.9 Retirement/Redundancy and Other Lump Sum Payments

Retirement, redundancy and other similar lump sum payments made by the university are subject to PAYE at the extra pay rate. Except for retirement and redundancy payments, lump sum payments must also have the ACC earners' levy and earners' account residual levy deducted from them at the rate of \$1.39 per \$100 (GST inclusive) from 1 April 2016 (formerly \$1.45 per \$100). The maximum ACC levy payable is updated annually and takes effect from 1 April.

The extra pay rates effective 1 October 2010 are:

- ▶ 10.5 c per \$1 when the total of the extra pay and the annualised value of all PAYE income payments (other than extra pays) paid to the employee in the previous four weeks is less than \$14,000.
- ▶ 17.5 c per \$1 when the total of the extra pay and the annualised value of all PAYE income payments (other than extra pays) paid to the employee in the previous four weeks is between \$14,001 and \$48,000.
- ▶ 30 c per \$1 when the total of the extra pay and the annualised value of all PAYE income payments (other than extra pays) paid to the employee in the previous four weeks is between \$48,001 and \$70,000.
- ▶ 33 c per \$1 when either:
 - ▶ The total of the extra pay and the annualised value of all PAYE income payments (other than extra pays) paid to the employee in the previous four weeks is greater than \$70,000, but less than the ACC earners' levy maximum threshold of \$128,470 from 1 April 2019 (previously \$126,286 from 1 April 2018) or
 - ▶ The employee has elected in a tax code declaration that a basic tax deduction rate of 33% apply to extra pay
 - ▶ Extra pays are also subject to Kiwisaver contribution requirements and ESCT accordingly (except for retirement and redundancy payments).

In situations where employees are invited to express an interest in either retiring or resigning, any gratuity payments should be connected to the point when the employee actually retires or ceases employment.

Where an employee is to be paid a lump sum gratuity payment on their retirement or cessation of employment, and payment of the lump sum is deferred to a subsequent tax year to minimise tax, this may be considered a tax avoidance arrangement.

Examples

Where a staff member is on paid leave (e.g. annual leave) from 1 January until 1 April, retires on 1 April and is paid a gratuity on the date of retirement (1 April), the gratuity will be taxable in the tax year in which the payment is made.

However, where the employee retired or ceased employment on an earlier date and the paid leave is simply a portion of the lump sum gratuity recharacterised as 'leave' up to the commencement of the new tax year at which point the remainder of the lump sum gratuity is paid in full, this is likely to be considered to be a tax avoidance arrangement.

Similarly, where Massey allows an employee to take leave without pay until 1 April, retires on 1 April and is paid a gratuity at that point, this may also be considered a tax avoidance arrangement, if the employee has in reality retired or ceased employment prior to 1 April and the leave without pay is simply an arrangement to defer payment of the gratuity to 1 April.

3.10 Overseas Leave

University academic staff go on approved overseas leave.

The University may pay for airfares and other travel accommodation and sundry expenses incurred by the staff member concerned provided the travel is for the benefit of the University.

To the extent that the expenditure is business related, reimbursement will be non-taxable to the employee provided supporting documentation is provided.

Where the reimbursement is for non-business expenditure or supporting documentation is not provided the expenditure will be treated as salary and wages and PAYE must be deducted.

Please also note that any reimbursements will not qualify for GST deductions unless the invoices concerned are in the name of the University.

It is not University policy to meet the costs of spouses and children accompanying employees on overseas leave. Refer sections 1.6 and 3.2 where this occurs.

Any reimbursement of overseas leave related expenses where the overseas leave is not a condition of the individual's employment will be treated as salary or wages and PAYE deducted.

3.11 Koha

The fact that a payment is called "koha" does not confer any particular tax status or exemption. Since the term "koha" can be used in a variety of situations, it is necessary to look beyond the use of the word to the situation in which the koha is given to the recipient. Depending on the circumstances, the giving of koha may not have any tax consequences or it may be subject to PAYE, schedular payment deductions, FBT or GST.

Existing Employment Relationship

If a payment is made to an individual in connection with an existing employment relationship between the University and the individual, the payment will usually be subject to PAYE whether or not it is termed "koha".

There may be circumstances where the recipient is an employee of the University, but the payment does not relate to the employment relationship. In those cases schedular payment deductions, FBT and GST may still be an issue (see sections 4.2, 1.6 and 10.6).

It is important to understand that where there is an employment relationship there will be a strong presumption that the payment relates to the employment. If the University decides the payment does not relate to the employment, and, as a result, does not deduct PAYE, the University must ensure it is able to justify this position at a later date.

Appendix VIII sets out Inland Revenue's guidelines on when an employment relationship may exist.

Examples

1. The University employs a person. The person is paid Koha of \$100 per week. The person has to work at 10 hours per week.

An employer/employee relationship would exist and PAYE must be deducted by the University from the payment.

2. A Kaumatua or other person receives weekly payments for teaching services at the University.

An employer/employee relationship would exist and PAYE must be deducted by the University from the payment.

3. The same Kaumatua teaches at the University and receives a salary in return. Occasionally he also performs other services for the University, for example he assists with the formal welcome of special visitors to one of the University campus'. In accordance with protocol, the University gives the Kaumatua a koha as a mark of respect and in appreciation of his help.

Whether or not the koha payment relates to the employment relationship between the Kaumatua and the University may depend on factors such as how the Kaumatua came to perform the services (for example, whether through his relationship with the University or through outside connections).

No Separate or Formal Employment Relationship

It may be that there is no other employment relationship between the koha recipient and the University outside the services provided by the individual to which the koha payment relates, or perhaps no formal employment relationship at all.

It is possible that the circumstances surrounding the provision of these services are sufficient to constitute an employment relationship between the University and the recipient. Determining existence or absence of an employment relationship can be particularly difficult in the case of volunteer workers who provide services on a regular basis. The distinction between a reward for employment services provided and a thank you for a voluntary contribution is very difficult and some assistance may be required to analyse the nature of the situation.

A key factor in determining whether tax (either PAYE or withholding tax) should be withheld is whether there is an expectation on the part of the recipient that they will receive payment for the service they are providing. Where such an expectation does exist, the amount will not be koha and regardless of the value of the payment, Massey will be required to determine whether PAYE or withholding tax should be deducted.

However, where there is no expectation on the part of the recipient that they will receive payment for the service(s) they are providing, the amount is likely be koha and no tax is required to be withheld.

Example

A Kaumatua gives a blessing at a ceremony and Massey gives the Kaumatua \$100. Provided there is not an existing employment relationship between Massey and the Kaumatua, Massey must consider whether

there is an expectation on the part of the Kaumatua that they will receive payment in return for providing the blessing, to determine whether tax should be withheld.

If the same Kaumatua gives blessings at several ceremonies each year and for each ceremony Massey pays the Kaumatua \$100, it is arguable that an expectation of payment exists. However, if Massey only occasionally pays the Kaumatua \$100, it is unlikely that such an expectation exists and the amount may be koha.

Example

A Kuia who is on NZ Super helps at the University crèche for 2 days a week to teach Maori. She doesn't want to receive any payments as it might affect her personal tax position. The University wants to give her something for helping out so gives her petrol vouchers instead.

The University must pay PAYE to IRD. The value of the vouchers must be recorded in the wage records as net earnings.

In this situation, although there is not a formal employment relationship, but there is a direct relationship between the payment and the Kuia's services and the Kuia may be deemed to be an employee of the University. In this example it seems likely that the vouchers (money or monies worth) are given in direct substitution for a cash wage. In other cases it may be more difficult to determine the existence of otherwise of an employment relationship. In Inland Revenue's view, a PAYE obligation will arise where there is some ongoing relationship between the University and the recipient and payment is received in consideration of services performed. Where these circumstances exist, therefore, the University must ensure that it is able to defend any decision not to deduct PAYE.

Treatment of Koha not Paid in Relation to Employment

Where the payment does not relate to an employment relationship, it will still be subject to withholding tax if the payment is of a type falling within the schedular payments rules (see section 4.2 and Appendices I and VIII).

Schedule 4 of the Income Tax Act 2007 sets out different activities that can be subject to the schedular payments regime, together with types of payments for each activity that will be captured. (For example, "payments for forestry or bush work of any kind", "fees or other remuneration for or in relation to examining candidate", "Payments to resident entertainers" and "An honoraria").

In order to determine whether withholding tax should be deducted from the payment, it is necessary to consider the nature of the activity the payment relates to (if any), as well as the type of payment.

Reimbursement Allowances

Where payment is to reimburse a person for actual costs, there will be no withholding or PAYE obligations. The level of reimbursement must be reasonable (refer to chapter 1.5).

Example:

1. A Kaumatua gives a talk to students of the University relating to a special study of a particular iwi. The University makes a payment to the Kaumatua to cover his travel costs.

There is no employer/employee relationship. A PAYE or withholding tax deduction is not required. Further, provided the payment covers actual travel costs, it is not taxable as it constitutes a reimbursement allowance. Public service rates for motor vehicle reimbursement would be a good guide as to the level of payment which would be acceptable as a refund of costs.

Any enquiries regarding the deduction of withholding tax or PAYE should be referred to the Manager – Remuneration and Reporting, or Chief Financial Officer.

3.12 Reimbursements for Subscriptions

Massey University reimburses employees for subscriptions to various publications.

The reimbursement paid to employees for subscriptions to research and other professional or academic organisations is likely to be sufficiently closely related to the derivation of the employee's employment income to be exempt income in the hands of the employee and not subject to PAYE.

Reimbursement for subscriptions to other organisations may also be exempt income in the hands of the employee if this expenditure is necessarily incurred to perform an obligation required by the employee's employment.

Any reimbursement greater than the amount actually incurred or for a subscription of a private nature will not be exempt income in the hands of the employee and will be subject to PAYE.

3.13 Cash Grant to Employee's Spouse

A cash payment to the spouse of a deceased employee paid within one year after the death of the employee will not be subject to PAYE. The payment is not likely to be taxable in the hands of the spouse.

3.14 Inducement Payments

Section CE 10 of the ITA 2007 includes within a person's income, an amount they derive for loss of vocation or position, for leaving a position, or for a loss of status.

Where a lump sum payment is income under section CE 10, it will fall within the definition of "extra pay" if the income was derived in connection with an employment relationship between the person who received the income and the person who paid the income.

Lump sum payments made to prospective employees as an inducement to leave another organisation and work for Massey may be taxable under section CE 10 to the prospective employee. If this is the case Massey will have a liability to deduct PAYE from any such payment.

Where a payment is made for a taxpayer to consider acceptance of employment rather than being an amount derived by a person for leaving a position, and the form of the transaction is consistent with this distinction, it could be argued that such a payment is capital and non-taxable. The primary characteristics of such a payment would be:

- ▶ The arrangement to which the payment relates would not impose any obligation on the recipient to accept the position or repay any amount
- ▶ The payment is made prior to execution of the employment contract
- ▶ The payment bears no relationship to the provision of services by the recipient.

3.15 KiwiSaver

KiwiSaver is a workplace saving scheme that is available to all New Zealand citizens and people entitled to be in New Zealand indefinitely that are under the age of eligibility for New Zealand superannuation (currently 65).

The Government introduced the KiwiSaver scheme with the aim of enabling and encouraging individuals to save for their retirement through their employment earnings. Participation in the scheme is voluntary, although, from 1 July 2007, new employees who are eligible to participate will be automatically enrolled in the first instance with the ability to opt out of the scheme between 2 and 8 weeks after commencing employment. Existing employees may choose to become members of a KiwiSaver scheme.

Both full and part time permanent employees are eligible to UniSaver New Zealand. Where an employee has elected to become a member of UniSaver New Zealand, Massey will pay 1.35 times that employee's regular contributions up to 6.75% of that employee's gross salary.

An employer that has an existing registered superannuation scheme can apply to the Government Actuary for approval to become an exempt employer. As an exempt employer, the employer does not have to automatically enrol new employees in KiwiSaver. An employer that has a complying superannuation fund

will receive the benefit of KiwiSaver incentives. UniSaver New Zealand is a complying superannuation fund.

Massey has approval from the Government Actuary to be an exempt employer. Accordingly, new employees are not automatically enrolled in KiwiSaver. However, employees are still able to opt in to KiwiSaver and Massey must continue to make deductions if a new employee is already a member of KiwiSaver.

From 1 April 2008, Massey is required to make employer contributions for those employees that are members of KiwiSaver or UniSaver New Zealand. From 1 April 2013, the minimum compulsory employer contribution rate is 3%, however Massey can make additional voluntary contributions if it wishes to. These compulsory employer contributions are no longer exempt from employer's superannuation contribution withholding tax ("ESCT"). From 1 April 2012, employers are required to account for ESCT on all their contributions to KiwiSaver and other complying superannuation funds. For example, ESCT is payable on contributions made by Massey to UniSaver New Zealand. The ESCT is applied at a rate equivalent to an employee's marginal tax rate.

Massey is responsible for deducting employee KiwiSaver contributions and forwarding them to Inland Revenue along with PAYE. From 1 April 2019, employees can elect a contribution rate of either 3%, 4%, 6%, 8%, or 10%. Employees who join KiwiSaver will have contributions deducted at the default rate of 3% from their pay, or if the employee elects, 4%, 6%, 8%, or 10%.

3.16 Voluntary Payroll Giving

Massey has the option of allowing its employees to make regular payroll donations from their pay through Massey's payroll. Where an employee chooses to make payroll donations a tax credit of 33 1/3% is available to the employee. This tax credit is offset against PAYE calculated on the employee's gross pay, thereby reducing the amount of PAYE payable for that period.

Massey is responsible for ensuring that the payroll donations are transferred to the organisation receiving the donation within two months after the end of the pay period in which the donation is made. Payroll donations are held on trust for the employee until the donation is received by the recipient organisation.

4. Withholding Tax

4.1 Administration Guidelines

Accounts Payable staff monitor payments for compliance with the PAYE rules. This arises as schedular payments are normally made through the accounts payable system rather than the payroll system. Withholding tax must be deducted in the circumstances outlined below and it is emphasised that at all times the University remains liable for non-compliance. Responsibility for ensuring withholding tax is deducted will rest with those Departments authorising payment. Clear instructions must be given to the Payroll Office and Accounts Payable team to enable them to deduct the correct amount of tax. Any enquiries regarding the deduction of withholding tax should be referred to the Manager – Remuneration and Reporting, or Chief Financial Officer.

4.2 Background

With the enactment of the ITA 2007, the Income Tax (Withholding Payments) Regulations 1979 was repealed and incorporated into subpart RD of the ITA 2007.

Subpart RD addresses employers' responsibility to withhold tax from PAYE income payments (source deduction payments under the Income Tax Act 2004). PAYE income payments are defined as salary or wages, extra pays and schedular payments (formally withholding payments under the Income Tax (Withholding Payments) Regulations 1979).

Withholding tax is to be deducted from the following payments:

1. Non-resident passive income being:
 - ▶ Interest paid to non-residents
 - ▶ Royalties paid to non-residents (Refer to section 9.0)
 - ▶ Dividends paid to non-residents
2. Resident passive income being:
 - ▶ Interest paid to New Zealand residents
 - ▶ Dividend paid to New Zealand residents
3. Payments to overseas residents:
 - ▶ Visiting and guest lecturers
 - ▶ Contract payments to non-resident contractors
 - ▶ Non-resident entertainers
4. New Zealand residents which are not companies (other than agricultural, horticultural or viticultural companies and companies with building contracts substantially for the supply of labour) including:
 - ▶ Sales commissions
 - ▶ Visiting and guest lecturers
 - ▶ Refuse removal
 - ▶ Care taking or acting as watchman
 - ▶ Cleaning premises
 - ▶ Gardening including grass cutting
 - ▶ Cleaning plant, furniture, fittings, and equipment
 - ▶ Shearing and agricultural contracting
 - ▶ Vermin destruction
 - ▶ Weed destruction
 - ▶ Examiners
 - ▶ Fees or other remuneration for or in relation to contributions by freelance journalists, writers, artists or other regular or casual contributors.

- ▶ Resident entertainers
 - ▶ Honoraria payments
 - ▶ Agricultural work
 - ▶ Some koha payments received in respect of any of the above activities (see section 3.10)
5. Payments to consultants and registered professionals (see section 2.5)
- ▶ Where the provider is non-resident, for any services provided
 - ▶ Where the provider is New Zealand resident and is not a company, for any services of the types listed in section 4 above

Where a payment is made to a company, not being a non-resident entertainer, non-resident contractor, agricultural, horticultural, or viticultural company or payments under a labour-hire arrangement, these are not classified as schedular payments and are therefore not subject to the schedular payments rules. For example, where the University makes a payment to a New Zealand resident company, the University will not be required to withhold tax.

4.3 Calculation of Withholding Tax Paid to Contractors

1. A contractor subject to withholding tax is generally registered for GST, but not always. Therefore, the GST status of the contractor should be confirmed.
2. If the contractor is registered for GST and supplies a tax invoice, withholding tax should be deducted on the GST exclusive amount of the payment.
3. If the contractor is registered for GST and does not supply a tax invoice, withholding tax should be deducted on the GST inclusive amount of the payment.
4. If the contractor is not registered for GST, withholding tax is deducted on the total payment.
5. Generally (the exception being reimbursements paid to volunteers), the total payment including any taxable reimbursements (e.g., reimbursement for travel) will be subject to withholding tax.
6. It is possible for Massey to deduct expenditure incurred in the production of a schedular payment. Only the amount remaining after the expenditure has been deducted will then be subject to withholding tax. This will require an application for a determination from the IRD.

4.4 Effect of the Attribution Rules

The attribution rules contained in the ITA 2007 will not result in contractors being treated as employees. The rules are intended to prevent employees from circumventing the top marginal tax rate by interposing a company, partnership or trust between themselves and their employer. The effect of the rules is that, in some instances, income derived by the interposed entity will be attributed to the service provider (the person who actually provides the services). There will not be an impact on the University's withholding obligations in relation to these contractors (i.e., no PAYE will be payable).

4.5 Rate of Withholding Tax Deduction

1. If an exemption certificate is supplied by the person receiving the payment no withholding tax should be deducted. In some cases the person receiving the payments may supply the University with a Tailored Tax Rate certificate specifying a special rate of withholding tax. In such instances withholding tax should be deducted at the rate specified.

We emphasise that the certificate supplied should always be checked to see if it authorises nil withholding tax deductions or a special rate of withholding tax.

2. If the person receiving the schedular payment does not supply either an IR 330C or an exemption certificate, Inland Revenue require withholding tax to be deducted at a "no-notification" rate. This is presently at 45% except for non-resident entertainers (e.g., visiting

lecturers). For schedular payments made on or after 21 December 2004, the no-notification rate for a non-resident contractor who is a company is 5% in addition to the appropriate withholding tax rate (i.e., 5% in addition to the non-resident contractor withholding tax rate of 15%). Non-resident entertainers are taxed at 20 cents in the dollar regardless of whether an IR 330C is provided (i.e. non-resident entertainers are not able to vary the rate of withholding below 20%).

Refer to section 4.2. The schedular payments rules will not apply where the person is providing professional services (for example, architectural or engineering advice) or is a New Zealand resident company.

3. If an IR330C is supplied by the person receiving the payment, withholding tax is deducted at the rate set out in Schedule 4 of the ITA 2007 attached at Appendix I or at the rate elected provided it is not less than 10% (or 15% if they have a temporary entrance class visa). An independent contractor can choose a new rate of withholding by completing a new IR330C twice within a 12 month period with the same payer. To change the rate a third time they will need agreement from the payer. Independent contractors are no longer required to apply to IRD for a Special Tax Certificate provided the rate of withholding is not less than 10% or 15%.

The withholding tax rate for a schedular payment to a non-resident contractor is 15%. However, a higher rate is applicable if the schedular payment falls within a more specific category of schedular payment e.g. a non-resident entertainer.

4. Independent contractors receiving non-schedular payments can also voluntarily choose to have tax deducted. However, the independent contractor must agree in a written agreement with Massey to treat the payments as voluntary schedular payments.

It is recommended the written agreement include:

- ▶ The name of the independent contractor and Massey
- ▶ An agreement that all payments made to the independent contractor will be treated as voluntary schedular payments
- ▶ The period it applies to, and
- ▶ The signature of both the independent contractor and Massey

The agreement can be in the form of a memo, letter, formal contract or emails.

5. Offshore Activities or Activities with Offshore Entities

5.1 Administration Guidelines

The University sometimes becomes involved in the provision of consulting services and training assistance to overseas entities in places such as China, Vietnam, Malaysia, Thailand, Singapore, Fiji and Papua New Guinea to name a few. This might involve University staff being sent offshore on a short-term basis, or the recruitment of foreign staff. The University will negotiate a fee to be paid by the entity for these services.

Other examples of activities in this category would include collaborations with overseas universities for the provision of courses to students in New Zealand or elsewhere.

5.2 Tax Implications

These activities raise a variety of taxation issues, depending on the jurisdiction in which the activities are undertaken or in which any other entities involved are located.

Considerations may include:

- ▶ The level of withholding tax to which the foreign-sourced payments may be subject
- ▶ The impact (if any) of indirect taxes such as GST or VAT
- ▶ Registration requirements of the foreign country
- ▶ Treatment of employees deployed overseas
- ▶ Other countries' structuring restrictions
- ▶ Cross-border currency limitations applying; and potentially
- ▶ The loss of charitable status for the University.

As these issues are complex, appropriate professional tax advice must be obtained by contacting the Chief Financial Officer prior to signing any contract with an overseas entity or commencing any overseas work (whichever occurs earlier).

5.3 International tax matters – US activities

5.3.1. US tax on royalty income

Royalties received from the US by Massey should be eligible for the concessional withholding tax rate of 5% under the US/NZ Double Tax Agreement (DTA). This is on the assumption that the consideration received by Massey meets the Treaty definition of a 'royalty' and is deemed to arise in the US.

To ensure tax on US sourced royalty income is deducted at the concessional rate of 5%, it is important that the US Form W-8BEN is completed correctly and completely, reflecting the 5% Treaty rate, and given to any US company or organisation Massey receives royalty income from.

5.3.2 Tax compliance

Every year Massey receives a US Income Tax Return of a Foreign Corporation form (Form 1120-F), which is used to report income received by a foreign corporation from US sources. Massey is generally not required to complete and file this form on the basis that:

- ▶ Massey's only US sourced income is royalty income

- ▶ The Form W-8BEN is completed correctly and completely
- ▶ Tax is being withheld on the royalty income at the appropriate rate, being the concessional treaty rate of 5%.

If Massey derives income that is not subject to withholding tax or engages in business in the US, then Massey will need to complete and file Form 1120-F.

Massey also receives Form 1042-S every year from each US company or organisation from which Massey has received income in the previous calendar year. This form shows the total royalty income paid to Massey during the calendar year by the company or organisation completing the form, as well as any tax withheld on the royalty income by that company. Where tax has been withheld at the concessional rate of 5%, there will be no refund or credit available. However, copies of these forms should be retained.

If Massey's activities in the US change e.g., Massey starts deriving US sourced business income or there is a significant increase in US sourced royalty income, we suggest that Massey seek further advice.

5.4 University's Policy

As noted above, where the University is involved in activities offshore or involving offshore entities, a complicated series of tax issues will need to be considered. The consequences may differ depending on the country (or countries) involved. All staff involved must consult with the Chief Financial Officer before any such arrangements are formalised.

6. Visiting Lecturers and Research Workers

6.1 Administration Guidelines

Overseas academic research visitors come to the University for short term visits (2 - 6 weeks normally) to collaborate with a University staff researcher for a specific reason. Normally these visitors are not New Zealand residents for tax purposes. They have permanent residence and permanent employment in other countries. The visitors may be offered Grant in Aid from Massey University towards the costs of their visit or be provided with subsidised accommodation. The tax implications of engaging visiting lecturers and research workers can differ depending on the visiting lecturers' country of origin. Therefore all contracts with overseas lecturers must be negotiated through the Deputy Vice Chancellor – People and Culture and the appropriate tax treatment confirmed with the Chief Financial Officer.

6.2 New Zealand Tax Residency Test

An overseas visiting lecturer or research worker will be a non-resident provided that person:

- ▶ Does not have a permanent place of abode in New Zealand
- ▶ Is not physically present in New Zealand for an aggregate of more than 183 days in any 12-month period

Difficulty can arise in determining a person's residency especially in relation to whether that person has a permanent place of abode in New Zealand. In such instances the person should seek tax advice to determine their status before informing the University.

New Zealand non-residents are taxable on any income they earn which has a source in New Zealand unless specific exclusions apply.

Where an overseas visiting lecturer or research worker is a New Zealand resident, they will be taxable in New Zealand on their worldwide income unless they are eligible to be treated as a transitional resident.

A transitional resident is exempt from New Zealand tax on foreign sourced income for the duration of the period they are considered a transitional resident. The exception to this is for foreign sourced employment income and income from personal services which is not covered by the exemption and is prima facie subject to New Zealand tax.

The transitional resident exemption applies to persons who become a New Zealand resident on or after 1 April 2006 provided that person:

- ▶ Has not been treated as a New Zealand resident under the ITA 2007 in the preceding 10 years
- ▶ Has not previously been a transitional resident
- ▶ Has not elected not to be a transitional resident

A person who satisfies the above requirements is a transitional resident from the first day of residence in New Zealand. The period of transitional residence ends on the earlier of:

- ▶ The day before the person ceases to be a New Zealand resident
- ▶ 48 months after the month in which the person is deemed a New Zealand resident

Please contact the Deputy Vice Chancellor – People and Culture, or the Chief Financial Officer, to discuss whether a person may be a transitional resident or whether one of the specific exclusions for non-residents may apply.

6.3 New Zealand Tax Obligations - Visiting Experts/Lecturers

Appendix IV(A) includes a checklist for determining if a person is a non-resident entertainer. Part (B) sets out whether a person is eligible for tax exempt status (i.e., eligibility for a tailored tax rate certificate or certificate of exemption) or relief under a DTA.

Where a person provides services other than lecturing, refer to Appendix V which includes a checklist for determining if a person is a non-resident contractor. Part (B) sets out whether a non-resident contractor is eligible for tax exempt status or relief under a DTA.

Appendix VI includes a summary of the New Zealand tax obligations of visiting research experts and lecturers who remain non-residents for New Zealand tax purposes during their stay in New Zealand and whose New Zealand income is not eligible for relief under a DTA.

If the visiting expert/lecturer is not paid for his or her services, but receives a genuine gift from the University, the gift will not be taxable in the hands of the entertainer.

6.4 University's Policy

1. Payments made by the University to visiting research experts and lecturers including taxable reimbursements and allowances will, in the first instance, be required to have withholding tax deducted from them.

In the case of a visiting non-resident lecturer who is a non-resident entertainer, the rate of withholding tax is 20 cents per dollar of payment regardless of whether they have a New Zealand IRD number.

Only in those circumstances where the visiting lecturer/expert provides a tailored tax rate certificate should withholding tax not be deducted (or deducted at a reduced rate). (Refer section 7.1 in regard to applying for a tailored tax rate certificate on behalf of a non-resident entertainer.)

Where the non-resident is an employee of Massey University, payments made to them will be subject to PAYE at the normal rates.

2. The value of any subsidised or free accommodation provided to short term visiting lecturers for up to 3 months after arrival will be exempt from tax. The tax treatment of accommodation provided to visiting lecturers for periods exceeding 3 months may also be exempt from tax. Please contact the Deputy Vice Chancellor – People and Culture or the Chief Financial Officer to confirm the correct tax treatment.
3. If the payment was made under an arrangement for assistance entered into by the Government of New Zealand, it is exempt from income tax by section CW 22 of the ITA 2007. These arrangements as listed in the Act are reproduced in Appendix III. Income from carrying out an activity or performance in New Zealand will be exempt from income tax under section CW 20 if any of the following apply:
 - a. The activity or performance occurs under a cultural programme of the New Zealand government or an overseas government
 - b. The activity or performance occurs under a cultural programme wholly or partly sponsored by the New Zealand government or an overseas government
 - c. The activity or performance occurs as part of a programme of an overseas foundation, trust, or other organisation that:
 - i. Exists wholly or partly to promote cultural activity and
 - ii. Is not carried on for the private pecuniary profit of any member, proprietor, or shareholder.
 - d. The activity or performance relates to a game or sport in New Zealand during a visit and the participants are official representatives of a body that administers the game or sport in an overseas country;
 - e. The activity or performance of a non-resident entertainer that would give rise to exempt income under this section if derived by the non-resident entertainer, is exempt income if derived by a person who:
 - a. Provides the services of the non-resident entertainer during the visit to New Zealand
 - b. Is 1 of the following:

- i. The entertainer's employer or
- ii. A company of which the entertainer is an officer or
- iii. A firm of which the entertainer is a principal.

Again, enquiries regarding this matter should be directed to the Deputy Vice Chancellor – People and Culture, or Chief Financial Officer.

6.5 Travel Reimbursements and Grants in Aid for Travel

1. University Expenditure

To the extent that the following travel reimbursements and Grant in Aid payments constitute business related expenditure of the University they will be treated as University expenditure and not taxable to the visiting lecturer/research worker.

Travel to - University Conferences
 - Overseas Lectures
 - Overseas Research and Overseas Leave
 Travel on University related matters.

2. Salary and Wages

Where the non-resident is an employee of Massey, the following Grant in Aid payments will be treated as salary and wages and subject to PAYE.

- ▶ Private travel and accommodation for a spouse or other family member accompanying an employee.
- ▶ Accommodation and travel expenditure for a holiday taken by an employee in conjunction with the University travel.
- ▶ Purchases by the employee which are retained by the employee such as books, computer software, etc.

All Grant in Aid payments where the invoices are in the name of the visiting lecturer/research worker will be treated as salary and wages unless substantiated as University expenditure.

6.6 Visiting Lecturers/Double Tax Agreements

Visiting lecturers from certain countries are subject to special rules covering New Zealand tax payments to them. These rules do not detract from the University's obligations to deduct withholding tax from taxable payments made to visiting lecturers unless the visiting lecturer is able to provide the University with a Certificate of Exemption or Tailored Tax Rate Certificate. (See section 6.0)

However, depending on the duration of the visit, visiting lecturers resident in a treaty country who are unable to obtain a Certificate of Exemption may have no final liability to pay tax in New Zealand. In such circumstances, visiting lecturers may be able to obtain a refund of any tax deducted by the University on their behalf by filing a return of income with the IRD prior to leaving New Zealand.

7. Certificates of Exemption – Payments to Non-Residents

7.1 Administration Guidelines

As a service to visiting lecturers and research workers, the University is able to apply on their behalf to Inland Revenue for certificates of exemption. Where certificates of exemption are obtained, withholding tax will not be required to be deducted by the University.

Checklists for determining eligibility for certificates of exemption and pro forma letters of request are reproduced in Appendices IV and V.

Staff are encouraged to apply for certificates of exemption for visiting non-residents where the eligibility criteria exists as this relieves the University of its requirements to deduct and remit withholding tax to Inland Revenue.

In those circumstances where overseas lecturers visit Massey briefly during the course of a series of visits to other New Zealand universities, certificates of exemption will still be required where Massey makes payments for any services it receives from the non-residents. Where short-term visits occur, contact should be made with the Deputy Vice Chancellor – People and Culture as soon as possible so that timely application can be made for exemption certificates.

Non-Resident Entertainer (Lecturers)

A “non-resident entertainer” includes a non-resident person engaged by the University who is not an employee but is engaged in an activity in connection with lectures, speeches or talks for any purpose whether on a regular or casual basis, although there are some exceptions.

Consequently, the term “non-resident entertainer” will encompass those persons who comprise the broad category of visiting lecturers and/or research workers.

The schedular payments rules do not provide for the issue of certificates of exemption in respect of non-resident entertainers. Non-resident entertainers also cannot elect their own rate of withholding. However, Inland Revenue will issue “tailored tax rate certificate” in respect of such persons where the Commissioner is satisfied that any income derived by them is not subject to tax in New Zealand under the provisions of the ITA 2007 or because of relief provided by a DTA. A checklist as regards their eligibility and a pro forma letter of application is attached at Appendix IV.

Non-Resident Contractor (Services other than lecturing)

A “non-resident contractor” includes a non-resident person engaged to perform services for/to the University which are not in the nature of lecture, speaking engagements or similar activities. It also includes a non-resident person who supplies any personal property or services of another person to the University in New Zealand.

Unlike the case with non-resident entertainers, the schedular payments rules do provide for the issue of certificates of exemption to non-resident contractors providing such services meeting the eligibility criteria.

A checklist as regards eligibility and pro forma letter of application to IRD is attached at Appendix V.

Non-Resident Employees

Non-residents who are employed by the University will be subject to PAYE in the same manner as resident employees and are required to complete an IR330 (Tax Code Declaration). PAYE is deducted from these payments at the normal rates.

8. Scholarships

8.1 Administration Guidelines

Overall responsibility for scholarships rests with the Scholarship Committee, to which all enquiries should be directed. Enquiries regarding the tax status of scholarship payments must be directed to the Chief Financial Officer.

8.2 General Overview

1. Background

The University is involved in a variety of scholarships.

1. A scholarship paid for attendance at an educational institution will be exempt from income tax.
2. If a scholarship is paid to an overseas student under any arrangement for assistance entered into by the Government of New Zealand, it will be exempt from income tax to the student.

2. Policy

Scholarships to be exempt from income tax

1. For the award of a scholarship to qualify for the exemption from income tax as outlined in section CW 36 of the ITA 2007 the payment needs to be a payment for attendance at an educational institution.

IRD's Interpretation Statement on scholarships and bursaries IS 15/01: Income tax – tax exempt scholarships and bursaries – s CW 36 clarifies that scholarships must be paid for the dominant purpose of assisting with the recipient's education.

Provided this criteria is met, payments whether made from business, at the direction of trusts or estates, or any other source will generally meet the exemption criteria.

2. The payment cannot be:
 - a) A basic grant or independent circumstances grant (made under regulations made under section 193 of the Education Act 1964, section 303 of the Education Act 1989, or any enactment made in substitution for those sections). These taxable grants comprise what are generally termed "student allowances" or "independent circumstances allowances" paid under the Student Allowances Regulations 1991.
 - b) Monetary remuneration to an employee.
 - c) A stipend which covers very basic costs of living (generally regarded as a payment for services).

8.3 International Students

1. Background

1. International students come to New Zealand to gain experience as part of the degree requirements at their home University.
2. They attend the University as students.
3. They may be a graduate from a Department of their home University.

4. The students are not in New Zealand as part of any arrangement for assistance entered into by the Government of New Zealand.
5. They are paid a scholarship by the University to facilitate their attendance at the University.

2. Policy

1. International students who are in New Zealand are paid their scholarship in respect of their attendance at an educational institute as a student.

The payment is therefore exempt from income tax.

2. There is no disqualification in terms of the scholarship if the scholarship is awarded by the University.

8.4 International Students/Tutors

1. Background

1. International students attending the University may also be employed by the University to conduct tutorials.
2. Any payments to the students as tutors would not be made as part of any arrangement for assistance entered into by the Government of New Zealand.

2. Policy

Payments for conducting tutorials will be subject to PAYE where they are performed for and on behalf of the University.

9. Royalties

9.1 Administration Guidelines

The University will be required to deduct non-resident withholding tax from royalties where the royalties are paid to non-residents. Those circumstances where it is uncertain that a royalty payment is being made should be referred to the Provost or Chief Financial Officer.

9.2 Royalties

1. Royalty is defined to include:
 - (i) Payments for:
 - ▶ The use of or right to use any motion picture film or any film or videotapes for use in connection with TV, or tapes for use in connection with radio broadcasting.
 - ▶ The use of or right to use a copyright, patent, trademark, design or model, plan, secret formula or process, or other like property or right.
 - ▶ The supply of scientific, technical, industrial, or commercial knowledge or information.
 - ▶ Provision of any assistance as a means of enabling the application or use of the above.
 - ▶ Payments for the supply of knowhow and connected services will be treated as falling within the definition of royalty.
 - (ii) Royalties for the use, production or reproduction of a literary, dramatic, musical, or artistic work in which copyright subsists.
 - (iii) Payments made under a licence agreement for the use of computer software are regarded by Inland Revenue as royalty payments and each payment is subject to non-resident withholding tax where the payment is made to a non-resident. However, payments under the general run of software licensing/purchasing agreements (e.g., packaged software) are unlikely to be royalties.
2. Royalties paid to New Zealand residents are not subject to withholding tax.
3. The rate of withholding tax on royalty payments to non-residents is 15% unless reduced by a DTA.

9.3 Payment to Employees

Royalties received for intellectual property which is wholly owned by the University and which are paid, in whole or in part, to staff members who participated in the development of the intellectual property constitute salary and wages and are subject to PAYE.

9.4 Double Tax Agreements

The DTAs New Zealand has with other countries have an article dealing with royalties. The article limits the amount of non-resident withholding tax deducted on the gross amount of the royalties. The rates from the double tax treaties are:

Agreement	Article	Royalties
Australia	12	5
Austria	12	10
Belgium	12	10
Canada	12	10

Agreement	Article	Royalties
Chile	12	5
China	12	10
Czech Republic	12	10
Denmark	12	10
Fiji	11	15
Finland	12	10
France	12	10
Germany	12	10
Hong Kong	12	5
India	12	10
Indonesia	12	15
Ireland	14	10
Italy	12	10
Japan	12	5
Korea (Republic of)	12	10
Malaysia	10	15
Mexico	12	10
Netherlands	12	10
Norway	12	10
Papua New Guinea	12	10
Philippines	12	15
Poland	12	10
Russia	12	10
Samoa	12	10
Singapore	12	5
South Africa	12	10
Spain	12	10
Sweden	10	10
Switzerland	12	10
Taiwan	12	10
Thailand	12	10 or 15
Turkey	12	10
United Arab Emirates	13	10
United Kingdom	13	10
United States	12	5
Vietnam	12	10

The University should deduct non-resident withholding tax from any "royalty" payments to non-residents. When the payment is authorised, Accounts Payable must be advised of the particulars of the type of royalty payment and the country where the recipient is a resident. Non-resident withholding tax deducted is to be remitted to the Non-Resident Centre of the Dunedin office of Inland Revenue.

10. GST

10.1 Administration Guidelines

All Departments have the responsibility for ensuring the correct amount of GST is accounted for in each transaction (where applicable). Unless otherwise stated, enquiries regarding GST should be directed to the Chief Financial Officer.

Massey University is registered for GST. This means the University must account for GST output tax on amounts received from funding bodies, student fees, hostel charges and other fee paying customers. GST input tax can be claimed in regard to most expenditure incurred by the University.

10.2 Invoice Requirements

1. GST tax invoices must be kept for seven years. The Inland Revenue Department has the discretion to request that the documentation be retained for a further three years in addition to seven years.
2. The original GST tax invoice must be held by the accounts payable section or payroll section (where the withholding tax documents are retained). If any other department within the University is keeping a copy of the invoice the original must be sent to accounts payable. The copy must be clearly marked as a copy.
3. GST Tax Invoices

The specific requirements for details to be shown on tax invoices are as follows:

Value more than \$1,000

- ▶ Words "Tax Invoice" in a prominent place
- ▶ Name of supplier
- ▶ Name and address of purchaser
- ▶ Supplier's GST registration number
- ▶ Date of invoice
- ▶ Description of supply
- ▶ Quantity or volume of supply
- ▶ Consideration:
 - ▶ Either -
 - (a) Amount payable before GST
GST payable
Total including GST; or
 - (b) Total payable
Statement that total payable includes GST

Value \$51 to \$1,000

- ▶ Words "Tax Invoice" in a prominent place
- ▶ Name of supplier
- ▶ Supplier's GST registration number
- ▶ Date of invoice
- ▶ Description of supply
- ▶ Consideration with statement that GST is included

Value of up to \$50

- ▶ No tax invoice required, however, the registered person is required to record the date, description, cost and supplier of all purchases and maintain proof of payment. Ideally, supporting documentation such as invoices or receipts should be kept as well.

4. GST Credit Notes

If the amount paid (consideration) is decreased after the tax invoice has been issued, a credit note must be produced.

The details required on a GST credit note are as follows.

- ▶ Words "Credit Note" in a prominent place
- ▶ Name, address and registration number of supplier
- ▶ Name and address of purchaser
- ▶ Date credit note issued
- ▶ Brief explanation for credit note being issued
- ▶ Consideration must state either:
 1. Previous consideration for the supply
Correct consideration for the supply
The difference between these two amounts and the tax charged in respect of that supply to the extent that it relates to the amount of that difference; or
 2. The difference as calculated above
The tax charged in respect of that supply if the tax fraction is used.

10.3 Allowances

Where actual expenditure incurred by staff is not reimbursed but an allowance is paid by the University to the staff member no claim for GST input tax can be made.

Allowances would include:

- ▶ Travel claims - meal allowances;
- ▶ Mileage;
- ▶ Travel allowances, e.g., Wellington trip allowance.

The same applies to Grant in Aid Payments.

If however, the payment reimburses actual expenditure and the staff member can produce a receipt (if up to \$50.00) or a tax invoice (over \$50.00) in the name of the University which relates directly to the reimbursement, then GST can be claimed on the portion supported by the receipt/tax invoice.

10.4 Relocation Expenses

GST may be difficult to claim on Appointment Expenses reimbursed to an employee unless the invoices supporting the reimbursement are in the name of the University. Where possible, employees should ensure that the invoices bear the University's name.

10.5 Auctions

Where goods are sold at auction, input tax and output tax must be accounted for separately, e.g., a cheque for \$100.00 is received being the net proceeds from the sale of a vehicle.

- ▶ we are informed commission charged was \$20.00.

Therefore output tax is 360/23	=	15.65	credit	(that is [\$100 + \$20] x 3/23)
Input tax is 60/23	=	2.61	debit	(that is \$20 x 3/23)

10.6 Koha

Since the term “Koha” is used in widely differing circumstances, it is necessary to consider the situation in which the payment is made (i.e., form over substance).

Under section 2(1) of the GST Act, “consideration” is defined as:

...in relation to the supply of goods and services to any person, includes any payment made or any act of forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods and services whether by that person or by any other person, but does not include any payment made by any person as an unconditional gift to any non-profit body

Payments associated with supplies made by registered persons will be subject to GST unless it is possible to establish that the payment is not “in respect of, in response to, or for the inducement of, the supply” or to establish that it is an unconditional gift to a non-profit body.

Koha received by the University

If the payment of Koha in money or goods and services is related to the supply of goods and services by the University, the Koha may be subject to GST.

If the University chooses not to return any GST it must be able to establish that the payment received by it was an unconditional gift and not received in exchange for goods or services supplied by the University.

If the payment of Koha in money or goods and services is not accompanied by a supply of goods and services by the University, the Koha will be regarded as an unconditional gift and not subject to GST.

Examples

1. A company decides to hold a series of workshops on the University Marae. The Marae asks for a Koha of \$30 per attendee per day.

Although the payment is called a Koha it will be regarded as a payment for services and subject to GST.

2. Money is given to the University as Koha for extensions to the University Marae.

Inland Revenue may argue that the Koha is not an unconditional gift as it was given for a specific purpose.

The University should consider the circumstances of the Koha carefully before deciding not to return GST.

Koha paid by the University

If the payment of Koha in money or goods and services is related to the supply of goods and services to the University, the Koha may be subject to GST.

If the payment of Koha in money or goods and services is not accompanied by the supply of goods and services to the University, the Koha will be regarded as an unconditional gift and exempt from GST.

For the University to be able to claim input tax on Koha it must be provided with a GST Tax Invoice.

However, there may be instances when goods and services are supplied to the University, and through Maori custom rather than any contractual obligation, the University is expected to make payment for the goods and services received. If the recipient of the payment is a non-profit body, it may be arguable that the amount is an unconditional gift and not subject to GST.

10.7 Accommodation/Rental

Only amounts paid for accommodation in buildings:

- ▶ Which are hostels (including those occupied by employees)

- ▶ Which are not considered a “dwelling” (premises, that a person occupies as their principal place of residence and of which the person has “quiet enjoyment” as that term is used in section 38 of the Residential Tenancies Act 1986)

are subject to GST.

GST output tax is calculated at the rate of 9% if individual occupancy is for longer than 4 weeks. Otherwise it is 15%. No GST is chargeable on student flat rentals or farm dwelling rentals.

10.8 Tuition Fees

Upon receipt of fees, GST will only be accounted for on the non-refundable portion of amounts paid. GST is to be accounted for on the remaining amounts once an invoice is issued.

10.9 Foreign Students' Tuition Fees

Fees paid in relation to studies undertaken by foreign students in New Zealand are subject to GST at the rate of 15% regardless of whether or not the University has entered into a contract with a non-resident to perform the relevant services, as long as it is reasonably foreseeable that the services will be received in New Zealand.

For example, where non-resident parents enter into a contract with the University to provide tuition to their child in New Zealand, the supply is subject to GST at 15%.

The same will apply where the University enters into a contract with a non-resident business to provide tuition to another person (e.g., an employee or director of that business), if it is reasonably foreseeable the tuition will be received in New Zealand.

There is an exception in circumstances where it is reasonably foreseeable that the provision of services by the University is related to the making of taxable supplies by a registered person.

Where the University enters into a contract with a non-resident to provide tuition outside New Zealand (e.g., extramural students living overseas), the supply will continue to be zero-rated. However there are potential changes in relation to overseas GST/VAT, and until the changes are finalised, all enquiries should be referred to the Financial Reporting Manager.

10.10 Donations

The University receives donations from various sources. Donations are not subject to GST if they are unconditional gifts.

The donation will be exempt GST as an unconditional gift if:

- ▶ The payment is made voluntarily to the University.
- ▶ The payment is made for the purposes of the University.
- ▶ No identifiable direct valuable benefit arises or may arise in the form of goods and services supplied to the person making the payment.
- ▶ The payment is not made by the Crown or a public authority.

Where Massey makes a supply of goods and services which were donated to Massey, those goods and services will be exempt from GST provided they are not substantially changed prior to being sold.

If Massey acquires a supply of goods and services which are not acquired for the principal purposes of making exempt supplies (i.e. a supply of donated goods and services), Massey may claim a GST input tax credit on those supplies.

Each situation should be considered separately and if necessary enquiries should be referred to the Chief Financial Officer. For further discussion on this issue, please see section 14.1.

10.11 Bad Debts Written Off

If a debt has been written off, and the money is subsequently received, contact the Financial Reporting Manager, or Chief Financial Officer, with the details as these must be disclosed separately in the monthly GST return.

10.12 Billing Outside Organisations

Except where goods are exported or services are supplied to overseas residents who are outside New Zealand at the time the services are supplied, GST must be charged at the rate of 15% for the services and goods we supply to outside organisations. All charging should be done on official Massey Tax Invoices via the request for tax invoice process.

This does not apply to internal charges, i.e., between one Massey Department and another.

10.13 Budgets

All budgets relating to Massey accounts should exclude GST.

Before research projects commence, the GST implications should be made clear, so everyone is aware how much will be credited to each project, i.e., confirm if persons contributing to projects are registered or not.

10.14 Conference Organisers

People who are involved in organising conferences should refer to the Conference Officer's Conference Planning Kit. Copies are available at the Information Office.

When budgeting for a conference, all figures should be net of GST, and then GST should be added on at the end when calculating the registration fees. These budgets should be submitted to the Financial Operations Manager, Finance Operations Section or the Conference Officer for approval before an account is opened.

Note: There are different procedures on whether the conference is run via Massey accounts or run externally. If the conference is run on behalf of the University, then the conference must be run using Massey University accounts. GST will then be included when charging outside bodies and Massey staff (if they are not funded internally).

10.15 Customs

All GST charged by Customs on imports is to be analysed to GC, (code for GST imposed by customs) not GI as it has to be disclosed separately on the GST return.

When equipment is purchased from overseas, it should be administered through the equipment office.

Private overseas purchases must not be ordered in the name of the University.

10.16 Debtors/Creditors - (For The Accounts Office, Finance Operations)

When the accrual is calculated at year-end, GST should be accrued as well.

10.17 Financial Transactions

These transactions are not subject to GST and include:

- ▶ Bank fees
- ▶ Costs relating to exchange of currency
- ▶ Payment, issue, collection or transfer of ownership of cheques
- ▶ Traveller's cheques and letter of credit
- ▶ Interest

10.18 Fines & Penalties

Any punishment imposed by statute or by-law is not subject to GST. Amounts imposed as consideration for use of an underlying service (e.g., library fines) are subject to GST.

10.19 Grants-in-Aid Made to Staff

Where Grants in Aid are received towards conference or travel costs in New Zealand, and the grantee supplies tax invoices in the name of Massey University covering the costs incurred, the University can claim GST input tax on the amount covered by the Grant.

10.20 Insurance

Payments made to overseas companies for insurance premiums do not contain GST (unless working through a NZ agent). Similarly, insurance claim proceeds received from overseas insurers do not include GST.

10.21 Prizes

The general principle has been agreed that wherever possible, the donor will be advised of the name and address of the prize-winner. The donor will then make payment directly to the prize-winner.

If the prizes must go through Massey's accounts, the prize is considered a donation, and no GST is to be deducted off the income. When a book, etc is purchased, GST is to be deducted in the normal way.

10.22 Second-hand Goods

GST can be claimed on the purchase of second-hand goods from non-registered persons. However livestock and its produce is not considered second-hand, and therefore tax invoices must be supplied by the seller if an input tax deduction is to be claimed.

Note that where a supplier and a recipient are associated persons, the input tax deduction available in supplies of second-hand goods is now generally limited to the lesser of:

- ▶ The GST paid on the original cost of the goods to the supplier
- ▶ 3/23 of the purchase price or
- ▶ 3/23 of the open market value of the supply

10.23 Stock and Equipment

For stock-take purposes, all costs should exclude GST. All equipment should be valued excluding GST, when updating equipment registers.

10.24 Student Finance Transactions

(a) Hardship Grants

Because Massey is acting as an agent, there is no requirement to account for GST.

(b) Student fees paid by an internal account (not covered in the above)

e.g. Research Funding, Hostel Supervision, Staff Members.

Because the fees are paid by Massey (an internal transaction), GST needs to be deducted off the original invoice.

Accounts Receivable will:

Receive an internal charge/transfer from the department concerned. The students account is credited the gross amount and the GST portion reversed.

(c) Scholarships paying student fees

Where scholarships, paying fees, are funded from outside sources, Massey is acting as an agent and therefore the funds are receipted in gross and are transferred to the student fee account gross. GST is not required to be accounted for.

(d) Staff fee waiver account

The fees are internally funded, therefore, GST is reversed.

(e) Scholarships (not for student fees)

Massey acts as an agent when receiving scholarships from an outside source. Therefore, no GST is accounted for when the funds are received, and no GST is deducted when the cheque is paid to the student.

10.25 Subscriptions

Where Massey pays annual membership subscriptions on behalf of staff members, Massey is able to claim GST input tax on the amount paid provided that it holds the tax invoice for the subscription and the expenditure relates to Massey's taxable activity (see TIB Vol 2:3 (October 1990) GST Treatment Of Expenditure By Employees In The Course Of Their Employer's Business).

10.26 Travel/Reimbursements

Travel/Reimbursement claims, that do not have GST tax invoices (or invoices in cases where the claim is up to \$50) to support the claim, will only be reimbursed the net amount before GST.

Note: All travel expense tax invoices should be in Massey University's name.

10.27 Vice-Chancellor's Authorities/Financial Authorities

When applying for authorities, stipulate the net amount (excluding GST).

10.28 Fringe Benefits

Except where a fringe benefit enjoyed by a staff member is an exempt supply (e.g., low interest loan or certain types of life insurance) GST must be accounted for at the rate of 15% on the value of the benefit.

The GST adjustments on fringe benefits are required to be filed with the FBT return rather than GST return.

10.29 ACC/ARC

GST must be accounted for on ACC contract payments levies at the rate of 15%.

10.30 Input Tax Deduction on Reimbursed Professional Association Fees

The IRD have advised that they will allow the University to claim an input tax deduction in relation to the GST element of reimbursed professional association fees of its employees, despite that the original tax invoice for the association fees is in the name of the employee.

10.31 Electronic Transactions

Please note that getting invoices for air tickets and other items purchased electronically may be difficult. Staff must request an invoice at the time payment is made.

10.32 Quick Reference Chart

Appendix VII contains a quick reference chart of the GST treatment of various income forms.

11. ACC/ARC

11.1 The ACC Scheme

Currently, all injuries suffered in New Zealand are covered by the Accident Compensation scheme (ACC scheme), administered by the Accident Compensation Corporation (ACC) which is government owned. Generally, this has been the position since 1974. However workplace accident insurance was provided by the private sector for a 12-month period from 1 July 1999 to 30 June 2000. From 1 July 2000 all workplace accident insurance cover was returned to public provision under ACC, pursuant to the Injury Prevention, Rehabilitation and Compensation Act 2001.

11.2 The University's Obligation as an Employer

Premiums are collected by ACC to cover the cost of injuries. These premiums are paid into a series of self-funding accounts, out of which entitlements are funded.

Employers pay an employer premium (for ACC WorkPlace Cover) to ACC to cover workplace accidents suffered by their employees. The employer premium is calculated by reference to the employer's industry classification, the amount of the employer's payroll, as well as the employer's workplace safety record.

In April 2011, an experience rating system was introduced that modifies the premium payable by employers, based on their prior claims history. Businesses with better than average safety records receive a discount, while a loading will apply to those with worse than average safety records.

The experience rating programme applies to businesses that have paid levies of \$10,000 or more in the first three of the four tax years prior to the levy year in which the experience rating is calculated (the "experience period"). The ACC will apply a maximum discount or loading of 50% on the business' ACC Work levy rate.

For businesses that have paid levies totalling less than \$10,000 in any year during the experience period, the no claims discount programme may apply for which the maximum discount or loading adjustment is 10%.

The employer levy is paid by the employer for every employee to cover the cost of work-related accidents. The employer levy is calculated on the liable earnings of the employer and is paid on a provisional basis using the prior year's liable earnings or an estimate provided by the employer to ACC. When actual earnings information is available, ACC invoices the employer based on the actual earnings to 31 March.

Employers and self-employed persons pay a residual claims levy to cover the under-funded liability for the estimated future cost of work injuries suffered before 1 July 1999 and non-work injuries suffered before 1 July 1992. Prior to 1 April 2002 the residual claims levy was paid to Inland Revenue. After 1 April 2002 the residual claims levy is paid direct to ACC.

Inland Revenue provides ACC with information from the employer's PAYE monthly schedules. ACC will invoice the employer for both the employer levy and residual claims levy from July 2002 and only one payment will be required.

Employers can choose between ACC's standard cover (known as ACC Workplace Cover) or to self-manage their employee claims (through the ACC Partnership Programme) and pay a lower employer premium.

12. Documentation

12.1 Background

There are specific rules relating to documentation which must be kept for taxation purposes.

12.2 Documentation Rules

1. Time Retained

All documentation required for taxation purposes must be kept for seven years. The Inland Revenue Department has the discretion to request that the documentation be retained for a further three years in addition to seven years.

If the documentation has been destroyed after seven years, but before the Inland Revenue Department requests it be kept for the additional three years, there is no consequence.

2. Language

The income tax and GST legislation requires documents to be retained in the English language and in New Zealand.

3. Income Tax, GST and Withholding Tax Requirements

Cultural and charitable organisations are required to keep records for PAYE, FBT, GST and withholding tax purposes.

Records include:

- ▶ Ledger records
- ▶ Bank statements
- ▶ Vouchers
- ▶ Invoices
- ▶ Tax invoices
- ▶ Credit/debit notes
- ▶ Receipts
- ▶ Till tapes
- ▶ Stock on hand records
- ▶ Lists of debtors and creditors
- ▶ Documents that verify transactions in the General Ledger

13. Handling of Tax Queries/IRD Investigations

13.1 Administration Guidelines

All enquiries from Inland Revenue should in the first instance be directed to the Chief Financial Officer.

13.2 Background

1. Approach with Caution

An investigation can be disruptive. It is important the investigation is administered in a controlled and orderly fashion.

The involvement of staff in an investigation can be costly to the University. If the investigation is not approached in a systematic way by staff, the cost to the University will escalate.

2. Balanced Approach

The Inland Revenue Department has almost exhaustive power to obtain access to the information they require. Thus it is necessary to strike a balance between not being obstructive and not being so lax, that unnecessary and irrelevant information is given to the Department, and the investigation is allowed to unduly disrupt the operation of the University.

3. Control

It is important to ensure the investigation proceeds in an orderly, controlled fashion. This involves all the policies listed.

13.3 Policies for IRD Investigation

1. All Questions to One Person

All Inland Revenue Department questions should be directed to one person who will co-ordinate with the Department. This person will be the Chief Financial Officer or their delegated representative. That person should either answer the questions or if appropriate direct the Inland Revenue Department to the most suitable person.

2. Answer Question Asked

Answer only the actual question asked. Always think before answering and answer only if you are sure of the answer. If you are not sure, write the question down and advise you will find out the correct information.

3. Advice Before Answering

Do not be afraid to take professional advice before answering a question. It is not necessary to answer all questions on the spot.

4. List of Questions Asked

Obtain a list of all questions asked and maintain a record of all answers given. This ensures all parties know what is asked and what replies were given.

5. Copies of Information Given

See and take copies of all information the Inland Revenue Department has taken copies of.

6. Someone to Provide Information

Appoint someone to provide the Inland Revenue Department with all information they request no matter how mundane. It is much more orderly and cost effective for a University staff member to compile the information than non-University personnel.

Any requests for information made to staff other than the designated person, should first be transferred to the designated person by staff.

7. Inland Revenue Department to have Own Area

Give the Inland Revenue Department their own area separate from other staff, records and ongoing business activities. It is important that ongoing University operations are not disrupted by the investigation.

8. Advise Staff

Advise all staff that the Inland Revenue Department will be present and why they are present. In addition, go through the above procedure, and policies with staff so that they are aware of them and may implement them.

13.4 General Enquiries/Phone Calls

The Inland Revenue Department may request information from the University from time to time.

1. In all cases:

Record questions, the caller's name and their phone number. Advise the caller someone will get back to them.

2. All calls are then to be referred to the Chief Financial Officer. The Chief Financial Officer will approve who is authorised to communicate with the Inland Revenue Department.

Some information at the University is highly confidential. It is increasingly important that no information is accidentally given to people seeking information as bogus Inland Revenue Department personnel.

The Chief Financial Officer will reply to the Department.

All inquiries from the University to the Inland Revenue Department must be directed to the Chief Financial Officer. No staff outside of Payroll and Finance are authorised to make approaches to the Inland Revenue Department.

This is required so that a central record is kept of all questions and replies. This will then enable the Chief Financial Officer to keep the whole University briefed on tax developments on a periodic basis.

14. Penalties

14.1 Administration Guidelines

All Departments must ensure compliance with aspects of the University's obligation in terms of PAYE/GST and FBT. It is emphasised that the University primarily remains liable for areas of non-compliance and it is important this exposure does not arise and the added cost of penalties does not arise.

14.2 Background

Non-adherence to procedures set in the taxation section of the Finance Manual could result in Inland Revenue Department investigations, additional taxes and penalties being payable by the University.

14.3 Devolution Policy

Under devolution any costs of investigations, additional taxes and penalties resulting from non-adherence to "procedures" will be the responsibility of the primary cost centre manager concerned. They will be charged as expenditure to the cost centre concerned.

14.4 Shortfall Penalties

Shortfall penalties range from 20% to 150% depending on the nature of the actions undertaken by the taxpayer that resulted in the shortfall occurring.

Shortfall penalties are imposed for the following actions by the taxpayer:

- ▶ Not taking reasonable care in relation to a tax position (20%)
- ▶ Unacceptable tax position (20%)
- ▶ Gross Carelessness in relation to a tax position (40%)
- ▶ Abusive tax position (100%)
- ▶ Evasion or Similar Act (150%)

Shortfall penalties can be imposed for all tax types.

Voluntary Disclosure/Temporary Shortfall

No penalties will apply where the shortfall penalty is for not taking reasonable care, for taking an unacceptable tax position or unacceptable interpretation where the taxpayer has made a voluntary disclosure prior to notification of an Inland Revenue audit or investigation.

A 75% reduction also applies to those shortfalls which are considered to be temporary in nature.

If the taxpayer has been notified of an Inland Revenue investigation and discloses before the investigation commences, this will result in a 40% reduction of the shortfall penalty.

Good Behaviour

There are legislative provisions which allow for a further reduction of a shortfall penalty by 50% for good behaviour, provided specific criteria as outlined in the legislation are met.

15. Miscellaneous

15.1 Donations

It is University policy not to provide advice to donors as to whether donations made to the University will be deductible for tax purposes. As this is a complex area the University will not accept liability for any advice given on this issue.

Appendix I Scheduling Payments Rates

Standard rates of tax for scheduling payments

PART A - PAYMENTS TO NON-RESIDENT CONTRACTORS

- 1 A contract payment that relates to a non-resident contractor's contract activity or service has a standard rate of tax of 0.15 for each dollar of the payment, if the payment is
 - (a) To the non-resident contractor:
 - (b) To an agent of the non-resident contractor:
 - (c) To a person acting on behalf of the non-resident contractor.

PART B - PAYMENTS OF COMPANY DIRECTORS' FEES, EXAMINERS' FEES, HONORARIA, AND OTHER PAYMENTS

- 1 A payment of a company director's fee, or an examiner's fee, or an honorarium, has a standard rate of tax of 0.33 for each dollar of the payment.
- 1B A payment has a standard rate of tax of 0.33 for each dollar of the payment, if it is for work or services performed by –
 - (a) A local government elected representative:
 - (b) An official of a community organisation, society, or club:
 - (c) A chair or member of a committee, board, or council:
 - (d) An official, chair, or member of a body or organisation similar to one described in paragraph (b) or (c).
- 2 In this part, examiner's fee means fees or remuneration for work or services that relate to examining an examination candidate, if the work or services have the following nature:
 - (a) Setting an examination paper or question:
 - (b) Marking a candidate's answer:
 - (c) Examining a candidate orally:
 - (d) Examining a candidate's practical work or performance.

PART C - PAYMENTS FOR WORK OR SERVICES RELATING TO PRIMARY PRODUCTION

- 1 A payment for work or services referred to in the following paragraphs has a standard rate of tax of 0.15 for each dollar of the payment:
 - (a) Farming contract work:
 - (b) Cultivation contract work:
 - (c) Shearing:
 - (d) Droving:
 - (e) (Repealed)
 - (f) Forestry or bush work (including bush felling, road and tramway work, removal of timber, undergrowth cutting, burning, or clearing):
 - (g) Planting or cutting flax:
 - (h) Work described in section DO 1 or DO 2 that is related to land that is used or intended to be used for farming or agriculture.
- 2 In this part,
 - cultivation contract work
 - (a) Means work or services provided under a contract or arrangement for the supply of labour, or substantially for the supply of labour; and on or in connection with land that is intended to be used for the cultivation of fruit crops, vegetables, orchards, or vineyards:
 - (b) excludes work or services provided by
 - (i) A post-harvest facility:
 - (ii) A management entity under a formal management agreement under which the entity is responsible for payment for the work or services provided.
 - farming contract work means work that is related to land that is used or intended to be used for farming or agriculture, if the work has the following nature:
 - (a) Firewood cutting, or post or rail splitting
 - (b) Cutting down trees incidental to work under paragraph (a)
 - (c) Grass or grass seed cutting
 - (d) Hedge cutting
 - (e) Planting trees
 - (f) Planting or cutting flax
 - (g) Threshing, chaff cutting, hay making, hay baling, or harvesting or gathering crops

PART D - PAYMENTS FOR COMMERCIAL CLEANING AND MAINTENANCE WORK, OR FOR GENERAL CONTRACTING

- 1 A payment for commercial cleaning or maintenance work has a standard rate of tax of 0.20 for each dollar of the payment.
- 2 A payment for work or services referred to in the following paragraphs has a standard rate of tax of 0.15 for each dollar of the payment:
 - (a) Mail delivery or collection
 - (b) Transporting school children
 - (c) Milk delivery
 - (d) Refuse removal
 - (e) Caretaking or acting as a guard
 - (f) Street or road cleaning
- 3 In this part, -
commercial cleaning or maintenance work means work or services that are related to schedular commercial land, if the work or services have the following nature:
 - (a) Cleaning all or part of premises
 - (b) Cleaning or laundering plant, vehicles, furniture, furnishings, fittings, or equipment
 - (c) Gardening (including grass cutting and hedge cutting)
 - (d) Destroying vermin
 - (e) Destroying weedsschedular commercial land means land that:
 - (a) Is not used for farming or agriculture purposes
 - (b) Is not a dwellinghouse
 - (c) Is not premises that are used exclusively for residential purposes

PART E - PAYMENTS FOR LABOUR-ONLY BUILDING WORK, OR FOR LABOUR-ONLY FISHING BOAT OPERATING

- 1 A payment for labour-only building work, or for labour-only fishing boat work, has a standard rate of tax of 0.20 for each dollar of the payment.
- 2 In this part,
labour-only fishing boat work means work or services under a contract, arrangement, or agreement for profit-sharing which is exclusively or substantially for the supply of labour in connection with operating or maintaining a fishing boat that is required to be registered under section 103 of the Fisheries Act 1996
labour-only building work means work or services under a contract or arrangement which is exclusively or substantially for the supply of labour in connection with a building or a construction (including pre-fabrication and pre-cutting for the relevant building or construction), if the work or services have the following nature:
 - (a) Work or services that, customarily, may form part of the work or services of a carpenter under a building contract:
 - (b) Work or services connected with roof-fixing, steel-fixing, erecting fences, or laying concrete, bricks, blocks, tiles, slabs, or stones, if the relevant building or construction is not land that is used or intended to be used for farming or agriculture:
 - (c) Work or services connected with hanging wallpaper, hanging decorative wall coverings or furnishings, or painting or decorating (including plastering):
 - (d) Work or services connected with installing fibrous plaster, wallboard, insulating material, interior tiles, interior lining, floor tiles, carpet, linoleum, or floor coverings.

PART F - PAYMENTS FOR ACTIVITIES RELATED TO SPORTS, MEDIA, ENTERTAINMENT, AND PUBLIC SPEAKING

- 1 A payment of a media contribution fee, or of a promotional appearance fee, has a standard rate of tax of 0.25 for each dollar of the payment.
- 2 A payment that relates to media production work has a standard rate of tax of 0.20 for each dollar of the payment, if part A of this schedule, and clauses 4 and 5 of this part do not apply to the payment.
- 3 A payment of a modeling fee has a standard rate of tax of 0.20 for each dollar of the payment.
- 4 A payment for services connected with a non-resident entertainer providing or performing a Part F activity has a standard rate of tax of 0.20 for each dollar of the payment, if the payment is
 - (a) To the non-resident entertainer:
 - (b) To an agent of the non-resident entertainer:
 - (c) To a person acting on behalf of the non-resident entertainer.
- 5 A payment for services connected with a New Zealand resident providing or performing a Part F activity has a standard rate of tax of 0.20 for each dollar of the payment, if clause 6 does not apply to the payment and it is

- (a) To the New Zealand resident:
- (b) To an agent of the resident:
- (c) To a person acting on behalf of the resident.

6 A payment for services connected with a New Zealand resident providing or performing a Part F activity has a standard rate of tax 0.15 for each dollar of the payment, if the payment relates to shares of riding or driving fees and it is

- (a) To the New Zealand resident, and the resident is an apprentice jockey or an apprentice driver:
- (b) To an agent of the apprentice jockey or apprentice driver:
- (c) To a person acting on behalf of the apprentice jockey or apprentice driver.

7 In this part,

media contribution fee means fees or remuneration, paid to a contributor, that relate to a contribution for television, radio, theatre, stage, or printed media

media production work means work or services that relate to television, videos, or films, if the work or services have the following nature:

- (a) On-set and off-set pre-production work or services:
- (b) On-set and off-set production work or services:
- (c) On-set and off-set post-production work or services

modeling fee means fees or remuneration that relate to modeling, including a personal attendance for any promotional purpose, for photography, for supplying personal photographs, or for supplying personal endorsements or statements

Part F activity means an activity or performance—

- (a) connected with—
 - (i) A sporting event or competition:
 - (ii) Making speeches or giving lectures or talks for any purpose:
 - (iii) Acting, singing, playing music, dancing, or entertaining generally, for any purpose and whether alone or not
- (b) undertaken by a person who meets the requirements of any of the following paragraphs:
 - (i) They are not fully or partly sponsored under a cultural programme of an overseas government or the Government of New Zealand
 - (ii) They are not an official representative of a body that administers a game or sport in an overseas country
 - (iii) They are not undertaking an activity or performance under a programme of a foundation, trust, or organisation outside New Zealand which exists for the promotion of a cultural activity and is not carried on for individual profit of the member or shareholder
 - (iv) If they are an employee, officer, or principal of a company, firm, or other person, includes the company, firm, or other person

Promotional appearance fee means fees or remuneration that relate to a personal attendance for exhibiting or demonstrating goods

PART G - SALES COMMISSION

1 A payment of commission or remuneration to an insurance agent or sub-agent, or to a salesperson has a standard rate of tax of 0.20 for each dollar of the payment.

PART H - PAYMENTS TO PURCHASE NATURAL PRODUCTS

1 A payment that relates to a purchase of schedular natural products has a standard rate of tax of 0.25 for each dollar of the payment, if the payment is made to the seller and it is not an exempt natural products payment.

2 A payment that relates to a purchase of game has a standard rate of tax of 0.25 for each dollar of the payment, if the payment is made to the seller.

3 In this part,

exempt natural products payment means a payment that relates to the purchase of schedular natural products, if the payment is made -

- (a) To a natural products dealer
- (b) On a purchase that occurs after a disposal by a natural products dealer
- (c) To an auctioneer or a dealer acting as agent for the seller
- (d) At retail, in a shop

game means all or part of a wild deer, wild pig, or wild goat, whether dead or alive

natural products dealer means a person who -

- (a) Is registered under any Act or regulation as a broker, dealer, or trader in relation to schedular natural products:
- (b) Holds a natural product dealer certificate, issued by the Commissioner under section 44D of the Tax Administration Act 1994:

- (c) Holds an unrevoked certificate from the Commissioner showing that the person would be a licensed dealer for purposes of the Income Tax (Withholding Payments) Regulations 1979 if those regulations had not been revoked by this Act

schedular natural products means -

- (a) Greenstone (nephrite)
- (b) Eel
- (c) Whitebait
- (d) Sphagnum moss

PART I - PERSONAL SERVICE REHABILITATION PAYMENTS

- 1 A personal service rehabilitation payment for a person under the Accident Compensation Act 2001 has a standard rate of tax of 0.105 for each dollar of the payment.

Part J - PAYMENTS UNDER LABOUR-HIRE ARRANGEMENTS

- 1 A payment by a person (the payer) to another person (the payee) has a standard rate of tax of 0.20 for each dollar of the payment if -
 - (a) 1 of the payer's main activities is the business of arranging for a person or persons to perform work or services directly for clients of the payer; and
 - (b) the payment is made under an arrangement the performance of which, in whole or in part, involves the performance of work or services by the payee directly for a client of the payer, or directly for a client of another person; and
 - (c) in the case of the payer and the payee being associated persons described in section YB 2 or YB3, the payer has chosen to apply this part to the payment.

Part W - Voluntary schedular payments

- 1 A payment to a person is treated as a schedular payment (a voluntary schedular payment) and has a standard rate of tax of 0.20 for each dollar of the payment if -
 - (a) there is no obligation to withhold an amount from the payment under this Act or under the Tax Administration Act 1994; and
 - (b) the payer and the payee have agreed that the payment is a voluntary schedular payment, and have recorded their agreement in a document.

Appendix II Mileage Reimbursements Rates

Approved Mileage Rates for Employee Reimbursement

IRD issued an Operational Statement 18/01 Commissioner's statement on using a kilometre rate for business running of a motor vehicle which applies from the 2018 income year.

The distance on which the reimbursement rate is calculated is work-related mileage only. From the start of the 2018 income year the rate for vehicles is split into two tiers. If a logbook is maintained by the employee, the rate for the tier one is 76c per km. This rate applies to the business portion of the first 14,000km travelled by the motor vehicle in a year. These rates apply irrespective of engine size or whether the vehicle is a petrol or diesel, petrol hybrid, or electric vehicles. The rates for the tier two are 26c, 18c, and 9c per km for petrol or diesel, petrol hybrid, and electric vehicles, respectively. These rates apply to the business portion of any travel in excess of 14,000 km. The mileage rates do not apply to motor cycles. The Commissioner considers these mileage rates as being a reasonable estimate of the costs likely to be incurred by the employee.

If logbooks recording the employment related portion of travel or other records that establish the proportion of employment use for an income year are not maintained the tier one per km rate of 76c is limited to the first 3,500 km travelled for employment purposes. The appropriate tier two rate must then be used for any travel for employment purposes in excess of 3,500 km.

Inland Revenue have confirmed in TIB Vol 18:5 (June 2006) that employers may use rates published by a reputable independent source, representing a reasonable estimate in accordance with section CW 17 of the ITA 2007 (for example New Zealand Automobile Associates, Inc mileage rates).

There is currently a draft Commissioner's statement on using a kilometre rate for reimbursement of a motor vehicle out for consultation. The kilometre rates above may change from the date the statement is finalised.

As the kilometre rates are usually set by the Commissioner on an annual basis, check the Inland Revenue website regularly for the latest kilometre rates (keyword: claiming vehicle expenses).

Instead of using the above mileage rates, an employee's actual expenditure can be reimbursed. If you do this you must make sure that you both keep accurate records, including details of private and work related expenditure to justify the reimbursements.

Appendix III Tax Exemptions for Visiting Experts and Lecturers

Approved arrangements for the purposes of section CW 22 of the ITA 2007.

- ▶ An arrangement entered into by the government of New Zealand in relation to or under:
 - ▶ The Commonwealth Education Scheme
 - ▶ A programme of the United Nations, or any specialised agency of the United Nations, for cultural, economic, educational, expert, professional, or technical assistance.
- ▶ An arrangement entered into by the government of New Zealand for the purpose of providing education, training or experience for officers of the Samoan, Cook Islands, Niuean, or Tokelauan public services, or for persons resident in Samoa, the Cook Islands, Niue, or Tokelau.
- ▶ An arrangement entered into by the government of New Zealand with the government of any other country or with any international organisation, if it is an arrangement that:
 - ▶ Is for the purpose of providing cultural, economic, educational, expert, professional, or technical assistance, or administrative or other training, or the means or facilities for making investigations, whether upon a bilateral, co-operative, multilateral, mutual, or unilateral basis
 - ▶ Is in principle similar to the first two categories of arrangements described above

Appendix IV Checklist for Non-resident Lecturers

Checklist for Non-resident Entertainers (Visiting Lecturers)

(A) Determining Whether Person is a Non-Resident Entertainer

1. Is the visiting non-resident lecturer receiving payment as an independent contractor to Massey University? Y/N

(See section 2.3 regarding distinction between independent contractors and employees.)

-
2. Is a payment made to the person, their agent, or a person acting on their behalf? Y/N

Note: Payments to a company or firm employing the person are also covered.

-
3. Does the person perform or participate in or receive payment for any activity in connection with lectures, speeches, or talks for any purpose but excluding activities: Y/N

- ▶ Performed pursuant to a cultural programme of, or wholly or partially sponsored by, the New Zealand Government or an overseas Government
- ▶ Performed pursuant to a programme of a non-profit organisation that exists wholly or partly to promote cultural activity
- ▶ In relation to a game or sport, where the participants are official representatives of an overseas sporting body?

-
4. Is the person a non-resident of New Zealand for tax purposes? Y/N

(See section 6.2 regarding New Zealand residency test.)

Where the person is a company, the company will be a non-resident of New Zealand where it:

- ▶ Is not incorporated in New Zealand and
- ▶ Does not have its head office in New Zealand and
- ▶ Does not have its centre of management in New Zealand and
- ▶ Is not controlled by its directors in New Zealand.

If all these questions have been answered in the affirmative, then the payment is a specified payment to a non-resident entertainer and withholding tax must be deducted from the gross amount of the payment at the rate of 20c per \$1, unless a tailored tax rate certificate is provided to Massey University by the person.

If no tailored tax rate certificate is provided by the person, Massey University should determine whether or not a tailored tax rate certificate should be applied for on behalf of the non-resident entertainer using the following checklist.

(B) Determining Eligibility for a nil Tailored Tax Rate Certificate

1. Section CW 20 Tax Exemption

Y/N

Is the payment made to the non-resident entertainer (lecturer) in relation to an activity or performance:

- ▶ Performed pursuant to a cultural programme of, or wholly or partially sponsored by, the New Zealand government or an overseas government or
- ▶ Performed pursuant to a programme of a non-profit organisation that exists wholly or partly to promote cultural activities or
- ▶ In relation to a game or sport, where the participants are official representatives of an overseas sporting body?

If any of these questions are answered in the affirmative then this exemption will apply and a nil tailored tax rate certificate should be applied for before payment is made.

2. Section CW 22 Tax Exemption

Y/N

- (a) Is the person who is receiving the payment a non-resident of New Zealand for tax purposes

(Refer section 6.2 for New Zealand Residency Test.)

- (b) Are the services performed for or on behalf of an employer who is not resident in New Zealand; or is the person paid from any maintenance, allowance, scholarship, or bursary?

- (c) Is the amount paid to the person for the purpose of teaching or lecturing under any arrangement for assistance entered into by the Government of New Zealand (see appendix III for approved arrangements)?

If all these questions are answered in the affirmative the payment will be exempt from tax and a nil tailored tax rate certificate should be applied for before a payment is made.

3. DTA Relief

Y/N

Where neither of the above provisions provide eligibility for tax exempt status it is necessary to determine if relief can be provided under a DTA which New Zealand has entered into with a foreign country.

Any remuneration for teaching by a visiting professor or teacher from the following countries is exempt from New Zealand income tax where the following criteria in respect of each country are met.

1. Fiji (Art 17) and Sweden (Art 19)

- ▶ The visit to this country is for less than two years.
- ▶ They are a resident of one of the above countries immediately before the visit.
- ▶ The remuneration paid is subject to income tax in the person's country of residence.

2. Belgium (Art 20), China (Art 20)

- ▶ The visit to this country is for less than two years.
- ▶ They are a resident of one of the above countries immediately before the visit.

3. Germany (Art 20), Korea (Art 21), Netherlands (Art 20) and France (Art 21)

- ▶ The visit to this country is for less than two years.
- ▶ They are a resident of either of the above countries immediately before the visit

-
- ▶ This is also applicable to income from research if such research is undertaken in the public interest and not for private benefit.

4. India (Art 21), Indonesia (Art 20), Italy (Art 20) and Malaysia (Art 15)

- ▶ The visit to this country is for less than two years.
- ▶ They are a resident of either of the above countries immediately before the visit.
- ▶ The remuneration paid is subject to tax in the person's country of residence.
- ▶ Income from research will only be exempt where the research is undertaken in the public interest and not primarily for the private benefit of a specific person.

5. Philippines (Art 20)

- ▶ The visit to this country is for less than two years.
 - ▶ They are a resident of the Philippines immediately before the visit.
 - ▶ Any research is undertaken for the public benefit.
 - ▶ Remuneration from remittances from outside New Zealand used to enable the visiting professor or teacher also gets the benefit of this exemption.
-
-

Pro Forma Letter for an Application for a nil Tailored Tax Rate Certificate for a Non-Resident Entertainer (Overseas Lecturer)

[Massey University Letterhead]

[Date]

Non-resident contractors team
Inland Revenue Department

By email: nr.contractors@ird.govt.nz

Dear Sir

IRD No. [If available/held]

Application for a nil tailored tax rate certificate

On behalf of [taxpayer's name] we apply for a nil tailored tax rate certificate as discussed in TIB 6.8 at page 7.

[Taxpayer's name] is a non-resident entertainer and the nil tailored tax rate certificate will relieve Massey University of its obligations to withhold tax under the Income Tax Act 2007.

[Taxpayer's name] is a resident of [give taxpayer's home country] and is temporarily in New Zealand the purposes of [give detailed description of the purposes of taxpayer's visit/work including details of whether it is a one off or a continuing appointment and if so the term].

[Taxpayer's name] will be in New Zealand for [give number of days] after which time [he/she] will be returning to [given taxpayer's home country].

The grounds for seeking a nil tailored tax rate certificate are that [taxpayer's name] income from Massey University is not taxable in New Zealand pursuant to [provide the section of Income Tax Act 2007 or the article of the relevant DTA that exempts the income from tax in New Zealand, e.g., section CW 20 of the Income Tax Act 2007, or article 20 of the China / New Zealand double tax agreement].

We enclose a copy of [taxpayer's name] contract for service for your information.

If you have any questions please contact [name of contact at Massey University].

Yours sincerely
MASSEY UNIVERSITY

[Name of Writer]
[Designation]

Appendix V Checklist for Non-resident Contractors

(A) Determining Whether Person is a Non-Resident Contractor

1. Is the non-resident person who receives payment an independent contractor to Massey University? Y/N

(See section 2.3 regarding distinction between independent contractors and employees.)

2. Does the person under a contract, agreement or arrangement undertake or receive payment for performing or rendering any work or contract of service (except lecturing) including any of the following services: Y/N

- ▶ Advisory
- ▶ Analytical
- ▶ Consultancy
- ▶ Designing
- ▶ Inspection
- ▶ Management
- ▶ Professional
- ▶ Scientific
- ▶ Technical.

3. Are the services being performed in New Zealand? Y/N

4. Is the person a non-resident of New Zealand for tax purposes? Y/N

(Refer section 6.2 regarding the New Zealand residency test.)

If all these questions have been answered in the affirmative, then the payment is a contract payment to a non-resident contractor and withholding tax must be deducted from the gross amount of the payment at the rate of 15c per \$1 (if a Tax Code Declaration form has been provided), unless a valid certificate of exemption is provided to Massey University by the person. If a tax code declaration form has not been provided then the non-declaration rate is 20% if the non-resident contractor is a company, and 45% in all other cases.

If a non-resident contractor is entitled to full relief under a DTA and will be in New Zealand for less than 93-days in any 12 month period, the non-resident contractor will not be required to apply for an exemption certificate. A further exemption provides that a non-resident contractor is exempt from non-resident withholding tax if, in relation to the total contract activities of the non-resident contractor, the total amount of contract payments made to that contractor is less than \$15,000 in any 12 month period. In each case, before deciding not to deduct withholding tax, the University should ascertain whether the contractor is expected to exceed the 92-day period or the \$15,000 threshold in respect of all contract activities to be undertaken in New Zealand in any 12 month period.

If the rules above do not apply or no certificate of exemption is provided by the person Massey University should determine whether or not to apply for a certificate of exemption on behalf of the non-resident contractor, considering the following guidelines overleaf.

We note that Inland Revenue may impose shortfall penalties if an employer fails to make a deduction from a schedular payment made to a non-resident contractor who does not hold a valid certificate of exemption from NRCT (notwithstanding that the non-resident may be entitled to total relief under a DTA). An employers' withholding payment penalty of \$250 for each monthly schedule for which the employer fails to make a required tax deduction from a schedular payment made to a non-resident contractor. This penalty is capped at \$1,000 per employer monthly schedule. This penalty only applies if the contractor would otherwise be entitled to DTA relief. In all other cases, the general shortfall penalties apply.

(B) Determining Eligibility for Certificate of Exemption

1. Section CW 19 Tax Exemption Y/N

- (a) Is the person performing the services a non-resident of New Zealand for tax purposes?

(Refer section 6.2 regarding the New Zealand Residency test.)

- (b) Is the visit for a period of less than 93 days? and
- (c) Is the payment taxable in the non-residents home country? and
- (d) Are the services performed for or on behalf of a person who is not resident in New Zealand?

If the answer to all the above is yes, an exemption will apply.

2. If this exemption from tax does not apply it is necessary to determine if relief can be provided under a DTA which New Zealand has entered into with a foreign country.

Y/N

Payments for independent professional services provided by a non-resident to Massey University are exempt from New Zealand income tax where the following criteria in respect of each country are met.

1. Austria (Art 7), Mexico (Art 7), South Africa (Art 7), Czech Republic (Art 7), Spain (Art 7), Chile (Art 7), Poland (Art 7), Samoa (Art 7)
 - ▶ The individual is not performing services in New Zealand through a permanent establishment
2. Belgium (Art 14), Denmark (Art 14), United Arab Emirates (Art 15)
 - ▶ The individual is present in New Zealand for less than 183 days in aggregate in any income year
 - ▶ The individual does not have a fixed based regularly available to them in New Zealand for the purpose of performing the services in question
3. Canada (Art 14 as re-negotiated on 3 May 2012) and Japan (Art 14)
 - ▶ The individual is present in New Zealand for less than 183 days in aggregate in any 12 month period commencing or ending in the taxation year concerned and
 - ▶ The remuneration is paid by, or on behalf of an employer who is resident of Canada/Japan and
 - ▶ The cost of the remuneration is not borne by a permanent establishment which that person has in New Zealand.
4. China (Art 14), India (Art 14), Ireland (Art 16), United Kingdom (Art 15), Vietnam (Art 14)
 - ▶ The individual is present in New Zealand for less than 183 days in any consecutive 12 month period and
 - ▶ The individual does not have a fixed base regularly available to them in New Zealand for the purpose of performing the services in question.
5. Fiji (Art 12)
 - ▶ The individual is present in New Zealand for less than 183 days in aggregate in any income year and
 - ▶ The remuneration is paid by, or on behalf of an employer who is not a New Zealand resident and
 - ▶ The cost of the remuneration is not borne by a permanent establishment which the employer has in New Zealand and
 - ▶ The income is taxed in Fiji
6. Finland (Art 14), France (Art 14), Germany (Art 14), Italy (Art 14), Korea (Art 14), Netherlands (Art 14), Switzerland (Art 14)
 - ▶ Income from the services performed by the non-resident in New Zealand will be exempt from tax in New Zealand unless the individual has a fixed base regularly available to them in New Zealand for the purpose of performing the services in question.
7. Indonesia (Art 14)
 - ▶ The individual is present in New Zealand for less than 90 days in aggregate in any consecutive 12 month period and
 - ▶ The individual does not have a fixed base regularly available to them in New Zealand for the purpose of performing the services in question

-
8. Malaysia (Art 11)
 - ▶ The individual is present in New Zealand for less than 183 days in aggregate during the income year and
 - ▶ The services do not form part of a continuous period of more than 183 days throughout which the individual is present in New Zealand and
 - ▶ The services are performed for and on behalf of a resident of Malaysia and
 - ▶ The cost of the remuneration is not borne by a New Zealand resident

 9. Norway (Art 14)
 - ▶ The services are performed in New Zealand and
 - ▶ The individual is present in New Zealand for period(s), together with period(s) in the preceding or succeeding income year, which in aggregate are less than 183 days and
 - ▶ The individual does not have a fixed base regularly available to them in New Zealand for the purpose of performing the services in question.

 10. Philippines (Art 14)
 - ▶ The individual is present in New Zealand for less than 183 days in aggregate in any income year and
 - ▶ The individual does not have a fixed base regularly available to the individual in New Zealand for the purposes of performing the services in question

 11. Sweden (Art 15)
 - ▶ The individual is present in New Zealand for less than 183 days in aggregate in any income year and
 - ▶ The individual does not have a fixed base in New Zealand for a period exceeding 183 days in an income year

 12. Turkey (Art 14)
 - ▶ The individual is present in New Zealand for less than 183 days in aggregate in any continuous 12 month period
 - ▶ The individual does not have a fixed base regularly available to them in New Zealand for the purpose of performing those services or activities

 13. Russia (Art 14), Thailand (Art 15), Taiwan (Art 14)
 - ▶ The individual is present in New Zealand for less than 183 days in aggregate in any twelve month period commencing or ending in the fiscal year concerned; and
 - ▶ The individual does not have a fixed base regularly available to them in New Zealand for the purpose of performing the individual's activities.

 14. Australia (Art 7), Hong Kong (Art 7), Singapore (Art 7), United States of America (Art 7)
 - ▶ The individual is not deemed to have permanent establishment in New Zealand.
-

The determination of whether a permanent establishment exists is complex and professional advice must be sought by contacting the Chief Financial Officer prior to making any payment.

If all these questions are answered in the affirmative, (and the person is not a lecturer), the payment will be exempt from tax and an exemption certificate should be applied for.

Pro Forma Letter for an Application for a Certificate of Exemption for a Non-Resident Contractor

[Massey University Letterhead]

[Date]

Non-resident contractors team
Inland Revenue Department

By email: nr.contractors@ird.govt.nz

Dear Sir

[Taxpayer's Name]

IRD No: [if available/held]

Application for Certificate of Exemption from Non-Resident Contractors Withholding Tax

On behalf of [taxpayer's name] we apply, pursuant to section 24M of the Tax Administration Act 1994 and section RD 24 of the Income Tax Act 2007, for a certificate of exemption from non-resident contractors withholding tax.

[Taxpayer's name] is a non-resident contractor and the certificate of exemption certificate will relieve Massey University of its obligations to withhold tax under the Income Tax Act 2007.

[Taxpayer's name] is a resident of [give taxpayer's home country] and is temporarily in New Zealand the purposes of [give detailed description of the purpose of taxpayer's visit/work including details of whether it is a one off or a continuing appointment and if so the term].

[Taxpayer's name] will be in New Zealand for [give number of days] after which time [he/she] will be returning to [give taxpayer's home country].

The grounds for seeking a certificate of exemption are that [taxpayer's name] income from Massey University is not taxable in New Zealand pursuant to [provide the section of Income Tax Act 2007 or the article of the relevant DTA that exempts the income from tax in New Zealand, e.g., section CW 8) of the Income Tax Act 2007, or article 14 of the China/New Zealand double tax agreement].

We enclose a copy of [taxpayer's name] contract for service for your information confirming the details of [his/her] appointment with Massey University.

If you have any questions please contact me.

Yours sincerely
MASSEY UNIVERSITY

[Name of Writer]
[Designation]

Appendix VI New Zealand Tax Obligations – Visiting Experts/Lecturers

The following summarises the New Zealand tax obligations of visiting research experts and lecturers who remain non-residents for New Zealand tax purposes during their stay in New Zealand and are not eligible for Double Tax Treaty relief.

In Bound - Non-Residents

						Comments
				Taxable	Not Taxable	
Compensation:						
Base Salary				X		
Bonus				X		
Cost-of-Living Allowance				X		
Free or Subsidised Accommodation				X		A
Other Cash Allowance				X		
Home Leave Travel				X		B
Other	Reimbursing	Allowance	(including relocation/repatriation benefits)		X	
Non-cash Benefits					X	B
Superannuation Contributions					X	C
Share Options				X		
Other items:						
Personal Investment Income (interest, dividends etc)				X		D
Capital Gains					X	E
Rental Income				X		F
Beneficiary Income				X		G
Taxable Distributions from Trusts					X	G
FIF Income					X	
A	In relation to work-related relocations to New Zealand: - Accommodation provided for up to 3 months after arrival is exempt from tax. In relation to temporary assignments in New Zealand for periods not exceeding 2 years: - Accommodation is tax exempt for a maximum period of 2 years. See section 3.6.					
B	Home leave travel will be subject to PAYE if flight cost is reimbursed or FBT if flight costs are paid directly by Massey on the basis that the travel is not business related. Some other reimbursement allowances, particularly relocation/repatriation benefits may be exempt. See section 3.4. Some non-cash benefits may also be exempt, refer to FBT in section 1.					
C	Depending on the type of scheme, superannuation contributions could have FIF or FBT implications.					
D	New Zealand sourced personal investment income will be taxed in New Zealand. Such income sourced outside New Zealand will not be subject to tax in New Zealand.					
E	Capital gains may be subject to tax in the country of residence.					
F	New Zealand-sourced rental income will be taxed in New Zealand. Such income sourced outside New Zealand will not be subject to tax in New Zealand.					
G	Beneficiary income from a New Zealand complying trust will be subject to New Zealand tax. Beneficiary income from a foreign trust or a non-complying trust will not be subject to New Zealand tax unless it is New Zealand sourced.					

Appendix VII GST Quick Reference Chart

Type of Income	Liable for GST	Not Liable For GST	Exempt From GST
Grants	X		
Subsidies	X		
Suspensory loans	X		
Donations		X	
Koha (generally)		X	
Bequests		X	
Tuition fees	X		
Overseas income (*)		X	
Hostel fees	X		
Consulting / Trading activities	X		
Equipment hire	X		
Rent received (residential)			X
Rent received (commercial)	X		
Sale of assets/equipment	X		
Building and maintenance recoveries	X		
Insurance receipts	X		
Advertising or sponsorship	X		
Interest/dividends			X
Sale of student notes:			
- Monetary Value Stated	X		
- No monetary Value Stated		X	
Fines imposed under statute		X	
Fines not imposed under statute	X		

* Overseas Income – where services are supplied to non-residents, but performance of the services are received in New Zealand by a person who is not registered for GST, such services will be liable to GST.

Appendix VIII IRD Interpretation Guidelines – Employee or Independent Contractor

INTERPRETATION GUIDELINE: IG 16/01
INCOME TAX; GOODS AND SERVICES TAX – DETERMINING EMPLOYMENT
STATUS FOR TAX PURPOSES (EMPLOYEE OR INDEPENDENT CONTRACTOR?)

Summary

1. This interpretation guideline will help taxpayers to determine their employment status for tax purposes.
2. This Interpretation Guideline updates and replaces Interpretation Guideline IG 11/01, “Income tax; Goods and services tax - Determining employment status for tax purposes (employee or independent contractor)”, Tax Information Bulletin ¶1245-101 Vol 24, No 5 (June 2012): 3. IG 11/01 outlined the tests for determining whether a person is an employee or independent contractor. This Interpretation Guideline corrects an error regarding the control test in [5] of IG 11/01 (the test is stated correctly in the body of the Item). This Interpretation Guideline also updates legislative references and case law and has been revised in places for clarity. The Commissioner’s approach to determining employment status for tax purposes remains unchanged.
3. A taxpayer’s tax obligations for amounts earned from work done depends on their employment status (i.e., whether the taxpayer is an employee or an independent contractor).
4. The Income Tax Act 2007 (ITA) defines “employee” to include a person who receives or is entitled to receive a “PAYE income payment”. A “PAYE income payment” is defined to include a payment of “salary or wages” or “extra pay”. Both of these terms are defined as being “... made to a person in connection with their employment”. Case law has determined that the use of the word “employment” in these definitions relates to “a contract of service”. Under the Goods and Services Tax Act 1985 (GSTA), supplies of goods and services under a “contract of service” are not taxable. These provisions do not explain how to determine whether there is a contract of service in any particular case. Therefore, we must rely on the common law to determine whether there is a contract of service.
5. The common law distinguishes between contracts of service and contracts for services. A contract of service means there is an employer–employee relationship; a contract for services means there is a principal-independent contractor relationship. At common law, the courts have developed various tests to determine whether there is a contract of service or a contract for services. The case law shows that the main tests are the intention, control, independence, fundamental and integration tests. These tests can be summarised as follows:
 - Intention of the parties test – looks at the intentions of each party to the agreement as to the nature of the relationship.
 - Control test – examines the degree of control the employer or principal exerts over the manner in which the work is done. A high level of control supports the conclusion that the person engaged to perform the services is an employee.
 - Independence test – examines the level of independence the person engaged to perform the services exerts over their work. A high level of independence supports the conclusion that the person engaged to perform the services is an independent contractor.
 - Fundamental test – considers whether the person engaged to perform the services is doing so as a person in business on their own account. If the answer is “yes”, this supports the conclusion that the person is an independent contractor; if the answer is “no”, this supports the conclusion that the person is an employee.
 - Integration test – looks at whether the person engaged to perform the services is integrated into the business. If the person is integrated into the business, this supports the conclusion that they

are an employee. By contrast, if the person is not integrated into the business, but rather is an accessory to it, this supports the conclusion that they are an independent contractor.

6. The leading case on employment status is the Supreme Court decision in *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721. In *Bryson*, the Supreme Court considered whether a person was an “employee” under the Employment Relations Act 2000. *Bryson* is consistent with the Court of Appeal’s decision in *TNT Worldwide Express Ltd v Cunningham* [1993] 3 NZLR 681 (CA).

Analysis

7. The analysis in this Interpretation Guideline is divided into the following sections:
 - Types of employment relationship: discusses the difference between “contracts of service” (which employees have) and “contracts for services” (which independent contractors have).
 - Employment status and tax law: outlines the significance to taxpayers of their employment status. It also explains how the common law on determining employment status can be relevant when determining a taxpayer’s employment status under the GSTA and the ITA.
 - Relevance of Employment Relations Act 2000 case law: considers s 6 of the Employment Relations Act 2000. Section 6 defines “employee” for that Act. This part concludes that, when determining employment status for tax purposes, s 6 decisions are relevant to the extent that those decisions concern the common law on the employee/independent contractor distinction.
 - Determining employment status – leading New Zealand authorities: discusses the leading New Zealand authorities on determining employment status – *Bryson* and *TNT*.
 - Common law tests of employment status: summarises the main tests for deciding employment status – the intention of the parties, control, independence, fundamental and integration tests.
 - Relevant decisions: summarises three cases that illustrate how the courts have applied the common law tests, and lists other decisions since *Bryson* on how to determine employment status.

Types of employment relationship

8. The law distinguishes between two types of employment relationship: the employer–employee relationship and the principal–independent contractor relationship. Each relationship has different legal rights and obligations. The type of employment relationship in any particular case depends on whether there is a “contract of service” or a “contract for services” between the persons concerned. In *New Zealand Educational Institute v Director-General of Education* [1981] 1 NZLR 538 (CA), the Court of Appeal stated at 539:

On many occasions over the years the Courts have had to decide whether the relationship between two persons was that of employer and employee or, as it used to be called, master and servant. The inquiry normally involved the distinction between a contract of service in which the relation was that of employer and employee and a contract for services in which the relation was that between employer and independent contractor. A decision in any particular case required an examination of the contract between the two - it might be expressed in words or it might be implicit from the circumstances.
9. Employees have a “contract of service” with their employer. Contracts of service evolved from the earlier concept of a master–servant relationship. This type of relationship required an employee to be continuously available for service and to accept a high degree of control by the employer. A “contract for services” applies to the relationship between an independent contractor and a principal. It emphasises the nature of the services to be provided by a person rather than their availability to work as directed.
10. At common law, the courts have developed several tests to determine whether there is a contract of service or a contract for services. The case law shows that the main tests are the intention, control, independence, fundamental and integration tests. These tests are discussed below at [51] – [80].

Employment status and tax law

Consequences of employment status for tax purposes

11. A taxpayer's tax obligations for amounts earned from work done depends on their employment status (i.e., whether the taxpayer is an employee or an independent contractor). Employment status has the following consequences for tax purposes:
- Payments to employees from their employer must have PAYE deducted at source.
 - Employees cannot register for GST or charge GST for services they supply as employees.
 - Independent contractors may deduct certain expenses incurred in deriving assessable income.
 - Independent contractors must account to Inland Revenue for tax and accident compensation earner and employee premiums for themselves and any employees.
 - Independent contractors must meet all the requirements of the GSTA if the services they supply are in the course of a taxable activity and they are registered (or liable to register) for GST.
12. Taxpayers cannot change their employment status (or the resulting tax implications of that status) merely by calling themselves independent contractors when they are essentially still employees.

Relevance of common law tests under tax law

13. Neither the ITA nor the GSTA explains how to determine whether there is a contract of service or a contract for services in any particular case. We must therefore rely on the common law tests for determining employment status.

Income Tax Act 2007

14. The ITA defines "employee" in s YA 1 as follows:
employee—

(a) means a person who receives or is entitled to receive a PAYE income payment:

(ab) for the purposes of the FBT rules, includes a shareholder-employee who has chosen under section RD 3(3) to treat amounts paid to them in the income year in their capacity as employee as income other than from a PAYE income payment:

(ac) despite paragraph (a), in sections CE 1, CE 1B, and CW 16B to CW 16F (which relate to accommodation provided in connection with employment), includes an employee provided with accommodation or an accommodation payment as described in section CE 1(3)(a) (Amounts derived in connection with employment):

(b) in sections CW 17, and CW 17B to CW 18 B (which relate to expenditure, reimbursement, and allowances of employees) includes a person to whom section RD 3(2) to (4) (PAYE income payments) applies:

(c) in the FBT rules, and in the definition of shareholder-employee (paragraph (b)), does not include a person if the only PAYE income payment received or receivable is—

(i) a payment referred to in section RD 5(1)(b)(iii), (3), (3B), (6)(b) and (c) and

(7) (Salary or wages):

(ii) a schedular payment referred to in schedule 4, parts A and I (Rates of tax for schedular payments) for which the person is liable for income tax under section BB 1 (Imposition of income tax):

(d) is defined in section DC 15 (Some definitions) for the purposes of sections DC 12 to DC 14 (which relate to share purchase schemes):

(db) does not include an owner of a look-through company or a person who has a look-through interest for a look-through company, unless the owner or person is a working owner:

(e) for an employer, means an employee of the employer

15. Paragraph (a) defines "employee" as a person who receives or is entitled to receive a "PAYE income payment". The latter term is defined in s RD 3(1) as follows:

(1) The PAYE rules apply to a PAYE income payment which–

(a) means–

(i) a payment of salary or wages, see section RD 5; or

(ii) extra pay, see section RD 7; or

(iii) a schedular payment, see section RD 8:

16. Other relevant definitions include:

- "salary or wages" (s RD 5(1)(a)):

(1) Salary or wages–

(a) means a payment of salary, wages, or allowances made to a person in connection with their employment;

- "an extra pay" (s RD 7(1)(a)(i)):

(1) An extra pay–

(a) means a payment that–

(i) is made to a person in connection with their employment;

- "employment" (s YA 1)

employment has a meaning corresponding to the meaning of employee, and–

(a) includes the activities performed by the Governor-General, a member of Parliament, or a judicial officer that give rise to an entitlement to receive a PAYE income payment for the activities: ...

17. The use of the word "employment" suggests that the above provisions apply where there is a contract of service. This interpretation is supported by *Challenge Realty Ltd v CIR* (1990) 12 NZTC 7,212 (CA). In this decision, the Court of Appeal considered the definition of "salary or wages" in s 2 of the Income Tax Act 1976. This definition provided:

'Salary or wages', in relation to any person, means salary, wages, or allowances (whether in cash or otherwise), including all sums received or receivable by way of overtime pay, bonus, gratuity, extra salary, commission, or remuneration of any kind, in respect of or in relation to the employment of that person;

18. Delivering the judgment of the court, Bisson J stated at 7,224:
In the context of "salary and wages" in sec 2, the word "employment", in our view, relates to a contract of service It is that word which governs the definition: the definition being intended to include all forms of remuneration received under a contract of employment

19. Consequently, the definition of "salary or wages" did not include amounts received as remuneration under a contract for services.

20. The ITA does not explain how to determine whether a taxpayer is employed under a contract of service. Therefore we must rely on the common law to determine employment status. As a general principle of statutory interpretation, where legislation makes use of terms with established meanings at common law, it is presumed that Parliament intended those terms to be given their common law meanings (subject to any contrary legislative intention): *Bank of England v Vagliano Bros* [1891] AC 107 (HL); *R v Kerr* [1988] 1 NZLR 270 (CA). As mentioned earlier, the common law distinguishes between contracts of service and contracts for services, and the courts have developed tests to establish whether there is a contract of service or a contract for services.
21. However, it is important to highlight that some parts of the relevant definitions in the ITA (see [15] and [16] above) do not rely on the common law. The ITA identifies particular classes of persons and payments that are specifically included or excluded from the definitions. For example:
- Section RD 3(1)(b) provides that “PAYE income payment” does not include:
 - (i) an amount attributed under section GB 29 (Attribution rule: calculation):
 - (ii) an amount paid to a shareholder-employee in the circumstances set out in subsection (2):
 - (iii) an amount paid or benefit provided, by a person (the claimant) who receives a personal service rehabilitation payment from which an amount of tax has been withheld at the rate specified in schedule 4, part I (Rates of tax for schedular payments) or under section RD 18 (Schedular payments without notification), to another person for providing a key aspect of social rehabilitation referred to in paragraph (c) of the definition of personal service rehabilitation payment in section YA 1 (Definitions).
 - Section YA 1 defines “employment” to include:
 - ... the activities performed by the Governor-General, a member of Parliament, or a judicial officer that give rise to an entitlement to receive a PAYE income payment for the activities; ...
 - Similarly, s RD 5(5) provides that “salary or wages” includes salary and allowances made to the Governor-General, members of Parliament and judicial officers.
22. A “PAYE income payment” includes “a schedular payment”. A “schedular payment” is defined in s RD 8 to mean a payment of a class set out in sch 4 of the ITA. Schedule 4 lists payments made to a wide variety of workers, including, for example, insurance agents and shearers. A worker who receives “a schedular payment” will typically be an independent contractor at common law. If an independent contractor receives “a schedular payment”, then tax must be deducted at source. However, the other consequences of being an independent contractor (set out at [11] above) remain.

Goods and Services Tax Act 1985

23. Under the GSTA, employees are not liable for GST on supplies of goods and services they make to their employers. This is because s 6(3)(b) excludes from the definition of “taxable activity”, “any engagement, occupation, or employment under any contract of service or as a director of a company, subject to subsection (4)” [emphasis added]. The GSTA does not explain how to determine whether there is a “contract of service”. For the reason explained in [20] above, the common law tests must be used to determine whether there is a contract of service or contract for services.

Relevance of Employment Relations Act 2000 case law

24. The common law tests for determining whether there is a contract of service or a contract for services have been developed by the courts over the course of many decisions. In some of these decisions the courts were determining employment status for tax purposes. However, in most decisions the courts were determining employment status under employment legislation. The employment legislation currently in force is the Employment Relations Act 2000 (ER Act). Sections 6(1), (1A), (2) and (3) of the ER Act define “employee” as follows:

(1) In this Act, unless the context otherwise requires, employee–

(a) means any person of any age employed by an employer to do any work for hire or reward under a contract of service; and

(b) includes–

(i) a homemaker; or

(ii) a person intending to work; but

(c) excludes a volunteer who–

(i) does not expect to be rewarded for work to be performed as a volunteer; and

(ii) receives no reward for work performed as a volunteer; and

(d) excludes, in relation to a film production, any of the following persons:

(i) a person engaged in film production work as an actor, voice-over actor, stand-in, body double, stunt performer, extra, singer, musician, dancer, or entertainer:

(ii) a person engaged in film production work in any other capacity.

(1A) However, subsection (1)(d) does not apply if the person is a party to, or covered by, a written employment agreement that provides that the person is an employee.

(2) In deciding for the purposes of subsection (1)(a) whether a person is employed by another person under a contract of service, the court or the Authority (as the case may be) must determine the real nature of the relationship between them.

(3) For the purposes of subsection (2), the court or the Authority–

(a) must consider all relevant matters, including any matters that indicate the intention of the persons; and

(b) is not to treat as a determining matter any statement by the persons that describes the nature of their relationship.

25. The definition of “employee” in s 6 is only for the purposes of the ER Act. The definition does not affect the interpretation of “employee” in the ITA or “contract of service” in the GSTA. However, the case law on s 6 can be relevant when determining employment status for tax purposes. In Bryson, the Supreme Court held at [32] – [33] that the definition of “employee” in s 6(1)(a) – “any person of any age employed by an employer to do any work for hire or reward under a contract of service” – reflected the common law. It also held that the common law tests for determining employment status were relevant when determining the “real nature of the relationship” between the parties under ss 6(2) and (3). Therefore, when determining employment status for tax purposes, s 6 case law can be relevant to the extent that those decisions concern the common law tests.

Determining employment status – leading New Zealand authorities

26. This part of the guideline discusses the leading New Zealand authorities on determining employment status. These authorities are the Supreme Court decision in Bryson and the Court of Appeal decision in TNT.

Bryson v Three Foot Six Ltd

Facts and decision

27. In Bryson, the Supreme Court considered whether a person was an “employee” under s 6 of the ER Act.
28. In this decision, the appellant, Mr Bryson, was a model maker for Weta Workshop. Weta Workshop had a close working relationship with Three Foot Six Ltd, which was the company that administered the production of The Lord of the Rings. Mr Bryson was seconded from Weta Workshop to Three Foot Six

Ltd and soon took a permanent position there. Mr Bryson was not given a written employment contract when he started, but some months later Three Foot Six Ltd supplied a written contract to all staff (the "crew deal memo"). The crew deal memo set out the conditions of employment and, in particular, it referred throughout to "contractor" and "independent contractor". Mr Bryson was required to sign the crew deal memo every week to secure payment for work done. A year later Mr Bryson was made redundant and he alleged unjustifiable dismissal. He could bring an unjustified dismissal claim only if he were found to have been an employee.

29. The Employment Relations Authority held that Mr Bryson was not an "employee" under the ER Act. On appeal, Judge Shaw in the Employment Court reversed this decision: *Bryson v Three Foot Six Ltd* [2003] 1 ERNZ 581. Her Honour held that Mr Bryson was an "employee" despite references to "independent contractor" in the crew deal memo. A majority of the Court of Appeal overturned the Employment Court's decision: *Three Foot Six Ltd v Bryson* [2004] 2 ERNZ 526. However, the Supreme Court reversed the Court of Appeal's decision and upheld the Employment Court's decision: *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721.

30. The Supreme Court quoted Judge Shaw from the Employment Court as follows at [5]:

Judge Shaw said that s 6 changed the tests for determining what constituted a contract of service. She summarised the principles she considered to have been established by Employment Court cases on that section as follows:

- The Court must determine the real nature of the relationship.
- The intention of the parties is still relevant but no longer decisive.
- Statements by the parties, including contractual statements, are not decisive of the nature of the relationship.
- The real nature of the relationship can be ascertained by analysing the tests that have been historically applied such as control, integration, and the 'fundamental' test.
- The fundamental test examines whether a person performing the services is doing so on their own account.
- Another matter which may assist in the determination of the issue is industry practice although this is far from determinative of the primary question."

31. The Supreme Court said at [32] that Judge Shaw had accurately stated what s 6 requires the courts to do, and had listed the relevant matters to be considered under that section. The Supreme Court said that "all relevant matters" certainly include the written and oral terms of the contract between the parties and that the terms will usually contain indications of the parties' common intention concerning the status of their relationship. The Supreme Court said it was clear from Judge Shaw's judgment that "she was very much alive to the need to begin by looking at the written terms and conditions which had been agreed to by Mr Bryson and Three Foot Six Ltd".

32. The Supreme Court made it clear that the common law tests for determining employment status were relevant under s 6 when the court stated at [32] that "[a]ll relevant matters' equally clearly requires the Court or the authority to have regard to features of control and integration and to ... the fundamental test". The court also said at [33] that Judge Shaw was correct in saying that the real nature of the relationship could be ascertained by analysing the tests that historically have been applied, such as the control, integration and fundamental tests:

...The Judge [Judge Shaw] obviously was not suggesting that these three customary indicia were to be applied exclusively. She correctly used them, in conjunction with the other relevant matters to which she referred, in an endeavour to determine the real nature of the relationship, as directed by s 6(2). ...

33. In the Employment Court, Judge Shaw had concluded that the fact Mr Bryson required six weeks training for the position with Three Foot Six Ltd indicated that he could not be said to have been contracting his skills because he did not have the relevant experience. The company closely controlled the work Mr Bryson did, including requirements about attendance at meetings and specific work hours, which included time when his services were not required. If he had been an independent contractor, he

would not have been paid for the down time and would have been free to get on with his own private business. Judge Shaw emphasised that her decision was based solely on the individual circumstances of Mr Bryson's employment and was not to be regarded as affecting the status of any other employee in the film industry.

Industry practice

34. The concept of industry practice was given prominence in Bryson because the outcome was thought to be critical to the New Zealand film industry. In Bryson, Judge Shaw stated that Three Foot Six Ltd did not contemplate that Mr Bryson was anything other than an independent contractor "because that was the invariable practice at Three Foot Six [and] across the film industry" (at [36] of the Employment Court decision). Judge Shaw in the Employment Court recognised that industry practice was relevant under s 6, but not determinative, as noted by the Supreme Court at [30] above.

35. At [21], Judge Shaw held that industry practice was also relevant under the common law. In support of this, at [22] her Honour cited *Muollo v Rotaru* [1995] 2 ERNZ 414 (EC) as a case where the Chief Judge held that:

the Court may consider industry practice when assessing the nature of an employment contract especially where a custom or practice is sufficiently well established. In such a case, the Chief Judge held that such practice could go to establishing the intention of the parties.

36. However, Judge Shaw held at [36] that, on the facts of the case, the industry practice was of little use in establishing the intention of both parties. At [57] – [76], her Honour reviewed the evidence given by expert witnesses as to industry practice and stated at [68]:

It is clear from the evidence that the defendant and the film and television industry in general has a real and genuine concern that any changes to the present employment arrangements which have been in place for many years will cause significant disruptions in the film industry with potentially adverse outcomes both in economic terms and in terms of attracting overseas film companies to bring the productions to New Zealand. Mr Binnie submitted that a decision in Mr Bryson's favour [i.e. that he was an employee] would "automatically 'unwind'" every existing crew deal memo and any future crew contracts for movie productions.

37. Judge Shaw held that this evidence did not support finding that Mr Bryson was an employee. Her Honour stated at [68] that "[w]hilst these concerns are acknowledged ... in the context of this case, they are overstated." Her Honour therefore gave little weight to industry practice on the facts.

38. The majority of the Court of Appeal held that the Employment Court had not given sufficient weight to the evidence of industry practice. It held that industry practice compelled the conclusion that Mr Bryson was not an employee (at [111], [113] and [117]). The Supreme Court disagreed. It held that the Employment Court had not erred in its treatment of industry practice. At [35]:

The question for this Court is whether the Court of Appeal majority was correct in holding that what the Judge said in relation to industry practice amounted to legal error. We do not believe that it was. She did not overlook or ignore the evidence of industry practice. In rejecting a submission from counsel for Mr Bryson, she in fact said that it could not be completely disregarded, referring with evident approval to a case under the Employment Contracts Act where the Chief Judge had held that industry practice could go to establish the intention of the parties. In the case before her, however, the Judge found that industry practice was not helpful in relation to establishing the common intention of Mr Bryson and Three Foot Six for the reasons given by her and mentioned at para [9] above. Later in her judgment she summarised the evidence on industry practice. It was, as she said, given in general terms. She found that it did not apply to Mr Bryson's situation. He had not been working on projects for several producers. He had not operated like a sole trader.

Summary

39. In summary, the following points can be taken from the Supreme Court's decision in Bryson.

40. When determining whether a person is an "employee" as defined in s 6 of the ER Act, the common law tests for determining employment status are still relevant. Consequently, when determining employment status for tax purposes, s 6 case law is relevant to the extent that it considers and applies

the common law tests.

41. Consistent with the common law, s 6 requires the court not to treat as determinative any statement by the parties that describes the nature of their relationship.
42. Also consistent with the common law, s 6 requires the court to consider:
 - matters indicating the intention of the parties, in particular the terms of the contract agreed to (whether in writing or orally) by the parties, and industry practice;
 - any divergences from, or supplementations of, those terms and conditions that are apparent in the way in which the relationship has operated in practice;
 - features of control and integration and whether the contracted person has been effectively working on his or her own account (the fundamental test).
43. Following the Supreme Court's decision, Parliament amended s 6 of the ER Act to insert provisions concerning film workers. Section 6(1)(d) excludes from the definition of "employee" persons engaged in "film production work". "Film production work" is defined in s 6(7). However, s 6(1A) provides that this exclusion "does not apply if the person is a party to, or covered by, a written employment agreement that provides that the person is an employee." As already discussed, s 6 of ER Act defines "employee" only for that Act.

TNT Worldwide Express Ltd v Cunningham

44. The other leading New Zealand authority on employment status is the Court of Appeal decision in TNT. In this decision, the Court of Appeal discussed in detail the intention, control and fundamental tests developed at common law. The Supreme Court in Bryson cited TNT with approval.
45. In TNT, the appellant company, TNT, engaged the respondent as an owner-driver to conduct a courier service for the company. The owner-driver:
 - provided his own vehicle and was responsible for the vehicle's maintenance and upkeep;
 - was responsible for his own tax and accident compensation payments;
 - claimed deductions as if he were self-employed; and
 - had a contract with TNT that said he was an independent contractor.
46. The company terminated the respondent's contract, and the respondent sought to invoke the personal grievance procedure under the Employment Contracts Act 1991 (now repealed).
47. The Employment Court ([1992] 3 ERNZ 1,030) held that an owner-driver courier for TNT was an employee and not self-employed. In reaching that conclusion, the court placed considerable emphasis on the rigorous control the company exercised over its owner-drivers. The Employment Court considered that the company's actions showed that it treated the owner-driver as its employee.
48. On appeal, the Court of Appeal held that the written contract entered into by the parties created a genuine independent contractor relationship. It accepted that an owner-driver courier was an independent contractor where the owner-driver's contract with TNT:
 - required the owner-driver to provide his own vehicle, uniform, approved radio telephone, goods service licence under the Transport Act 1962 and insurance;
 - paid the owner-driver mainly on a per trip basis;
 - made the owner-driver responsible for employing any relief driver;
 - referred to the owner-driver as an independent contractor; and
 - gave TNT very extensive control over the owner-driver's operations.

49. The Court of Appeal acknowledged the extensive control TNT exercised over the owner-driver, but concluded that the owner-driver accepted only that degree of control and supervision necessary for the efficient and profitable conduct of the business he was running on his own account as an independent contractor. At 667, Casey J cited the following statement of MacKenna J in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 1 All ER 433 (QBD) at 447:

A man does not cease to run a business on his own account because he agrees to run it efficiently or to accept another's superintendence.

50. The Court of Appeal said that when the contract is wholly in writing and it is not a sham, then the nature of the relationship intended by the parties is determined from the terms of that contract in the light of all the surrounding circumstances at the time the contract was made. Cooke P noted at 683 that "it is necessary to consider all the terms of the agreement". He also made the following observations at 686 and 687:

When the terms of a contract are fully set out in writing which is not a sham (and there is no suggestion of a sham in this case) the answer to the question of the nature of the contract must depend on an analysis of the rights and obligations so defined.

...

In the end, when the contract is wholly in writing, it is the true interpretation and effect of the written terms on which the case must turn.

Common law tests of employment status

51. In considering how the distinction between contracts for services and contracts of service is to be made, the Court of Appeal in *TNT* noted at 697 the following observation of the Privy Council in *Lee Ting Sang v Chung Chi-Keung* [1990] 2 AC 374, 382:

What then is the standard to apply? This has proved to be a most elusive question and despite a plethora of authorities the courts have not been able to devise a single test that will conclusively point to the distinction in all cases.

52. The Privy Council in *Lee Ting Sang* quoted with approval from the judgment of Cooke J in *Market Investigations Ltd v Minister of Social Security* [1969] 2 QB 173, 184–185, where it was said:

No exhaustive list has been compiled and perhaps no exhaustive list can be compiled of the considerations which are relevant in determining that question, nor can strict rules be laid down as to the relative weight which the various considerations should carry in particular cases.

53. Although there is no exhaustive list of considerations, the tests discussed below (established by the case law) provide useful guidance on the factors to be considered in determining whether someone is engaged as an employee or contractor. The relevance of the tests will depend on the particular facts in each case.

54. It is important when determining employment status to balance all the circumstances of the relationship between the parties. Often there will be competing factors that support differing conclusions on whether someone is an employee or an independent contractor. Applying the tests to the facts of a case requires an objective weighing of the various relevant factors to determine the true nature of the relationship.

55. Often the terms of the relationship between two persons will be recorded in a written agreement; though this is not always the case. If there is a written agreement, the first step is to analyse its terms and conditions. However, it is important to note that the nature of the relationship may change over time (e.g., a person takes on more duties), and this may not be reflected in the written agreement. Changes in regulations and work practices may also cause the employment status of some workers to change.

Alternatively, it could simply be that the written agreement does not accurately reflect how the relationship works in practice. How the parties actually work together must be considered when determining the type of employment relationship between them. As the Supreme Court in *Bryson* stated at [32]:

It is not until the Court or authority has examined the terms and conditions of the contract, and the way in which it actually operated in practice, that it will usually be possible to examine the relationship in light of the control, integration and fundamental tests. Hence the importance, stressed in TNT, of analysing the contractual rights and obligations.

56. Bryson and TNT both discussed the main common law tests for determining employment status – the intention, control, fundamental and integration tests. In the following paragraphs, these tests (along with the independence test) are examined in greater detail.
57. It is important to remember that the application of the common law tests is a weighing-up process. Sometimes the facts of a particular case may suggest different characterisations of the relationship, and there may be either overlap or tensions between the tests.
58. Also, as the characterisation of the relationship is dependent on the particular facts at hand, it is crucial that the facts are well understood, including any changes to the relationship that have occurred over time.

Intention of the parties test

59. The intention of the parties test looks at the intentions of each party to the agreement regarding the nature of the relationship. The description given to a relationship by the parties to the contract is a strong, but not conclusive, indication of the type of relationship that exists. The fact a written contract states a person is an employee or an independent contractor may indicate the intention of the parties, but it is not determinative: Bryson at [32] (SCNZ). Holland J in the High Court in Challenge Realty Ltd v CIR [1990] 12 NZTC 7,022 said at 7,032:

Obviously the Court's function in interpreting a contract is to determine the intentions of the parties. When, however, the question for determination is the legal relationship between the parties created by the contract, the expressed intention of the parties will not be determinative of the question. It is nevertheless an important factor, and if after considering all factors the exact state of the relationship is a matter of some ambiguity, may be decisive. In the present cases before me Harcourts is the only one with a written agreement. Nevertheless I would conclude that in all cases it was the intention of the parties to create an agency relationship rather than an employer/employee relationship. The question remains as to whether that result has been achieved.

60. If the actual circumstances point to an employment relationship, then simply labelling it an independent contract relationship will not alter the true position.
61. In TNT, a clause in the written contract that purported to override all other aspects of the agreement stated that the courier was an independent contractor. The Employment Court found that the actual conduct of the relationship showed that TNT imposed a high level of control and supervision of its staff that was inconsistent with any independence or initiative on the part of its staff. However, in reversing this decision, the Court of Appeal concluded, after weighing all the circumstances, that the TNT standard form contract created a genuine independent contractor relationship.
62. The taxation arrangements between the parties may be relevant when establishing their intentions. In Bryson, the Employment Court acknowledged at [55] that tax status can be an indicator of what a person intends his contractual relationship to be. For example, if the person engaged to perform the services is paid at a set rate at regular intervals and PAYE is deducted, this may support the view that the parties intended a contract of service. However, in some cases taxation arrangements between the parties may not be given much weight. In Bryson, Mr Bryson completed IR3 forms, which referred to the taxpayer as being self-employed in business or trade, and had claimed deductions for work-related expenses. The Employment Court stated at [55] that this was not conclusive evidence that Mr Bryson was an independent contractor. This was because he had not registered for GST and payslips received from Three Foot Six Ltd referred to PAYE deductions having been made. In these circumstances, it could not be said that Mr Bryson had acquiesced to independent contractor status.
63. In some circumstances industry practice may be relevant when determining the intention of the parties. As already discussed, in Bryson the Supreme Court agreed with the Employment Court's statement that industry practice could be relevant when considering the parties' intention, but that it was not determinative.

64. In *Bryson*, Three Foot Six Ltd considered Mr Bryson should be regarded as an independent contractor because the invariable industry practice was that production workers were hired as independent contractors. Expert witnesses explained that the reason for this practice was the project-based, intermittent nature of screen productions and the fact that production workers normally worked with several different producers during the course of the year. The Employment Court held at [59] - [60] that the evidence of industry practice was of little use on the facts of that case, because it was "necessarily general" and not consistent with the particular circumstances of Mr Bryson's case. Mr Bryson worked continuously for Three Foot Six Ltd alone and, unlike other workers in the industry, did not own any plant or equipment and did not operate as a sole trader. Mr Bryson's working conditions were therefore not typical of the industry.

65. By contrast, in *Muollo v Rotaru*, industry practice was given considerable weight. In *Bryson*, the Employment Court cited *Muollo* as authority for the proposition that industry practice was relevant at common law when considering the parties' intention as to their employment relationship. In *Muollo*, the Employment Court considered whether Mr Rotaru, who worked as a crew member aboard a fishing vessel, was an employee for the purposes of the Employment Contracts Act 1991 (now repealed). There was no written employment agreement. The Employment Court concluded that Mr Rotaru was an independent contractor and considered this conclusion was supported by the "custom and usage in the commercial fishing industry". It stated at 425-426 that the evidence of industry practice:

... presents a picture of an industry in which the co-operative venture is not only prevalent and a typical mode of conducting business but a commercial norm. All parties under such arrangements share in the proceeds. The commercial reasons for it suggested by Mr Gartrell in number, as follows:

1. It conduces to business viability;
2. ensures proper work attitudes;
3. takes cognisance of the fact that work is intermittent, and its duration uncertain;
4. acknowledges the seasonal nature of the work; and
5. means that there is not a pool of people waiting round in off-times with no work but still having to be paid.

Mr Gartrell urged upon me the good sense of the industry's considerations moving it to adopt this custom, mentioning the sporadic nature of the enterprise and the use of a percentage basis of determining the rewards and sharing productivity and risk. Along much the same lines Mr Gartrell stressed a total of six factors that were particularly important to both appellants:

1. work was intermittent;
2. duration of work was uncertain;
3. no liability for sick and holiday pay;
4. the business did not want the liability of an employee when work was not available;
5. proper work attitudes;
6. business/work cohesion.

66. An expert witness also stated that he was not aware of any fishing vessels where a crew member was on a wage or salary. In the expert's opinion, the normal arrangement was for crew members to be paid according to their share of the catch, for withholding tax to be deducted at source, and for crew members to pay their own ACC levies. The Employment Court stated that this evidence was consistent with the circumstances in which Mr Rotaru provided his services. It concluded that the evidence of industry practice showed that the parties' intention was to enter into a contract for services.

67. In summary, industry practice may be relevant when establishing the parties' intention, especially where the custom or practice is sufficiently well established. Industry practice is not determinative, and it

may be given less weight where it is inconsistent with the facts of the particular relationship considered.

Control test

68. The control test looks at the degree of control the employer or principal exerts over the work an employee or contractor is to do and the manner in which it is to be done. The greater the extent to which the principal or employer specifies work content, hours and methods and can supervise and regulate a person, the more likely it is the person is an employee.
69. The control test used to be considered the deciding test, but this is no longer the case. The Court of Appeal in TNT emphasised that control is only one of several relevant factors. The court endorsed the statement of Cooke J in Market Investigations Ltd (at 185) that while control will always have to be considered, it can no longer be regarded as the sole factor in determining the relationship between the parties. The Court of Appeal in TNT considered the Employment Court had given this factor too much weight.

Independence test

70. The independence test was not mentioned in Bryson or TNT, but has been discussed in several Taxation Review Authority cases that determined employment status: Case U9 (1999) 19 NZTC 9,077; Case X17 (2006) 22 NZTC 12,224; and Case Z10 (2009) 24 NZTC 14,113. The independence test is simply the inverse of the control test. A high level of independence on the part of an employee or a contractor is inconsistent with a high level of control by an employer or a principal.
71. A person generally has a high level of independence if they:
 - work for multiple people or clients (but the fact the person works for only one person or client does not necessarily mean the person is an employee);
 - work from their own premises;
 - supply their own (specialised) tools or equipment;
 - have direct responsibility for the profits and risks of the business;
 - hire or fire whomever they wish to help them do the job;
 - advertise and invoice for the work;
 - supply the equipment, premises and materials used;
 - pay or account for taxes and government and professional levies.
72. On the other hand, when some independent contractors perform work for a principal, they may agree not to work for a competitor or give away trade secrets. This alone will not make the worker an employee (it actually emphasises that the worker is usually entitled to work for others).

Fundamental test

73. The Employment Court decision in Bryson applied Market Investigations Ltd. In that decision, Cooke J said that the fundamental test for distinguishing an employee and an independent contractor was as follows, at 184–185:

“Is the person who has engaged himself to perform these services performing them as a person in business on his own account?” If the answer to that question is “yes”, then the contract is a contract for services. If the answer is “no”, then the contract is a contract of service. ... factors which may be of importance are such matters as whether the man performing the services provides his own equipment, whether he hires his own helpers, what degree of financial risk he takes, what degree of responsibility for investment and management he has, and whether and how far he has an opportunity of profiting from sound management in the performance of his task.
74. The Privy Council approved the fundamental test in Lee Ting Sang. This Privy Council decision was

subsequently cited by four of the five judges in the Court of Appeal in TNT.

75. The fundamental test is also sometimes described as the “business test” or the “economic reality test”. In *Challenge Realty*, the Court of Appeal stated at 7,219:

If it is helpful to look for a test for application in this case, apart from that of control, which is a key feature of the Act, we favour that suggested by Adrian Merritt, Lecturer in Industrial Law, University of New South Wales in his article “‘Control’ v ‘Economic Reality’: Defining the Contract of Employment” (1982) *Australian Business Law Review* 105 at p 118,

“The issue that must be settled in today’s cases is whether the worker is genuinely in business on his own account or whether he is ‘part-and-parcel of’ - or ‘integrated into’ - the enterprise of the person or organisation for whom work is performed. The test is, therefore, one of ‘economic reality’.”

76. The fundamental test looks at factors such as:

- whether the type of business or the nature of the job justifies or requires using an independent contractor;
- the behaviour of the parties before and after entering into the contract;
- whether there is a time limit for completing a specific project;
- whether the worker can be dismissed;
- who is responsible for correcting sub-standard work;
- who is legally liable if the job goes wrong.

77. Usually, an independent contractor agrees to be responsible for their work. An independent contractor cannot usually be dismissed, although the contract can be terminated if it is broken.

Integration test

78. In *Enterprise Cars Ltd v CIR* (1988) 10 NZTC 5,126 (HC), Sinclair J said that the integration test is whether the person is part and parcel of the organisation and not whether the work is necessary for the running of the business.

79. Under the integration test, a job is likely to be done by an employee if it is:

- integral to the business organisation;
- the type of work commonly done by “employees”;
- continuous (not a “one-off” or accessory operation);
- for the benefit of the business rather than for the benefit of the worker.

80. In the Employment Court decision in *Bryson*, at [50] Judge Shaw quoted Lord Denning’s “classic description of this test” from his judgment in *Stevenson Jordan & Harrison Ltd v MacDonalds* [1952] 1 TLR 101, 111 (CA):

... under a contract of service, a man is employed as part of the business, and his work is done as an integral part of the business; whereas, under a contract for services, his work, although done for the business, is not integrated into it but is only accessory to it.

Relevant decisions

81. This part of the Interpretation Guideline discusses three cases heard in the Employment Court since the Supreme Court’s decision in *Bryson*:

- *Tse v Cieffe (NZ) Ltd* [2009] ERNZ 20;

- *Kiwikiwi v Maori Television Service* (2007) 5 NZELR 6;
- *Tsoupakis v Fendalton Construction Ltd* (EC Wellington WC 16/09, 18 June 2009).

82. These decisions concern employment status under s 6 of the ER Act. As already discussed, s 6 decisions can be relevant when determining employment status for tax purposes to the extent that the decisions concern the common law tests.
83. The intention of this discussion is to illustrate how the courts approach the question of employment status following *Bryson*. When considering such decisions, it is important to remember that each case turns on its own facts. As Judge Shaw noted in *Tse v Cieffe (NZ) Ltd*, “previous case law is only useful in reiterating the relevant principles”.

Tse v Cieffe (NZ) Ltd

Facts

84. The issue in *Tse v Cieffe (NZ) Ltd* was the plaintiff’s employment status. Ms Tse worked for Cieffe from 2005 to 2008.
85. At the beginning of the relationship between the parties there was no written contract between the parties. An oral agreement was reached about the terms of the relationship between the parties. The terms included that Ms Tse would:
- work for 20 hours a week and would be paid at an agreed hourly rate;
 - work on the company’s internal system but also have some reception duties and general office administration duties;
 - invoice Cieffe as a contractor rather than be paid as an employee.
86. In 2007, Cieffe provided Ms Tse with a written consultancy agreement. The agreement provided that Ms Tse’s work would be performed under the general supervision and direction of a Cieffe representative, but that Ms Tse was not an employee of Cieffe. Ms Tse signed the agreement.
87. Ms Tse performed the duties that were agreed between the parties at the outset of the relationship, as well as sharing a variety of other office tasks, such as tidying and cleaning, with other employees. When the work Ms Tse had originally been engaged for was nearing completion she was asked to provide further ongoing services that were related to the original work. Ms Tse’s work was closely supervised.
88. By her own choice, Ms Tse worked regular hours. She was not instructed to attend the office at any specific time. Over time, her hours increased to 40 hours a week with some overtime. When Ms Tse would not be at work she would advise Cieffe that she would not be present; she would not request leave.
89. Ms Tse invoiced Cieffe for the hours that she worked. Initially, Ms Tse invoiced Cieffe through a company that Ms Tse had set up with her partner. After several months, Ms Tse began invoicing Cieffe in her own name. For the first year of the relationship Ms Tse added GST to the invoices, but she stopped doing this when she discovered that she was not required to be registered for GST.
90. Cieffe provided Ms Tse with branded clothing at work, a credit card (which was used on a business trip) and a business card. The business card had Cieffe’s logo and described Ms Tse as “Office Manager” and later as “Client Relationship Assistant Manager”.
91. Several times throughout the period that Ms Tse worked for Cieffe, she referred to herself as a contractor.

Application of law

92. Intention of the parties: Judge Shaw found that “at the commencement of the relationship both parties deliberately entered into an independent contracting arrangement” (at [40]). The arrangement was evidenced by the method of invoicing and Ms Tse’s references to herself as a contractor. Judge

Shaw found that the consultancy agreement “confirms the nature of the relationship which had existed from the outset: a contract for services” (at [42]).

93. Control: Ms Tse’s counsel argued that several factors pointed towards Ms Tse being under the control of Cieffe. One factor was that some of the tasks Ms Tse performed were not sufficiently specialised. Another factor was that Ms Tse’s work was supervised by a Cieffe representative. Judge Shaw noted that the non-specific tasks (such as tidying and cleaning) would not generally be performed by a contractor. However, other factors pointed towards a lower level of control by Cieffe than would be expected in an employment relationship. In particular, it was up to Ms Tse when she would undertake the work and she worked a variety of hours each month.
94. Integration: The integration test indicated that Ms Tse was an employee of Cieffe. Judge Shaw stated at [47]:

In some respects the evidence points to a degree of integration of Ms Tse into the business. These are the business cards and the Cieffe-branded clothing. She used Cieffe equipment and had access to the building. Calling her an office manager or client relationship assistant manager certainly presents an image of her to the outside observer as somebody who was part of the management team rather than running a separate business on their own. Such integration would not normally be expected of a consultant.
95. Fundamental test: Judge Shaw found that Ms Tse’s supply of invoices to Cieffe evidenced a business relationship. Ms Tse’s references to herself as a contractor also supported the view that she was in business on her own account.

Conclusion

96. Judge Shaw concluded at [50]:

While there were some elements in the conduct of her employment which, viewed in isolation, would not support a finding that she was self-employed, taken in the round I find that the real nature of the relationship between Ms Tse and Cieffe was, as intended, a contract for services.

Kiwikiwi v Maori Television Service

Facts

97. In *Kiwikiwi v Maori Television Service*, the issue was whether Mr Kiwikiwi was an employee or an independent contractor of Maori Television Service (MTS). Mr Kiwikiwi worked as a teleprompter for MTS.
98. When Mr Kiwikiwi started working for MTS, he was filling an urgent vacancy and had no experience as a teleprompter. There was no written agreement at the beginning of the relationship between the parties. Mr Kiwikiwi understood that he was on a one-month trial period with the prospect of a full-time job at the end of the trial period if he was suitable. He was told he would have at least 30 hours of work a week, with more at times. (As the volume of work for teleprompters fluctuates seasonally, hours were flexible.)
99. It was agreed between the parties that Mr Kiwikiwi would be operating on a roster that was prepared a month in advance. He would be paid an hourly rate and would present invoices to be paid.
100. Mr Kiwikiwi undertook teleprompting work but also did various ancillary duties, such as photocopying and banking. After he expressed concern at the additional tasks he was asked to perform, he was given a role profile description. Mr Kiwikiwi worked between 30 and 40 hours a week.
101. After seven and a half months of work, Mr Kiwikiwi was concerned that he still did not have an employment contract. He contacted MTS’s operation manager to request an employment contract. Following this, his rostered hours were reduced. The operation manager began to have issues with Mr Kiwikiwi’s performance and it was decided that Mr Kiwikiwi had to do some retraining before he could be re-rostered.

102. MTS argued that it was typical working practice in the television industry for teleprompters to be freelancers. Only one teleprompter had been an employee of MTS, with all other teleprompters being freelancers. However, the court heard evidence that TVNZ uses a combination of employees and freelancers as teleprompters.

Application of law

103. Intention of the parties: Judge Shaw found that there was no evidence of any common intention by the parties. The parties discussed some "incidents of employment", such as the hourly rate and rostered hours, but did not discuss Mr Kiwikiwi's employment status.

104. Control: MTS argued that Mr Kiwikiwi was free to do his work as he saw fit and was not subject to the control of MTS. Judge Shaw found that Mr Kiwikiwi was controlled by MTS's systems. Mr Kiwikiwi was required to comply with the set rosters, had no flexibility within the role and had to perform tasks in addition to teleprompting. The role profile description he was given was prescriptive. When standards slipped, Mr Kiwikiwi had to undergo retraining.

105. Fundamental test: Judge Shaw found that Mr Kiwikiwi was not in business on his own account as an independent contractor. The factors that led to this conclusion included:

- Mr Kiwikiwi was not registered for GST;
- Mr Kiwikiwi did not work for any other employer (apart from some shearing work over summer when little work was available from MTS);
- Mr Kiwikiwi had no separate accounts and did not operate under a business entity (such as a company);
- Mr Kiwikiwi did not bring any experience or skill to the position;
- Mr Kiwikiwi took no financial risk with his own capital and could not alter his profits by changing his work habits.

106. Judge Shaw stated that the invoices that Mr Kiwikiwi rendered each fortnight were inconclusive as he only rendered them to get paid.

107. Integration: Judge Shaw found that Mr Kiwikiwi's position was an integral part of the production process; it was "not an adjunct which the television station could do without" (at [42]).

108. Industry practice: Judge Shaw stated that industry practice can be relevant to both the intention of the parties and the nature of the continuing relationship. However, the industry practice was not black and white. MTS had employed a teleprompter as an employee in the past, and TVNZ used a combination of employees and independent contractors. Therefore, industry practice did not assist in determining Mr Kiwikiwi's employment status.

Conclusion

109. Judge Shaw concluded that the real nature of the relationship between Mr Kiwikiwi and MTS was one of employer/employee.

Tsoupakis v Fendalton Construction Ltd

Facts

110. The issue in *Tsoupakis v Fendalton Construction Ltd* was whether Mr Tsoupakis was an employee or an independent contractor. Mr Tsoupakis worked as a painter for Fendalton Construction for six months in 2005 and 2006 and then again for a year from 2007 to 2008. It was agreed by the parties that Mr Tsoupakis was an independent contractor during the 2005/2006 period. The issue before the Employment Court was whether Mr Tsoupakis was an employee or an independent contractor for the 2007/2008 period.

111. Fendalton Construction hired both employees and independent contractors to undertake painting work. Contractors were generally paid a higher hourly rate. Fendalton Construction provided both types

of staff with mobile phones to keep in touch during jobs.

112. Mr Tsoupakis was not given an employment agreement, despite repeatedly asking for a copy of his contract.
113. Mr Tsoupakis filled out a daily work record, including the hours worked and the address of the jobs worked on. He could reclaim costs of travel to jobs in some circumstances. Mr Tsoupakis submitted weekly invoices to Fendalton Construction for payment.
114. Mr Tsoupakis had his own business card that described him as a director of his own trading entity. There was no evidence that he used the card to solicit business for himself while working for Fendalton Construction. Mr Tsoupakis also had signwriting on his motor vehicle advertising his trading name and personal mobile number. Neither the car signwriting, nor the business card, referred to Mr Tsoupakis's association with Fendalton Construction.
115. While on jobs, Mr Tsoupakis was not supervised constantly by Fendalton Construction, but on most jobs Mr Tsoupakis's work was inspected by Fendalton Construction.
116. Fendalton Construction provided some of the tools required to do the jobs (although usually not paint brushes) and all of the consumables required (such as paint and rags). Mr Tsoupakis purchased materials as required for jobs using Fendalton Construction's trade accounts.
117. Mr Tsoupakis was given work on a daily basis with detailed work directions. He could be redirected to jobs when Fendalton Construction required. Mr Tsoupakis was expected to meet set criteria, such as the time to be taken and the volume of paint to be used. He was required to check in with Fendalton Construction when he finished a job. Mr Tsoupakis could not delegate his work to others to complete, and he was expected not to undertake other work.

Application of law

118. Intention of the parties: Chief Judge Colgan found that there was no discernible mutual intention of the parties as there had been no express discussion about the nature of their relationship.
119. Control: Chief Judge Colgan found that Fendalton Construction exercised a high degree of control over Mr Tsoupakis's work – both what was done and also how and when it was to be done. Mr Tsoupakis had to account in detail for his hours of work and had no ability to delegate or organise as he chose. In reality, he was constrained from working for anyone else or for himself.
120. Integration: The facts pointed towards Mr Tsoupakis having some elements of independence from Fendalton Construction – in particular, his business cards, the signwriting on his vehicle and that he was invited to the contractors' Christmas party (as opposed to the employees' party). Chief Judge Colgan found that, despite these elements, Tsoupakis was an integral part of Fendalton's business in the same way as would be expected of an employee. Factors pointing towards Mr Tsoupakis's integration were that he was held out as a member of Fendalton Construction's staff and that he was paid for the time that he worked rather than a set fee for each job.
121. Fundamental test: Chief Judge Colgan found that Mr Tsoupakis was not in business on his own account. Mr Tsoupakis provided his own paint brushes but other equipment was provided by Fendalton Construction. The fact Mr Tsoupakis was not trained by Fendalton Construction was a neutral factor, as Mr Tsoupakis was engaged as an experienced tradesperson.
122. Industry practice: Only limited evidence was presented to the court on industry practice in the painting industry. Chief Judge Colgan found that the evidence of industry practice was neutral, as it established that companies (including Fendalton Construction) engaged both independent contractors and employees as painters.

Conclusion

123. Chief Judge Colgan concluded that Mr Tsoupakis was an employee of Fendalton Construction for the 2007/2008 period.

Appendix IX Helpful IRD Publications

Depreciation – a guide for businesses (IR 260)

Explains the depreciation rules, including detailed schedules of assets and their depreciation rates.

Disputing an assessment (IR 776)

Explains the process to follow if you want to dispute a tax assessment or some other determination.

Employers guide (IR 335)

Explains the tax obligations of anyone who employs staff. Employers registering with Inland Revenue will receive a copy of this booklet.

Education centres (IR 253)

Explains the tax obligations of schools and other education centres. Covers everything from kindergartens and kohanga reo to universities and polytechnics.

Entertainment expenses (IR 268)

Covers the tax treatment of business entertainment expenses.

FBT Guide (IR 409)

Covers FBT definitions, exemptions and obligations.

GST Guide (IR 375)

A guide to working with GST.

Inland Revenue audits guide (IR 297)

This booklet is for business people and investors. It explains what is involved if you are audited by Inland Revenue, who is likely to be audited, your rights during and after the audit, and what happens once an audit is completed.

KiwiSaver Guide (KS4)

A guide to the obligations and responsibilities of employers under KiwiSaver.

Payments and gifts in the Maori community (IR 278)

This booklet explains the tax treatment of payments and gifts made in the Maori community.

Smart business (IR 320)

A general introductory guide for businesses and non-profit organisations.

Taxpayer obligations, interest and penalties (IR 240)

An introduction to the rules for business people applying from 1 April 1997.

Visitors tax guide (IR 294)

Tax information for visitors to New Zealand.

Understanding schedular payments for contractors (IR1029)

Appendix X List of Eligible Relocation Expenditure

DETERMINATION DET 09/04: ELIGIBLE RELOCATION EXPENSES

This determination is made pursuant to section 91AAR of the Tax Administration Act 1994. It may be cited as "Determination DET 09/04: Eligible relocation expenses". Further commentary is provided in Tax Information Bulletin Vol 21, No 8 (October/November 2009) on the background and key features of the related legislation.

Application

This determination shall apply to relocation expenses incurred in respect of the 2002–2003 and subsequent income years.

In addition to being a listed eligible relocation expense, the other criteria under section CW 17B of the Income Tax Act 2007, (or section CW 13B of the Income Tax Act 2004, or section CB 12(1B) of the Income Tax Act 1994, as required) must also be met for a payment by an employer to cover an employee's relocation expenses to be exempt income of the employee.

This determination may be supplemented or amended from time to time by further determinations pursuant to subsection 91AAR(4) of the Tax Administration Act 1994.

The list of eligible relocation expenses are set out in the schedule to this determination.

Definitions

In this determination, unless the context otherwise requires, expressions used have the same meaning as those in sections CW 17B of the Income Tax Act 2007, CW 13B of the Income Tax Act 2004, CB 12(1B) of the Income Tax Act 1994, and section 91AAR of the Tax Administration Act 1994.

Amendments to determination

Amendments to this determination may be made by the Commissioner issuing supplementary determinations pursuant to subsection 91AAR(4) of the Tax Administration Act 1994. This determination provides a process for updating the list of eligible relocation expenses.

Amendments may include adding further expenditure items to those already listed or deleting items from the existing list. The Commissioner must give at least 30 days notice of the implementation date for any change to the determination.

If a taxpayer wishes to put forward a case for an additional expenditure item to be included in the list, they would need to make a written application. Applications for changes should include the following information:

- ▶ 1. The nature of the amendment to the determination being sought
- ▶ 2. The applicant's details – this includes full name, IRD number (if applicable), address, landline telephone number, fax number, cell phone number and the contact person for enquiries
- ▶ 3. Information to support the amendment requested

Applications for changes to the determination should be sent to:

LTS Manager, Technical Standards National Office Inland Revenue PO Box 2198 WELLINGTON 6140

This determination is made by me, acting under delegated authority from the Commissioner of Inland Revenue under section 7 of the Tax Administration Act 1994.

This determination is signed on the 28th day of October 2009.

Rob Wells LTS Manager, Technical Standards

SCHEDULE TO DETERMINATION DET 09/04: LIST OF ELIGIBLE RELOCATION EXPENSES

This list sets out the types of expenditure that may be treated as exempt income when an employee is reimbursed, or the expenditure is paid on an employee's behalf, when the employee (including their immediate family) relocate their accommodation for employment purposes.

"Immediate family" includes the employee's partner, dependent children and any dependent adults that are part of the employee's household. A dependent adult might be a dependent parent of the employee or partner or a disabled relative for whom the employee or the employee's partner is the caregiver.

The costs should be reasonable in the circumstances and, where relevant, should be as if they had been calculated on an arms-length basis between third parties.

Where there is a time limit specified on an item, that limit will be assumed to have been met for payments made prior to the issue of this determination.

Furthermore, the time limit on a specific item is subject to the overall time limit set in the legislation (that is, expenditure must have been incurred by the end of the tax year following that in which the relocation occurred).

List of eligible relocation expenses

Preparatory

Engaging a relocation consultant

A familiarisation trip to the new location immediately prior to relocation, for a maximum of 7 days in the new location (this excludes travelling time between the old and new locations)

Obtaining immigration assistance

Immigration and emigration applications

Health checks, tests and immunisations necessary for immigration or emigration

Any documentation and police and other agency checks required as a result of the relocation

Obtaining advice on the taxation and superannuation implications of relocating and of obtaining assistance in meeting any additional tax reporting/return requirements that arise from relocating

Transportation

Removal and transport of household effects (including insurance, insurance excesses and taxes)

Moving "tools of trade" (including insurance, insurance excesses and taxes)

Moving other personal items such as cars, boats or trailers (including insurance, insurance excesses and taxes)

Cleaning and fumigation associated with the removal, transportation and storage of household effects

Excess baggage charges arising from the transportation of household and other personal effects and "tools of trade"

Customs' clearance and other costs associated with complying with New Zealand Customs regulations and other regulatory requirements that arise when transferring household and personal effects and "tools of trade" from the old to the new location

Transport to get to the new location (such as, but not limited to, air fares and car rental costs) using a direct route, and meals and accommodation en route

Relocating pets, including quarantining and boarding fees

Hiring a replacement vehicle while awaiting transportation and clearance of the employee's own vehicle to the new location. If the employee does not have a vehicle in transit, the cost is limited to a maximum of one month's hire

A trip to tidy up affairs after relocation

Property

Exiting or breaking existing accommodation leases and similar contracts

Selling an existing home and acquiring a new dwelling:

- ▶ Real estate commissions
- ▶ Advertising and auctioning
- ▶ Legal and conveyancing fees and disbursements
- ▶ Loan application fees
- ▶ Mortgage early repayment loan application fees; valuation costs
- ▶ LIM and building reports (or similar);

any stamp duty

- ▶ Penalty interest charges for breaking a fixed term loan
(but not any loss in capital value of the existing home)

Finding accommodation, whether to rent or to purchase, in the new location (but not bonds, refundable or otherwise)

Hiring household and/or personal effects for the new location, while awaiting transportation of related property to the new location

Storage of household or personal effects left at the old location, for (subject to the overall time limit) up to two years

Storage for household or personal effects once they have arrived in the new location, for up to three months, or until the employee finds a permanent home, whichever is sooner

Disposing of household/personal effects and similar assets at the previous location (but not capital losses)

Conversion of any electrical appliances because of voltage differences between the old and new locations

Disconnection and connection fees for, respectively, the old and new residences in relation to utilities (such as power and gas) and telecommunication services (such as telephone, internet and television)

Accommodation or value of employer provided accommodation once the employee has arrived in the new location, for up to three months after arrival

Cleaning and fumigation of old and new residences

Utility, rates, insurance and maintenance for the employee's previous residence for up to one year if, despite reasonable efforts, it cannot be sold or rented, or if the property is rented by the employee, it cannot feasibly be rented to someone else (for example, because the relocation is for a short period)

Individuals, dependants and miscellaneous

Language training for the employee necessary for the relocation (up to 12 months after relocation)

Redirecting mail

Disposal of investments, including superannuation and insurance policies, (but not any reduction in the value thereof), that cannot be held or continued because of the relocation

Charges for currency exchange on actual eligible relocation expenses incurred

Travel/health insurance while relocating

Additional childcare costs that arise as a result of a relocation giving rise to a temporary household rearrangement, for up to three months from the time of relocation

School uniform items that need to be replaced because of the relocation

Private school application fees if an employee's children were enrolled in private schools in the previous location or where there is no alternative to private schools in the new location

Cancelling professional and club memberships

Other costs directly arising from relocation, up to \$500 in aggregate
