

C O R P O R A T E S C O N T A C T

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New financial year

The beginning of a new financial year provides a time for us to take stock and set goals and priorities for the coming year. Timeliness, risk-focus and consistency will again be key areas of focus for the Corporates Segment. The work undertaken and our achievements in these areas over the past year provide a solid foundation to build on.

How to tell us about your concerns and complaints

It is important that we know where we are achieving and where our service may have let you down so that we can fix the problem for you and learn from it. With your feedback we can improve our processes.

So how do you let us know about your concerns? There are two options that you can take to resolve a complaint:

1. In most cases, the quickest and easiest way to resolve a complaint is by talking with the staff member you have been dealing with. If you are still not satisfied or the complaint involves a staff member you are welcome to contact the relevant Sector Manager or contact me directly on 04 802 6022 or spyros.papageorgiou@ird.govt.nz
2. If this does not resolve the matter or you are not satisfied with the way your complaint has been dealt with, our Complaints Management Service can take a fresh look at it. The Complaints Management Service can be contacted toll-free on 0800 274 138 between 8 am and 5 pm weekdays, or by writing to the Complaints Management Service, Inland Revenue, PO Box 1072, Wellington.

I encourage you to review the options outlined above and in our *Service complaints information sheet (Inland Revenue Charter) (IR 614)*

Risk reviews

I have talked recently about our desire to be risk-focused and have real time presence. One of the ways we hope to achieve this is through our risk review process which takes place from April to September for our largest taxpayers.

Each tax risk review involves two meetings—an initial interview and a subsequent meeting to discuss our conclusions. Questions at the initial interview address a number of areas, including tax adjustments made for the 2004 tax returns, tax governance issues, impacts of changes to legislation, issues arising from mergers, acquisitions and restructures, international matters and financing details.

The risk reviews are designed to be beneficial for both parties—they help large enterprises understand the Corporates Segment position and the response you can expect from us, and they help us to identify taxpayer risk and rank that across our taxpayer base allowing us to allocate resources to high risks and address them in a timelier manner.

Audits will not necessarily occur as a result of this work. The findings will be considered as part of our normal audit selection process.

I hope the new financial year is treating you well.

Spyros Papageorgiou
Group Manager
Corporates

Conduit tax relief elections

Essentially there are two types of conduit relief—from dividend withholding payment and from income tax on attributed CFC income—and the rules as to when the election is effective differ in each case.

For dividend withholding payment relief the election is effective from the date Inland Revenue receives it. For relief from income tax on attributed CFC income, the election is effective from the beginning of the imputation year, 1 April, in which the election is made.

So to receive conduit relief on dividend withholding payment, an election must be in place on or before the time dividend withholding payment would otherwise be payable.

Conduit relief on attributed CFC income, is claimed through the income tax calculation, and is allowed for an income year that corresponds to the imputation year. This means that the election must be received by Inland Revenue on or before the end of the imputation year that corresponds with the income year.

It is important to note that it is unlikely an election, to become a conduit tax relief company, that accompanies a return will be valid for the period reflected in the return. This is because an election must be made within the imputation year to receive conduit relief for the initial year and filing of returns can take place up to 14 months after the income year ends.

A further requirement is that this election must still be effective at the time the company files its income tax return.

For example, a company elects on 31 July 2005 to be a conduit tax relief company. Regardless of balance date, this election is effective from 31 July 2005 for the purposes of receiving conduit relief from dividend withholding payment.

For relief from income tax on attributed CFC income, it is effective from 1 April 2005, the start of the imputation year, and applies to the 2006 income year.

Therefore, for conduit relief for income tax purposes only, if the company has:

- an early balance date of 31 October 2005, it can claim conduit tax relief on attributed CFC income arising from 1 November 2004
- a standard balance date of 31 March 2006, it can claim conduit relief on attributed CFC income arising from 1 April 2005
- a late balance date of 30 September 2006, it can claim conduit tax relief on attributed CFC income arising from 1 October 2005.

In all cases an extension-of-time arrangement applies, this election cannot be revoked before the return is filed—which could be as late as 31 March 2007.

While the election is in place the company must file an annual *Conduit tax relief account return (IR 406)* when it files its return of income.

To cease being a conduit tax relief company, a valid revocation must be made. Such a revocation must be made in writing and is effective from the beginning of the imputation year, 1 April, immediately following the year in which the revocation is made. An annual imputation return must also have been filed.

A new statutory right of non-disclosure for tax advice documents

Under legislation passed in June, in the Taxation (Base Maintenance and Miscellaneous Provisions) Act 2005, a statutory right not to disclose certain documents will apply for tax advice provided by tax advisors.

Previously, statutory professional privilege was available to lawyers for confidential communications with their clients in relation to tax matters. The new legislation provides a “level playing field” for tax advisors and solicitors who provide tax advice to taxpayers.

The legislation specifies the criteria for being considered a tax advisor.

Taxpayers must claim the non-disclosure right; it will not be applied automatically. Taxpayers have a limited time period in which to claim the right of non-disclosure and the Tax Administration Act 1994 requires the taxpayer (or tax advisor acting on behalf of the taxpayer) to make certain disclosures to Inland Revenue.

Operational guidelines, in the form of a standard practice statement (SPS 05/07), have been published in the *Tax Information Bulletin Vol 17, No 6 (August 2005)*

Material shortfalls

To give you an insight into some common tax shortfall issues and help you build on your good compliance record, we have decided to regularly publish an overview of material shortfalls which have been identified during the previous quarter. This information might also help highlight risk areas which could be proactively reviewed.

The shortfalls have been sourced from two areas—voluntary disclosures made by corporate taxpayers, and agreed audit adjustments arising from our audit programme. Each description has resulted in at least one tax shortfall of no less than \$1 million in tax.

1. Breach of shareholder continuity

What's the issue?

In some recent audits we have seen instances where corporate groups have carried forward losses despite not meeting the 49% ownership continuity requirements set out in section IE 1 of the Income Tax Act 1994 “the Act”. The losses were usually quite old and in a couple of instances were large. Part of our initiative in the loss area is to review large losses carried forward to ensure companies or groups are entitled to carry those losses forward.

What to do

It is important that companies closely monitor their loss profile to ensure that they do not carry forward losses they are not entitled to.

2. Imputation credit account entries

What's the issue?

We have seen instances where imputation credit account (ICA) entries have not been correctly made—in some instances this has resulted in significant overstatements of the credit balances in these accounts. In a recent case a company did not record a significant income tax refund as a debit in its ICA, which resulted in the credit balance in its ICA being significantly overstated. This adjustment is required by section ME 5(1)(e) of the Act.

What to do

While adjustments in this area do not always result in additional tax payable at the time the adjustments are made, it is important to take care with imputation credit account entries to ensure that no surprise obligations arise in the future.

3. Performance pay deductibility

What's the issue?

In today's marketplace environment we are seeing remuneration packages that have at risk components. Where the at risk component is calculated with reference to the profit of the company there is a time delay between the end of the financial year, calculation and approval of the performance pay. In these instances the bonus is not incurred under section BD 2(1)(b)(i) of the Act until the profit is calculated and the bonus has been approved. Section EF 1(6)(a) of the Act is not applicable until the expenditure in question has been incurred for tax.

What to do

In these circumstances the obligation to pay the performance pay is not incurred until well after year end so it cannot be deducted for tax until the following year.

In the next issue of *Corporates Contact* we will report on a recent review which looked at why tax shortfalls are occurring and common themes that explain why companies are failing to ensure they pay the correct amount of tax.

In brief

Statement in support of a tax interpretation (IR 282)

Something we have seen lately, that is not used that frequently, is a method of mitigating tax risk by filing a disclosure of a tax position. The benefit in making this disclosure is a 75% reduction in potential shortfall penalties for any unacceptable or abusive tax positions (refer to section 141H of the Tax Administration Act 1994). This disclosure must be made on a *Statement in support of a tax interpretation (IR 282)* form at the time the relevant tax return is filed.

Income tax return (Registered superannuation funds) (IR 44)

If the fund has changed its name since filing its last return, could you please attach evidence of the change, such as a letter from the Government Actuary or a copy of the trustees' resolution confirming the change.

Ten simple steps to filing a notice of proposed adjustment

Disagree with an assessment or decision we've issued? Want to change a return you've filed? Planning on filing a notice of proposed adjustment (NOPA)? Before you do, follow these ten simple steps.

1. A NOPA must be in the prescribed form—*Notice of proposed adjustment (IR 770)*—as set out in section 89F(1)(b) of the Tax Administration Act 1994.
2. You can create your own document using the headings set out in the IR 770, but it must have the IR 770 coversheet attached otherwise your NOPA may be invalid.
3. Your NOPA must identify the adjustments proposed to be made to the assessment.
4. You must provide a statement of the facts and the law in sufficient detail to inform the Commissioner of the grounds for the proposed adjustment.
5. You must state how the law applies to the facts.
6. You must include copies of the documents significantly relevant to the issue that you are aware of at the time of issuing your NOPA.
7. Ready to send your NOPA? Don't include your NOPA with returns or other correspondence. Send it to us separately, with the IR 770 cover sheet clearly visible on top.
8. Don't forget to check the date of issue on your NOPA, this is the date that the NOPA is sent to Inland Revenue, not the date the cover sheet was filled out.
9. Your NOPA must be issued within four months of the date your return is received by Inland Revenue (the self-assessment date). You'll find this on the return acknowledgment form we sent you after processing your return.
10. If issuing a NOPA in response to a Commissioner's assessment, you must send it to us within four months of the date of issue of the assessment.

The image shows the IR 770 Notice of proposed adjustment form. It includes the Inland Revenue logo and the text 'Te Tari Taake'. The form is titled 'Notice of proposed adjustment' and 'IR 770'. It contains several sections: 'Date of issue' with a calendar icon; 'Taxpayer's details' with fields for Name, ID number, and Address; 'Inland Revenue's contact details' with fields for Name and Inland Revenue office; a table for 'Proposed adjustment(s)' with columns for 'Change in amount of tax payable/refundable', 'Change income', 'Change expenses', 'Change other', 'Tax type', 'Return period (see IR 770)', and 'Change in amount of tax payable/refundable'; and a section for 'Description of proposed adjustment(s)' with a large text area and a right-pointing arrow.

Making trouble-free payments to Inland Revenue

Each month millions of dollars of debt are created in Inland Revenue's accounting system because of incorrect payments. Our booklet, *Making payments (IR 584)*, sets out how you can make payments correctly, to the correct account, and avoid unnecessary contact with Inland Revenue.

Here are just some of the common payment errors we've come across recently:

1. When paying electronically, each payment has to have its own set of payment reference details. So, if you are paying more than one tax type, you must make separate payments to ensure we get enough information to correctly process them.
2. When paying from overseas the details of the payment are lost on transfer from your bank to Westpac (which collects payments on behalf of Inland Revenue in New Zealand). To ensure the money is credited to the correct account, it would be beneficial to email your Inland Revenue account manager when you have made a payment. If a payment is incorrectly credited you may find it comes back to you as an incorrect refund. This is especially the case with GST and FBT.
3. There seems to be some confusion around withholding tax. Non-resident contractor's withholding tax is paid with PAYE as are all other types of withholding tax. This is detailed on the back of the *Tax code declaration form (IR 330)*. However, non-resident withholding tax (NRWT) is different. It is paid on the *Non-resident withholding tax (NRWT) (IR 67P)* form. A reconciliation needs to be filled in at the end of the year to 31 March to balance the NRWT owing on the interest, dividends and royalties paid with the NRWT during the year, this is done by using the *Non-resident withholding tax on interest, dividends and royalties reconciliation statement (IR 67S)*. The code for payments is NRT.
4. Incorrect payments cause problems for companies and branches of companies, because system offsets of credits can be made to "clear" the supposed "debits". This means companies' general ledgers do not balance. This can be stopped by using the correct formats (pages 10–11 in our *Making payments (IR 584)* booklet) and tax type code (a full list can be found on page 12 of *Making payments*).

Update on our review of 2004 IR 4 disclosure questions

In the March 2005 edition of *Corporates Contact* we advised that we would be actively monitoring the filing of 2004 *Income tax return – Companies (IR 4)* to ensure the disclosures section has been completed.

Since then we have analysed the 2004 return data. There are three main observations.

1. The majority of corporate taxpayers are completing the disclosure boxes. However there is a small minority of taxpayers who are ticking neither the yes or no box to some of the questions.
2. The most common omission for corporate taxpayers is failure to complete Question 32. This question asks whether payments have been made to non-residents, and if so, how much and has NRWT been deducted. There are a number of cases where taxpayers who make payments to non-residents do not provide the amount paid or indicate if tax has been deducted.
3. The second most common omission for corporate taxpayers is failure to complete Question 37, which requires disclosure of the total lowest economic interests of shareholders during the income year.

Responses to the disclosure questions are one of the many areas Corporates looks at when determining tax risks. This is important information and it must be provided on our prescribed forms.

Any queries or comments regarding these questions are more than welcome. Please email [Margaret Pahina](mailto:Margaret.Pahina@ird.govt.nz) on the Corporates Risk and Intelligence Unit.

Please note: Boxes 33 to 39 make up the disclosure section of the 2005 IR 4.

New contact numbers for Inland Revenue

Telecommunications is a critical part of our communication with our customers. For the 2004–05 year is estimated that Inland Revenue had over seven million interactions with taxpayers—nearly six million of those involved the telephone or electronic channels.

A telecommunications review project was formed in late 2003 to review our current and future telecommunications requirements. The last major review was in 1997 and in the intervening time the way we conduct business has changed significantly. As a result, in March this year Inland Revenue signed a six-year Telecommunications Services Outsourcing Agreement with TelstraClear.

While our 0800 toll-free numbers will remain the same, the change of provider means that all other Inland Revenue telephone, mobile phone and facsimile machine numbers are changing.

Changes to telephone numbers will occur progressively from November this year and will be completed by April 2006. There will be a six-month period where calls to existing telephone numbers will be automatically transferred to the new number. New contact details will be posted on the Inland Revenue website and Corporates staff will be in touch to advise of their new contact numbers.

For all Corporates enquiries call us on 0800 443 773.

From the editor

If you have any suggestions for future topics in *Corporates Contact*, please send an email to Corps.Contact@ird.govt.nz

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