



FUELLING
PROSPERITY

TaxMail



29 March 2019

Update on non-resident directors' fees

Inland Revenue has now finalised its Interpretation Statement, *Application of schedular payment rules to non-resident directors' fees* ([IS 19/01](#)).

The Interpretation Statement changes the Commissioner's approach to withholding obligations on non-resident directors' fees. Importantly, it outlines when the Commissioner considers non-resident directors' fees are generally sourced in New Zealand. It does not matter whether the director's services are performed in New Zealand or elsewhere. This may be modified by the effect of some double tax agreements (DTAs).

The Commissioner has also released an [operational position](#) on when IS 19/01 will apply.

What's changing?

Broader approach to when directors' fees are treated as sourced in New Zealand.

The Interpretation Statement confirms that whether directors' fees are New Zealand-sourced is ultimately a question of fact. However, the Commissioner's new approach is that, in most cases, directors' fees paid by a New Zealand company to a non-resident individual director will have a source in New Zealand. This is regardless of whether the director's services are performed in New Zealand or elsewhere (for example, by attending a board meeting via video conference from overseas).

The Statement also confirms the effect of a new domestic source rule that was added as part of the Base Erosion and Profit Shifting (BEPS) measures. The rule includes as New Zealand sourced income, any income that may be taxed in New Zealand under a DTA. As most of New Zealand's DTAs allow New Zealand to tax directors' fees paid by a New Zealand company, those payments are New Zealand-sourced. This rule applies for income years beginning on or after 1 July 2018.

Note that some DTAs contain a modified rule. In that case, a non-resident director may be taxed in New Zealand only on income from director services performed in New Zealand or if they have a New Zealand permanent establishment (depending on the DTA).

The Interpretation Statement also discusses the source of directors' fees paid to non-resident entities (such as companies and partnerships). For these, the Interpretation Statement concludes that fees will be sourced in New Zealand to the extent they are attributable to a permanent establishment in New Zealand or they are paid for services performed in New Zealand.

Who will this affect?

Operational position

Inland Revenue has released an operational position on how the new Interpretation Statement will apply. This is summarised below:

Type of director's fees	Approach
Paid by a New Zealand company to a non-resident individual and New Zealand <u>not</u> entitled to tax payment under DTA.	New Zealand companies and non-resident directors must apply IS 19/01 from 1 April 2019. (The outcome will depend on where the director is resident).
Paid by a New Zealand company to a non-resident individual and New Zealand entitled to tax payment under DTA.	New Zealand companies and non-resident directors must apply IS 19/01 for income years beginning on or after 1 July 2018. For most non-resident individuals, this means it should apply from 1 April 2019.

Withholding implications for non-resident director's fees sourced in NZ

If a director's fees are New Zealand-sourced, they will generally be a "schedular payment" and subject to withholding as outlined below:

Categorisation of fees	Withholding obligation
Subject to schedular payment rules.	Company must withhold tax at time of payment (with 33% as the standard rate).
Paid to director as salary or wages.	Company must deduct PAYE.
Not subject to schedular payment rules and not salary or wages e.g. individual performs their services in New Zealand and meets the following criteria: <ul style="list-style-type: none">• Entitled to full NZ tax relief under DTA and in NZ for 92 days or less in a 12 month period• Total contract payments are \$15,000 or less in a 12 month period• Holds an exemption certificate.	Withholding is not required. However, both parties can agree to treat as "voluntary schedular payments" subject to withholding.

KPMG comment

The new Interpretation Statement means that where a non-resident director's services are physically performed is no longer the key determinant of whether payments for those services have a source in New Zealand.

While the Commissioner's position is clear, it may lead to commercial problems when trying to engage non-resident directors. There is no simple means of ensuring that they are in the New Zealand tax system so that penal tax rates are not applied. Further, the schedular payment rules are complex to work through.

Accordingly, we recommend New Zealand companies paying fees to non-resident directors' review their withholding obligations and their reporting of that information to Inland Revenue. This is particularly important in light of the new approach raising some uncertainties as to how it will apply practically.

Despite the preference in the Interpretation Statement, where directors' fees are sourced depends ultimately on the facts. This means that consideration needs to be given to whether the facts provide a different result.

Both the New Zealand company and non-resident directors should also review what the appropriate withholding rate is.

For further information, please contact Rebecca or John today.



Rebecca Armour
Partner, Global Mobility
Auckland
P: +64 9 367 5926
E: [Rebecca](#)



John Cantin
Partner, Tax
Wellington
P: +64 4 816 4518
E: [John](#)



[Legal](#) | [Privacy](#) | [kpmg.com/nz](#)

KPMG NZ Head Office:
18 Viaduct Harbour Avenue
PO Box 1584
Auckland 1140
T: +64 9 367 5800

Copyright ©2019 KPMG, a New Zealand partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. The KPMG name and logo are registered trademarks or trademarks of KPMG International.