

**EXPOSURE DRAFT - FOR COMMENT AND DISCUSSION ONLY | HUKIHUKI HURANGA  
- MŌ TE TĀKUPU ME TE MATAPAKI ANAKE**

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**STANDARD PRACTICE STATEMENT > PROCESSING**

# Deduction notices

Issued: XX MMMM YYYY

**SPS XX/XX**

Standard practice statements describe how the Commissioner of Inland Revenue (the Commissioner) will exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.

This statement sets out the Commissioner's power to issue a deduction notice to recover outstanding amounts of tax from a third party and provides guidance on how the Commissioner will use such notices.

**START DATE**

DD MM YYYY

**REPLACES**

- **SPS 21/01:** Deduction notices *Tax Information Bulletin* Vol 33, No 4 (May 2021): 36.

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## Application

This standard practice statement applies from the date of signing. It replaces [SPS 21/01](#): Deduction notices *Tax Information Bulletin* Vol 33, No 4 (May 2021): at page 36.

This statement outlines the Commissioner's powers to require deductions from amounts that are payable or will be payable to a taxpayer who has arrears and automatic deductions under the Child Support Act 1991. It applies to deduction notices issued under the:

- Tax Administration Act 1994 (TAA);
- Child Support Act 1991;
- Gaming Duties Act 1971;
- Goods and Services Tax Act 1985;
- Student Loan Scheme Act 2011.

## Standard practice

### Summary

1. A deduction notice is an important debt collection tool for the Commissioner. The Commissioner has the power<sup>1</sup> to require a third party to make deductions from amounts that are payable or will become payable by that third party to a taxpayer who has a tax liability, or who owes amounts under the Child Support Act 1991 or has amounts owing under the Student Loan Scheme Act 2011.<sup>2</sup>
2. A deduction notice may require deductions to be made in a lump sum or by instalments.

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<sup>1</sup> A deduction notice is issued under s 157 of the TAA, s 43 of the Goods and Services Tax Act 1985, s 154 of the Child Support Act 1991 or s 12L of the Gaming Duties Act 1971.

<sup>2</sup> Tax liability includes core tax, late filing penalties, late payment penalties, use of money interest, shortfall penalties, late payment interest and amounts owing under the Student Loan Scheme Act 2011.

3. A deduction notice will continue to apply:
  - until a deduction is made in respect of a notice requiring deduction by lump sum;
  - where an ongoing deduction notice exists, until the amount required under the notice has been deducted; or
  - until the Commissioner revokes the notice.
4. Deductions the third party makes are held in trust for the Crown until they are paid to the Commissioner.<sup>3</sup> If the third party does not make the deduction, the Commissioner may recover the amount required to be deducted from the third party as if it were tax payable by that third party.<sup>4</sup> Where the deduction notice is issued for child support, banks are excluded from being liable if they fail to deduct.<sup>5</sup> All other third parties are liable.
5. The Commissioner also has the power to prosecute a person for not complying with the terms of a deduction notice.<sup>6</sup>

## Detailed discussion

### Debt collection activity

6. Taxpayers who are liable to pay an amount of tax to the Commissioner will have due dates for the payment of those amounts. Where a due date for payment is not met, a taxpayer will have an amount that is due and payable to the Commissioner. Where an amount is owing by a taxpayer, the Commissioner may take action to recover that outstanding amount. One action available to the Commissioner is to require an employer, a bank or another third party that is liable to pay an amount to the taxpayer to pay that amount to the Commissioner instead. This is done by sending a deduction notice to the third party requiring the third party to pay all or some of the amount due to the Commissioner instead of to the taxpayer.
7. The decision to take any debt collection action, including the use of a deduction notice, is made after consideration of relevant information, including previous communication between Inland Revenue and the taxpayer, the compliance history

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<sup>3</sup> Section 157(8) of the TAA and s 167 of the Child Support Act 1991.

<sup>4</sup> Section 157(8) of the TAA and s 167 of the Child Support Act 1991.

<sup>5</sup> Section 168 of the Child Support Act 1991.

<sup>6</sup> Sections 157A and 143A of the TAA.

(including current compliance) of the taxpayer (including any entities related to or controlled by the taxpayer), the amount and age of the arrears, and any known hardship or hardship likely to be experienced by the taxpayer.<sup>7</sup>

8. Before issuing a deduction notice, the Commissioner will typically notify the taxpayer of an upcoming tax liability, advise that the amount is past due, and issue a letter advising the amount may be recovered by taking money from the taxpayer's income source or bank account. In many cases, Inland Revenue will attempt to telephone the taxpayer or will send a final notice for overdue amount letter before a deduction notice is issued. The Commissioner views the issuing of a deduction notice as a last resort in most cases. However, the Commissioner reserves the right to issue a deduction notice without prior notification in appropriate circumstances.
9. As a result of a major upgrade to Inland Revenue's information technology systems over the past few years, the Commissioner now has more information from a wider variety of sources and often in real time. This allows the Commissioner to be more proactive about preventing taxpayers getting into situations where they will have tax to pay. This allows for increased accuracy in the information Inland Revenue holds and more effective communications with taxpayers.
10. A compulsory deduction notice cannot be disputed by the taxpayer or the third party through the disputes process under Part 4A of the TAA.<sup>8</sup> Further, a compulsory deduction notice cannot be challenged under Part 8A of the TAA.<sup>9</sup> However, the decision to issue a compulsory deduction notice can be judicially reviewed in High Court proceedings.

## Child support deductions

11. From 26 October 2021 onwards, liable parents who receive a salary or wage are automatically set up with employer deductions when they meet one or more of the criteria. The most common criteria are where the liable parent:
  - is a new or returning child support customer (including when a role reversal occurs); or
  - has arrears.

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<sup>7</sup> See SPS 18/04: Options for relief from tax debt *Tax Information Bulletin* Vol 30, No 9 (October 2018): 37, SPS 11/02 Child support debt – Requesting an instalment arrangement *Tax Information Bulletin* Vol 23, No 2 (March 2011): 17 and SPS 11/03 Student loans – Relief from repayment obligations *Tax Information Bulletin* Vol 23, No 2 (March 2011): 24.

<sup>8</sup> The criteria for a taxpayer to initiate the disputes process are in ss 89D and 89DA of the TAA.

<sup>9</sup> Section 138E(1)(e)(iv) of the TAA.

If employer deductions are already in place and a child support reassessment or recalculation occurs, the deductions will automatically update, and the liable parent and their employer(s) will be notified.

12. Liable parents can be excluded from automatic employer deductions if they have privacy concerns, they are casual or seasonal workers, or an automatic deduction would not be suitable for other reasons.
13. To set up the child support deduction, the employer will be sent a deduction notice under s 154 of the Child Support Act 1991. The child support deduction will remain in force until it is revoked by the Commissioner.<sup>10</sup> The Commissioner will do this by issuing a notice of revocation to the employer.<sup>11</sup>

## **Tax liability**

14. A deduction notice can be issued when the taxpayer has an overdue tax liability.<sup>12</sup>
15. Where the tax liability is in the name of the taxpayer, an amount payable to that taxpayer, which they are entitled to receive in their personal capacity, may be subject to a deduction notice.
16. In some cases, a taxpayer may be liable for a tax liability that is recorded in the name of another taxpayer. For example, trustees of a trust are jointly and severally liable for the income tax liabilities of the trust.<sup>13</sup> This means the Commissioner can recover an income tax liability of the trust from a trustee and may issue a deduction notice against amounts payable to the trustee in their personal capacity. The same can apply to a partner in a partnership, where the partners are jointly and severally liable. Similarly, an agent may be liable for the tax liability or arrears of another taxpayer so that a deduction notice may be placed on an amount payable to the agent to satisfy the liability of the principal taxpayer.<sup>14</sup>
17. In respect of a Working for Families tax credit debt, the Income Tax Act 2007 provides that both the primary caregiver and their partner or spouse, throughout the income year to which the overpayment relates, are jointly and severally liable for any overpayment of Working for Families tax credits.<sup>15</sup> The Commissioner may place a

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<sup>10</sup> Section 158(1) of the Child Support Act 1991.

<sup>11</sup> Section 158(2)(a) of the Child Support Act 1991.

<sup>12</sup> Child support liability and debt is also collected by deduction notices in accordance with ss 129, 129A, 130 and 131 of the Child Support Act 1991.

<sup>13</sup> Section HC 2 of the Income Tax Act 2007. See also *CIR v Newmarket Trustees Ltd* [2012] NZCA 351; (2012) 25 NZTC 20-139 and *Dorchester Finance Ltd v Ngahuia Ltd* (2010) 3 NZTR 20-001 (HC).

<sup>14</sup> See ss HD 2 and HD 3 of the Income Tax Act 2007.

<sup>15</sup> Section MF 5(2) of the Income Tax Act 2007.

deduction notice on the bank accounts of the primary caregiver or their spouse or both for the income year and any joint account held in the names of the parties.

18. In respect of GST, the Goods and Services Tax Act 1985 applies to amounts payable to the registered person or the liable person or both.<sup>16</sup> A deduction notice can apply to amounts payable to a person who is jointly liable for the registered person's GST liability (such as a partner in a partnership or a trustee in respect of a trust).<sup>17</sup> A deduction notice can also apply to a person who is an agent in respect of the registered person's GST liability (such as an agent carrying on the taxable activity of an absentee principal).<sup>18</sup> It is not necessary for the registered person or the liable person to be registered for GST at the time the deduction notice is issued.

## **Where a deduction notice will not usually be issued**

19. A compulsory deduction notice will not usually be issued where:
- a taxpayer has made an application for financial relief that the Commissioner is considering;
  - a taxpayer has a tax liability and is keeping to an instalment arrangement;<sup>19</sup>
  - the taxpayer or Commissioner has initiated the disputes process under Part 4A of the TAA for the period(s) under dispute; or
  - a taxpayer is challenging an assessment through the courts and the tax is deferred (tax is deferred after the taxpayer files a Statement of Claim or Notice of Claim with the court).
20. The Commissioner may still issue a deduction notice if circumstances require it.

## **Daily interest**

21. A deduction notice may require deductions to be made to cover daily interest accruing on the tax liability. The interest starts on the date of the deduction notice and ends on the day on which the amount required to be deducted has been

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<sup>16</sup> Section 43 of the Goods and Services Tax Act 1985.

<sup>17</sup> Section 43(2AA) of the Goods and Services Tax Act 1985.

<sup>18</sup> Section 59(2) of the Goods and Services Tax Act 1985.

<sup>19</sup> If a taxpayer with an instalment arrangement incurs new tax liabilities, a deduction notice can be issued to recover the new tax liabilities that sit outside the instalment arrangement. When a taxpayer enters an instalment arrangement for overdue amounts with Inland Revenue the expectation is that current and future liabilities will be kept up to date.

deducted. If interest is to be calculated, the rate of interest will be advised in the deduction notice.

## **Amount payable to a person**

22. A deduction notice may be issued to a third party and applied against any money payable by that third party to the taxpayer. It does not matter whether the third party is paying the money to the taxpayer on their own account or as an agent for somebody else. It also does not matter whether the taxpayer has appointed an agent as the recipient of the amount.<sup>20</sup> Accordingly, any amount payable by a third party (or their agent) to a taxpayer (or their agent) will be subject to a deduction notice issued by the Commissioner.

## **Amounts payable by a person on a joint account**

23. A deduction notice may be placed on joint accounts when the money can be withdrawn from that account by the defaulting person without the signature or other authorisation of the other joint account holder(s).<sup>21</sup> Note that a deduction notice can be placed on a partnership account only in respect of the partnership's liability as a taxpayer under the relevant Act. A deduction notice cannot be placed on a partnership bank account to satisfy a partner's personal tax liability.
24. A deduction notice will apply to money held in a term investment, whether or not that investment is due to mature.

## **Foreign currency**

25. The balance of an account denominated in a foreign currency may be the subject of a deduction notice despite the currency of the account.

## **One-off and ongoing deductions**

26. A deduction notice may require deductions to be made either in a lump sum (one-off notice) or by instalments (ongoing notice). The notice will specify the manner of the deduction.

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<sup>20</sup> *Gennaker Holdings v IRD* (1991) 13 NZTC 8,154 (TRA).

<sup>21</sup> Section 157(11) of the TAA and 155(3) of the Child Support Act 1991.



27. A deduction notice will continue to apply:
- until a deduction is made by the third party in respect of a one-off notice requiring deduction by lump sum;
  - in respect to an ongoing notice, until the amount required under the notice has been deducted; or
  - until the Commissioner revokes or withdraws the notice.
28. If a deduction notice requires multiple deductions over a period, the amounts due do not need to be adjusted each pay period, unless there is a low pay period and the limitation applies as set out at [30] and [31].<sup>22</sup>
29. Note that this statement does not cover an attachment order issued by a court.

## **Limits that can be deducted from salary and wages**

30. Deduction notices issued against a taxpayer's salary and wages have limits as to the amount that may be deducted in respect of the portion that is salary and wages. In respect of deduction notices for all but liabilities due under the Child Support Act 1991, the amount the Commissioner may require an employer to deduct is limited to the greater of:<sup>23</sup>
- the lesser of 10% of the tax liability per week;
  - 20% of the gross salary or wages payable to the taxpayer on each pay day;<sup>24</sup> or
  - \$10 per week.

This is illustrated in Example 1: A deduction notice in practice.

31. Note that if the:
- taxpayer is not paid weekly, the instalment amounts should be multiplied to suit the pay period;
  - deduction amount is less than \$10 per week, the amount to deduct is \$10 per week;
  - taxpayer earns less than \$10 per week, the third party is not required to make an extra deduction; and

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<sup>22</sup> Section 157(3) of the TAA.

<sup>23</sup> Section 157(3) of the TAA.

<sup>24</sup> Gross salary or wages does not include employee non-taxable allowances or reimbursements.

- taxpayer asks the third party to deduct an extra amount, the third party may be required to do so.<sup>25</sup>
32. These limits ensure a taxpayer does not have their entire salary or wage taken by the Commissioner (unless they receive a payment of \$10 or less as a salary or wage).

#### Example 1: A deduction notice on wages in practice

Kerry has an outstanding tax liability and does not have an arrangement with the Commissioner for the payment of that debt. Kerry's debt is \$3,000 and the Commissioner's records show Kerry has started receiving a weekly wage from an employer. A deduction notice is issued to Kerry's employer requiring a deduction of the lesser of \$300 (being 10% of the tax debt) or 20% of Kerry's wage.

Kerry is paid \$900 on each pay day and their employer withholds \$180 (being 20% of the wage paid to Kerry).

The deduction on Kerry's wage will continue until:

- A new notice is sent to the employer advising that the deduction notice is revoked;
- The total amount owing has been deducted and paid to the Commissioner;
- Kerry ceases working for the employer.

Note that the same amount would be required to be deducted if the tax liability was for GST, gaming duty or student loan payments.

33. The Child Support Act 1991 has priority over any attachment order issued by the courts or deduction notice issued under any other Act (including the other Inland Revenue Acts).<sup>26</sup>
34. A deduction for financial support due under the Child Support Act 1991 may require an employer to deduct up to 40% of the net payment under the PAYE rules of the Income Tax Act 2007.<sup>27</sup> This is illustrated in Example 2: Deduction notice for financial support.
35. This means a deduction notice issued under s 154 of the Child Support Act 1991 for a child support debt will always take priority over a deduction notice issued under s 157

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<sup>25</sup> Section 39 of the Student Loan Scheme Act 2011.

<sup>26</sup> Section 154 of the Child Support Act 1991.

<sup>27</sup> See Employer's guide: Information to help you with your responsibilities as an employer – IR335 (guide, Inland Revenue, 2020) under 'Net protected earnings' (at 14). Also refer to s 165 of the Child Support Act 1991.

of the TAA for other tax types. This ensures the taxpayer will always receive at least 60% of the net payment (that is, payment due after PAYE is withheld) due from their employer. The debt for other tax types will be dealt with separately.

36. If a third party is deducting an amount under s 157 of the TAA and subsequently receives a child support deduction notice under s 154 of the Child Support Act 1991, they will need to put into effect the child support deduction notice. This may result in amending the earlier s 157 deduction in order to comply with the s 154 deduction.

#### **Example 2: Deduction notice for financial support**

Michael has an outstanding financial support liability and has not made an arrangement with the Commissioner for the payment of the debt. The outstanding financial support is \$3,000 when the Commissioner's records show Michael has started receiving a wage from an employer. A deduction notice is issued to Michael's employer requiring a deduction of the lesser of \$3,000 or 40% of Michael's wage after PAYE is deducted.

Michael is paid \$800 (net of PAYE) and his employer withholds \$320 (being 40% of Michael's wage (net of PAYE)).

### **Copy of deduction notice to be sent to the taxpayer**

37. The Commissioner will send a copy of the deduction notice to the taxpayer.<sup>28</sup> Where the taxpayer does not have a valid address, the deduction notice may be sent to the taxpayer's last known address.
38. The Commissioner may dispense with the requirement to send a copy of a deduction notice to a taxpayer where; after making reasonable inquiries, the Commissioner can find no valid address for the taxpayer and the third party to whom the deduction notice is sent is their current employer.<sup>29</sup>

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<sup>28</sup> Section 157(5) of the TAA and s 156(1) of the Child Support Act 1991.

<sup>29</sup> Section 157(5B) of the TAA and s 156(3) of the Child Support Act 1991.

## Revoking a deduction notice

39. The Commissioner may revoke a deduction notice by notifying the third party to not make the deduction or to make a deduction for a different amount. The Commissioner will notify the third party in writing that the deduction notice is revoked,<sup>30</sup> if the taxpayer has:
- paid their tax liability; or
  - agreed to an arrangement with the Commissioner for the payment of their tax liability.<sup>31</sup>
40. The Commissioner must not recover tax to the extent that the recovery places a taxpayer into serious financial hardship.<sup>32</sup> If a taxpayer submits an application for financial relief on the grounds of serious financial hardship (or is deemed to be in serious hardship) and the application is granted, the Commissioner will notify the third party in writing that the deduction notice is revoked.

## Withheld amounts

41. Once the third party has withheld an amount pursuant to a deduction notice, they hold that amount on trust for the Crown and must make payment of the amount to the Commissioner in the time provided for in the deduction notice. If the third party fails to pay the withheld amount to the Commissioner, they will be liable to pay use of money interest on this amount.
42. Further, the Commissioner may take action to recover the amount withheld by that third party. The third party may also be liable for criminal penalties for failing to account for the withheld amount.<sup>33</sup>
43. On making a deduction, the third party must notify the taxpayer of the fact of the deduction or extraction and of the purpose for which it was made.<sup>34</sup>
44. A person who makes a deduction required under a deduction notice is deemed to be acting under the authority of the taxpayer to whom the notice relates and is indemnified in respect of the deduction made.<sup>35</sup>

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<sup>30</sup> Section 157(4) of the TAA.

<sup>31</sup> Section 177B of the TAA.

<sup>32</sup> Section 176(2)(b) of the TAA and SPS 18/04: Options for relief from tax debt.

<sup>33</sup> Section 157A of the TAA.

<sup>34</sup> Section 157(6) of the TAA.

<sup>35</sup> Section 157(7) of the TAA.

## **Failure to comply with a deduction notice**

45. If a third party fails to make a deduction as required, the Commissioner may take recovery action against that third party for failing to deduct and pay the Commissioner in accordance with the deduction notice.
46. This ability to recover amounts not withheld applies to all tax liabilities except deductions of financial support required to be made by a bank under s 154 of the Child Support Act 1991, in which case the bank will not be liable for financial support it fails to deduct.<sup>36</sup>
47. Where a third party wilfully refuses to comply with a deduction notice then the Commissioner can consider prosecution.<sup>37</sup>

This standard practice statement is signed on XX MMMM YYYY.

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### **First Name Last Name**

Technical Lead, Technical Standards - Legal Services

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<sup>36</sup> Section 168(2) of the Child Support Act 1991.

<sup>37</sup> Sections 143A and 143B of the TAA.

# References

## Legislation cited

Child Support Act 1991, ss 129, 129A, 130, 131, 154, 155, 156, 158, 165, 167, 168

Gaming Duties Act 1971, s 12L

Goods and Services Tax Act 1985, ss 43, 59

Income Tax Act 2007, ss HC 2, HD 2, HD 3, MF 5

Student Loan Scheme Act 2011, s 39

Tax Administration Act 1994, Part 4A, ss 89D, 89DA, Part 8A, ss 138E, 143A, 143B, 157, 157A, 176, 177B

## Cases cited

*CIR v Newmarket Trustees Ltd* [2012] NZCA 351

*Dorchester Finance Ltd v Ngahuia Ltd & Ors* (2010) 3 NZTR 20-001 (HC)

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