

OPERATIONAL STATEMENT

Cash collateral is “money lent”

Issued: 18 March 2025

OS 25/01

Operational statements set out the Commissioner of Inland Revenue’s view of the law in respect of the matter discussed and deal with practical issues arising out of the administration of the Inland Revenue Acts.

This operational statement outlines a change of view by the Commissioner and sets out the approach that the Commissioner will be taking after changing his view on whether cash collateral provided as part of security lending and derivative transactions is “money lent”. The Commissioner’s view now is that interest arising on cash collateral may therefore be subject to obligations to withhold resident withholding tax (RWT) or non-resident withholding tax (NRWT).

All legislative references in this statement are to the Income Tax Act 2007, unless specified otherwise.

Introduction

The Commissioner has previously taken the view that payments of money in the form of cash (cash collateral) as part of, and to secure obligations under, security lending and derivative transactions was not money lent so there was no RWT or NRWT withholding obligation for the interest payments arising.

The Commissioner has changed his view and this operational statement sets out the approach that the Commissioner will be taking to the arrangements in question, going forward and for previous periods.

The Commissioner's view

1. This statement covers arrangements involving payment of amounts of money in the form of cash to act as security to cover the exposures of a party from obligations under security lending or derivative transactions using market standard documented agreements. Specific examples of such agreements considered by the Commissioner are (for security lending) the International Securities Lenders Association Global Master Securities Lending Agreement and (for derivatives) the International Swaps and Derivatives Association Master Agreement together with a Credit Support Annex stipulating the terms governing the posting of collateral.
2. The payments are referred to as "cash collateral".
3. The agreements governing the arrangements generally contractually oblige parties to make further payments (described as interest) based on the value of the cash collateral held. Whether such further payments create withholding obligations for RWT or NRWT depends on whether they are "interest" for the purposes of the definitions of "resident passive income" in s RE 2 and "non-resident passive income" in s RF 2. Whether they are "interest" depends on whether the cash collateral is "money lent" as that term is defined in s YA 1.
4. The Commissioner's view is that in the agreements he has considered the cash collateral is a loan, and therefore money lent, because there is a transfer of money with an obligation to repay. The arrangements in question require a party to pay an amount in circumstances where an equivalent with interest needs to be repaid. Further, the composite nature of the contractual arrangements does not have the consequence that the cash collateral is not money lent.
5. This means that a party to the arrangement who is a payer of interest on the cash collateral should, unless the payee has RWT exempt status, withhold RWT or NRWT (depending on the residence of the payee) and pay it to Inland Revenue.
6. For the avoidance of doubt, this is the position for interest that is specific to the cash collateral. This Statement does not cover interest that might be said to be a component of the pricing of other elements of the broader arrangement such as derivatives or shares.
7. The view outlined above is different to the view the Commissioner has taken previously at an individual customer level. For some time, although the Commissioner has accepted customers taking the position that cash collateral is not money lent, the correct approach has been considered to be uncertain. Having undertaken further thinking on the issue, the Commissioner has come to the conclusion outlined above.

Application

8. This statement applies from the date of issue.
9. However, the conclusion that cash collateral is money lent will be applied prospectively and to allow customers to make the required changes to their systems and any alternative arrangements, the Commissioner expects customers to comply with the new view when taking tax positions from 1 April 2025. The Commissioner will not be devoting resources to identifying incorrect compliance with the RWT or NRWT regimes for previous periods.

Maria Szymanik
Technical Lead, Legal Services

Date of Issue: 18 March 2025