



NON-RESIDENT CONTRACTORS' WITHHOLDING TAX

1. A contract payment that relates to a non-resident contractor's contract activity or service, is a schedular payment from which withholding tax must be deducted under the Pay As You Earn (PAYE) rules. Withholding tax will be deducted at the rate of 15%, 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.[Sections RD 3(1)(a)(iii), RD 8(1)(a)(i) & Schedule 4, Part A]
2. The tax deduction is normally referred to as non-resident contractors' withholding tax (NRCWT). NRCWT is neither a minimum tax nor a final tax liability. It is simply a withholding tax that is credited towards the non-resident contractor's final NZ income tax liability. If the final tax liability is lower than the NRCWT deducted, the excess NRCWT will be refunded.
3. The rate of NRCWT is 15% of the gross amount of each contract payment.
[Section RD 10(3)]
4. If the non-resident contractor does not notify the payer, of the withholding tax code (which is WT) by completing a Form IR 330, the rate of NRCWT is the "no-notification rate":
 - (a) 20% of the gross amount of each contract payment if the non-resident contractor receiving the payment is a company.
 - (b) 30% of the gross amount of each contract payment in all other cases.[Section RD 18(1) & (3)]
5. A non-resident contractor may apply for an exemption certificate from NRCWT if there are appropriate grounds to do so (see further below). The exemption will apply to payments made after the date of issue of the certificate.
6. Alternatively, a non-resident contractor may apply for special tax rate certificate, if the tax on expected gross income less allowable deductions from the contract activity will be less than 15% of the contract payment. A special tax rate certificate will apply to payments made after the date of issue.

Definitions of “contract payment” and “contract activity or service”

7. A contract payment is any payment other than the following:
 - (a) A royalty.
 - (b) A cost reimbursement payment from a person who is not associated with the contractor.
 - (c) A payment for labor-only building work or labor-only fishing boat work.
8. A contract activity or service means:
 - (a) Performing any work in New Zealand.
 - (b) Rendering a service of any kind in New Zealand.
 - (c) Providing the use of, or right to use, in New Zealand, any personal property, or services of a person other than the non-resident contractor.

[Section YA 1 definitions]

Exclusions from non-resident contractors’ withholding tax

9. No deduction of NRCWT is required to be made from the following contract payments:
 - (a) A contract payment, to a non-resident contractor or to another person on their behalf, for a contract activity or service, where the total amount, paid for those activities in a 12-month period, is not more than \$15,000.
 - (b) A contract payment to a non-resident contractor who has full relief from NZ tax under a double tax agreement and is present in NZ for no more than 92 days in a 12-month period.
 - (c) A contract payment that is covered by an exemption certificate.

Relief from NZ tax under a double tax agreement

10. A non-resident contractor will be relieved of any NZ tax liability in relation to a contract payment, if both of the following requirements are met:
 - (a) The non-resident contractor is resident in a country with which New Zealand has negotiated a double tax agreement, and that agreement has come into force.
 - (b) The non-resident contractor does not carry on business in New Zealand through a permanent establishment in New Zealand.

[For an explanation of what constitutes a permanent establishment, refer to the main section on *Business Profits Not Derived Through A Permanent Establishment.*]

11. Inland Revenue does not provide any guidance on the procedure by which a non-resident contractor informs the payer that full relief from NZ tax is available under a double tax agreement, and that the non-resident contractor will not be present in New Zealand for more than 92 days in a 12-month period. Presumably, a letter from a suitably qualified tax professional will be sufficient for the payer not to deduct NRCWT. It is not necessary to apply for an exemption certificate if the NRCWT exclusion applies on these grounds.

Exemption certificates for non-resident contractors

12. A non-resident contractor may apply in writing for an exemption certificate on any of the following grounds:
- (a) The amount derived from a contract activity or service is not income, either because of a double tax agreement or for another reason.
 - (b) The contractor provides a bond or other security for the payment of any income tax payable on amounts derived from a contract activity or service.
 - (c) The contractor has a history of good tax compliance in New Zealand for at least two years before the date of the application and can satisfy the Commissioner that the contractor will continue to properly comply with all their NZ tax obligations.
13. An application for an exemption certificate must be in writing (in Form IR 197) and must clearly state the grounds for the exemption. If the contractor is relieved of any NZ tax liability under a double tax agreement, because there is no permanent establishment in NZ, the reasons for that must be clearly set out. If a bond or other security is to be used, a letter of credit from a bank or something similar should be attached. If the basis of the exemption certificate is to be a good tax compliance record, the tax compliance record must be evidenced in the letter.
14. An exemption certificate will apply to payments made from the date it is issued. It will not apply to payments made before the date on which it is issued. It is therefore important to apply for an exemption certificate before any payments are made.

[Section RD 24]

Treatment of employees of a non-resident contractor

15. A non-resident contractor must deduct PAYE from any salary and wages paid to any employee present in New Zealand. The IRD requires a non-resident contractor to make arrangements to account for:
- (a) PAYE (including ACC earner's levy).
 - (b) Fringe benefit tax (FBT).
 - (c) Employer's superannuation contribution tax (ESCT).
16. An employee may be exempt or relieved from any NZ tax liability under the short-term visit exemption (the 92 day rule) or under a double tax agreement (the 183 day rule). However, any decision not to deduct PAYE must be approved by the IRD. In some circumstances a bond or other security may be lodged with the IRD in order to waive the requirement to make tax deductions from salary or wages payable to a non-resident employee.

[Refer to the main section on *Exemption Under Double Tax Agreements For Income From Employment*]

Filing NZ Tax returns

17. NRCWT is not a final tax. A non-resident contractor must file a New Zealand tax return, setting out the gross income from contract payments less allowable deductions, and settle their final NZ tax liability.
18. A non-resident contractor who has not been given an exemption certificate for the tax year does not have to pay provisional tax. Any tax payable in addition to NRCWT, relating to the final tax liability, must be settled by the due date for payment of terminal tax. If the non-resident contractor's NZ tax year is the standard tax year that ends on 31 March, the terminal tax payment is due on 7th February following the end of the contractor's tax year on 31 March, or, if a tax agent is used, on 7th April following the end of the tax year.

[Sections RC 3(2) & RA 13]