

Version
as at 12 April 2022



Income Tax (Determinations) Regulations 1987

(SR 1987/114)

Paul Reeves, Governor-General

Order in Council

At Wellington this 13th day of April 1987

Present:

His Excellency the Governor-General in Council

Pursuant to the Income Tax Act 1976, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

These regulations are administered by the Inland Revenue Department.

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Schedule 10

**Form of determination for publication under section 90(7) or
section 90AD(1) of the Tax Administration Act 1994**

Regulations

1 Title and commencement

- (1) These regulations may be cited as the Income Tax (Determinations) Regulations 1987.
- (2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

2 Interpretation

For the purposes of these regulations, unless the context otherwise requires,—

Act means the Tax Administration Act 1994

anonymity notification means an anonymity notification under regulation 8

applicant means a person who applies for a determination

application means an application for a determination in accordance with these regulations

assessment means an assessment of tax made by the Commissioner under the Act

determination means a determination made under section 90(1) or section 90AC(1) of the Act; but does not include a decision by the Commissioner not to make a determination in respect of an application

return means any return submitted or to be submitted to the Commissioner under the Act

working day means any day of the week other than—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day; and
- (ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and

- (b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

Regulation 2 **Act**: amended, on 18 December 1996 (applying with respect to the 1997–98 income year and subsequent years), by regulation 2 of the Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377).

Regulation 2 **determination**: amended, on 11 October 2001, by regulation 3 of the Income Tax (Determinations) Amendment Regulations 2001 (SR 2001/234).

Regulation 2 **determination**: amended, on 18 December 1996 (applying with respect to the 1997–98 income year and subsequent years), by regulation 2 of the Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377).

Regulation 2 **working day** paragraph (a): replaced, on 12 April 2022, by wehenga 7 o Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022/section 7 of the Te Kāhui o Matariki Public Holiday Act 2022 (2022 No 14).

Regulation 2 **working day** paragraph (ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

3 Applications

- (1) Every application for a determination under section 90 or sections 90AB to 90AE of the Act, shall be accompanied by payment of such fee as may be prescribed, and shall have annexed thereto—
 - (a) a draft of the determination for which application is made in the form and containing the matters set out in the Schedule; and
 - (b) the name or description of the applicant for the determination; and
 - (c) where the applicant has given anonymity notification, a draft of an anonymous version of the determination edited to remove the name of the applicant and other particulars that are likely to identify the applicant; and
 - (d) copies of all documents relevant to the application, or, at the option of the applicant, where any document is in large part not relevant to the application and the document is lengthy, copies of relevant extracts from that document; and
 - (e) written submissions in support of the application; and
 - (f) such other particulars as are necessary for a ready understanding of the effect of the determination.
- (2) On receipt of an application that complies with subclause (1) the Commissioner shall forthwith—
 - (a) record the application in the register to be kept for that purpose; and
 - (b) give written notice of the date of registration to the applicant.
- (3) On receipt of an application that does not comply with subclause (1), the Commissioner may—
 - (a) accept the application and take the steps referred to in subclause (2) in respect of that application; or

- (b) return the application to the applicant; or
 - (c) decline to register the application until it complies with subclause (1).
- (4) Where the Commissioner declines to register an application under subclause (3)(c), the applicant shall be notified forthwith.
- (5) The applicant, and any person on whose behalf the application was made, and any person to whom the application relates, shall from time to time produce, or, as the case may be, furnish to the Commissioner, such further documents or information in relation to the application as may be required by the Commissioner for the purpose of enabling the Commissioner to exercise the functions under section 90 or sections 90AB to 90AE of the Act.
- (6) The applicant may, at any time, by notice in writing to the Commissioner, withdraw the application.
- (7) The applicant may at any time amend the application by written notice to the Commissioner. From the receipt of such notice of amendment by the Commissioner these regulations shall apply to the application as amended.

Regulation 3(1): amended, on 11 October 2001, by regulation 4(1) of the Income Tax (Determinations) Amendment Regulations 2001 (SR 2001/234).

Regulation 3(1): amended, on 18 December 1996 (applying with respect to the 1997–98 income year and subsequent years), by regulation 2 of the Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377).

Regulation 3(5): amended, on 11 October 2001, by regulation 4(2) of the Income Tax (Determinations) Amendment Regulations 2001 (SR 2001/234).

Regulation 3(5): amended, on 18 December 1996 (applying with respect to the 1997–98 income year and subsequent years), by regulation 2 of the Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377).

4 Determination of application

- (1) The Commissioner shall, in respect of an application under regulation 3, in writing either—
- (a) make such determination as the Commissioner considers appropriate; or
 - (b) refuse the application.
- (2) Any determination made pursuant to section 90(1) or section 90AC(1) of the Act may be made subject to such conditions and in respect of such financial arrangements as the Commissioner thinks fit.
- (3) The Commissioner shall state in writing the reasons for the determination.
- (4) Where the Commissioner exercises the discretion in favour of making a determination under section 90(1) or section 90AC(1) of the Act in respect of an application, the Commissioner shall comply with the requirements of regulation 5.

Regulation 4(2): amended, on 11 October 2001, by regulation 5(1) of the Income Tax (Determinations) Amendment Regulations 2001 (SR 2001/234).

Regulation 4(2): amended, on 18 December 1996 (applying with respect to the 1997–98 income year and subsequent years), by regulation 2 of the Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377).

Regulation 4(4): amended, on 11 October 2001, by regulation 5(2) of the Income Tax (Determinations) Amendment Regulations 2001 (SR 2001/234).

Regulation 4(4): amended, on 18 December 1996 (applying with respect to the 1997–98 income year and subsequent years), by regulation 2 of the Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377).

5 Commissioner to prepare draft determination

- (1) Where, in response to an application pursuant to section 90(3) or section 90AB of the Act, the Commissioner exercises the discretion to make a determination under section 90(1) or section 90AC(1) of the Act, the Commissioner shall first prepare a draft determination in relation to the application, and shall send to the applicant a copy of the draft determination and of the reasons therefor.
- (2) The applicant shall notify the Commissioner within 10 working days after a date fixed by the Commissioner whether the applicant wishes the Commissioner to hold a conference in relation to the draft determination.
- (3) The date fixed by the Commissioner pursuant to subclause (2) shall not be earlier than the date when the Commissioner sends to the applicant the documents mentioned in subclause (1).
- (4) If the applicant—
 - (a) notifies the Commissioner within the period of 10 working days prescribed in subclause (2) that the applicant does not wish the Commissioner to hold a conference in relation to the draft determination; or
 - (b) does not notify the Commissioner within that period that the applicant wishes the Commissioner to hold such a conference,—the Commissioner may make the determination at any time after the expiration of that period.
- (5) If the applicant notifies the Commissioner in writing within the period of 10 working days prescribed in subclause (2) that the applicant wishes the Commissioner to hold a conference in relation to the draft determination, the Commissioner shall appoint a date (not being a date later than 20 working days after the expiration of that period), time, and place for the holding of the conference and give notice of the date, time, and place so appointed to the applicant.
- (6) The Commissioner may in any event determine to hold a conference in relation to the draft determination and shall appoint a date (not being a date later than 20 working days after the expiration of the period referred to in subclause (2)), time, and place for the holding of the conference and give notice of the date, time, and place so appointed to the applicant.

- (7) Subject to subclause (8), where the Commissioner is of the opinion that 2 or more applications for determination involve the same or substantially similar issues, the Commissioner may treat the applications as if they constitute a single application, and may prepare a single draft determination in relation to the applications and hold a single conference in relation to that draft determination.
- (8) Subclause (7) shall not apply where any of the applications involving similar issues contain an anonymity notification.

Regulation 5(1): amended, on 11 October 2001, by regulation 6(1) of the Income Tax (Determinations) Amendment Regulations 2001 (SR 2001/234).

Regulation 5(1): amended, on 11 October 2001, by regulation 6(2) of the Income Tax (Determinations) Amendment Regulations 2001 (SR 2001/234).

Regulation 5(1): amended, on 18 December 1996 (applying with respect to the 1997–98 income year and subsequent years), by regulation 2 of the Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377).

6 Determinations without consultation

Notwithstanding anything in regulation 5 the Commissioner may make a determination without following the procedures set down in that regulation where—

- (a) that determination complies in all substantive respects with the draft submitted pursuant to regulation 3(1)(a) and with the draft submitted pursuant to regulation 3(1)(c), if any; or
- (b) the applicant waives the requirements of regulation 5 by notice in writing to the Commissioner; or
- (c) the Commissioner, independently of an application made pursuant to section 90(3) or section 90AB of the Act, makes a determination incorporating the matter for which an application has been made.

Regulation 6(c): amended, on 11 October 2001, by regulation 7 of the Income Tax (Determinations) Amendment Regulations 2001 (SR 2001/234).

Regulation 6(c): amended, on 18 December 1996 (applying with respect to the 1997–98 income year and subsequent years), by regulation 2 of the Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377).

7 Procedure at conference

- (1) At every conference called under regulation 5 there shall be entitled to be present and to participate both personally and through a representative,—
- (a) the Commissioner;
- (b) the applicant;
- (c) anyone nominated by the Commissioner or by the applicant,—
- but no other person is entitled to be present.
- (2) At every conference called under regulation 5 the Commissioner shall provide for as little formality and technicality as the requirements of these regulations and a proper consideration of the application permits.

- (3) The Commissioner shall cause such record of the conference to be made as is sufficient to set out the matters raised by the persons participating in the conference.
- (4) The Commissioner or representative of the Commissioner attending the conference may terminate the conference when he or she is of the opinion that a reasonable opportunity has been given for the expression of the views of persons participating in the conference.
- (5) The Commissioner shall have regard to all matters raised at the conference, and may at any time after the termination of the conference make a determination in respect of the application.

8 Anonymity

- (1) Where the applicant desires that the identity of the applicant should not become publicly known the applicant shall so notify the Commissioner by an appropriate entry on the form of application or by some other form of notice acceptable to the Commissioner, and shall submit at the same time, in addition to the draft determination, an anonymous version of the draft determination edited to remove the name of the applicant and any other particulars that are likely to identify the applicant.
- (2) Where there has been an anonymity notification the Commissioner shall prepare an anonymous version of the determination edited to remove the name of the applicant and other particulars that are likely to identify the applicant and which, in the opinion of the Commissioner, can be omitted from the determination to be published pursuant to regulation 10 without affecting its usefulness or value.
- (3) An anonymous version of a draft determination prepared by the Commissioner shall be treated as part of the Commissioner's draft determination for the purposes of regulations 5, 6, and 7.

9 Further submissions

In addition to any written and oral submissions provided for in the foregoing provisions of the regulations in relation to any application, the Commissioner may invite or accept and take into consideration such further submissions, whether written or oral, as the Commissioner thinks fit.

10 Publication of determinations

Every determination shall be published, in a publication chosen by the Commissioner, within 30 days of the making of the determination in the form and containing the matters set out in Schedule:

provided that, where an applicant has given an anonymity notification, the Commissioner shall publish only the anonymous version of the determination prepared pursuant to regulation 8(2).

Regulation 10: amended, on 2 November 2012, by section 262 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

11 Setting fees

- (1) In addition to the fee mentioned in regulation 3, the applicant for a determination shall pay such fee at such rate as shall be prescribed by the Commissioner.
- (2) In setting the rate for fees payable by applicants pursuant to regulation 3, the Commissioner shall ensure as far as practicable that such fees cover the fixed costs of the Inland Revenue Department in administering the determination process.
- (3) In setting the rate for the fee payable pursuant to subclause (1) in respect of an application for a determination the Commissioner shall ensure as far as practicable that the fee covers the costs of the Inland Revenue Department which are additional to those in subclause (2) and which relate only to the consideration of that application.
- (4) The Commissioner shall, from time to time, publish a schedule of the fees payable by applicants in respect of applications for determinations.

12 Payment of fees

- (1) Where the Commissioner exercises the discretion to make a determination in response to an application under section 90(3) or section 90AB of the Act, the Commissioner shall tell the applicant and at the same time shall advise the applicant of the fee that is payable.
- (2) On payment of the fee the Commissioner shall make the determination: provided that the Commissioner may make the determination and may cause the determination to be published pursuant to section 90(7) or section 90AD(1) of the Act before the fee for the determination has been paid.
- (3) Where an application is withdrawn the Commissioner shall advise the applicant of the fee payable for work done before the Commissioner received notification of the withdrawal.

Regulation 12(1): amended, on 11 October 2001, by regulation 8(1) of the Income Tax (Determinations) Amendment Regulations 2001 (SR 2001/234).

Regulation 12(1): amended, on 18 December 1996 (applying with respect to the 1997–98 income year and subsequent years), by regulation 2 of the Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377).

Regulation 12(2) proviso: amended, on 11 October 2001, by regulation 8(2) of the Income Tax (Determinations) Amendment Regulations 2001 (SR 2001/234).

Regulation 12(2) proviso: amended, on 18 December 1996 (applying with respect to the 1997–98 income year and subsequent years), by regulation 2 of the Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377).

13 Waiver of fees

The Commissioner may waive all or part of a fee payable under these regulations if the Commissioner considers it is fair and reasonable in the circumstances to do so, having regard to the nature of the issue that is the subject of the application, the level of skill and experience required in the consideration of the application, and any other relevant factors.

Regulation 13: replaced, on 2 November 2012, by section 263 of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88).

14 Transitional

During the year in which these regulations come into force and the next year, regulation 11(2) shall not apply but instead the Commissioner shall set and charge such fees to applicants for determinations as seem appropriate to the Commissioner.

Schedule
Form of determination for publication under section 90(7) or section 90AD(1) of the Tax Administration Act 1994

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Schedule heading: amended, on 11 October 2001, by regulation 9(1) of the Income Tax (Determinations) Amendment Regulations 2001 (SR 2001/234).

Schedule heading: amended, on 18 December 1996 (applying with respect to the 1997–98 income year and subsequent years), by regulation 2 of the Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377).

1 Explanation

A preamble setting out the substance of the determination, including a description of the financial arrangement.

2 Reference

The relevant sections of the Act (including section 90(1) or section 90AC(1)) under which the determination is made and the relationship of the determination made to other determinations.

Schedule clause 2: amended, on 11 October 2001, by regulation 9(2) of the Income Tax (Determinations) Amendment Regulations 2001 (SR 2001/234).

Schedule clause 2: amended, on 18 December 1996 (applying with respect to the 1997–98 income year and subsequent years), by regulation 2 of the Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377).

3 Scope of determination

The relevant details of the financial arrangement to which the determination is to apply.

4 Principle

A description of the accrual and mathematical concepts that are applied to the financial arrangement.

5 Interpretation

Definitions of any specialised terms used in the determination.

6 Method

The application of clause 4 (principle) to the details disclosed in clause 3 (scope of determination).

7 Example

One or more examples of the application of the method.

P G Millen,

Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 15 April 1987.

Notes

1 *General*

This is a consolidation of the Income Tax (Determinations) Regulations 1987 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022/Te Kāhui o Matariki Public Holiday Act 2022 (2022 No 14): wehenga 7/section 7

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012 (2012 No 88): sections 262, 263

Income Tax (Determinations) Amendment Regulations 2001 (SR 2001/234)

Income Tax (Reorganisation and Rewrite Consequential Amendments) Regulations 1996 (SR 1996/377): regulation 2