

Reprint  
as at 29 March 2018



## Income Tax (Employment-related Remedial Payments) Regulations 2017 (LI 2017/241)

Income Tax (Employment-related Remedial Payments) Regulations 2017: revoked, on 29 March 2018, by section 423 of the Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018 (2018 No 5).

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 14th day of August 2017

Present:

Her Excellency the Governor-General in Council

These regulations are made under section RA 21 of the Income Tax Act 2007 on the advice and with the consent of the Executive Council.

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**These regulations are administered by the Inland Revenue Department.**

## Regulations

### 1 Title

These regulations are the Income Tax (Employment-related Remedial Payments) Regulations 2017.

### 2 Commencement

These regulations come into force on the day after the date of their notification in the *Gazette*.

### 3 Status of examples

- (1) An example used in these regulations is only illustrative of the provisions to which it relates. It does not limit those provisions.
- (2) If an example and the provision to which it relates are inconsistent, the provision prevails.

### 4 Employment-related remedial payments declared to be extra pay

- (1) An employment-related remedial payment is declared to be included in the definition of extra pay (*see* section RD 7(1) of the Income Tax Act 2007).
- (2) In this regulation,—

**employment agreement** has the meaning given by its definition in section 5 of the Employment Relations Act 2000, except that—

- (a) it includes an individual employment contract continued in force by section 242(1) of that Act; and
- (b) it excludes a contract for services described in paragraph (b) of that definition

**employment-related remedial payment—**

- (a) means a payment that,—
  - (i) but for these regulations, would be a payment of salary or wages or an extra pay, or a combination of both; and
  - (ii) is made to a person to satisfy all or part of a shortfall in 1 or more previous payments to the person in respect of the person's entitlements under the Holidays Act 2003 or an employment agreement, or both; but
- (b) excludes the first of any payments made to a person to address a failure to pay the person any salary or wages for a pay period.

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### Examples

#### *Example 1*

An employee (**A**) was paid \$1,500 in annual holiday pay under the Holidays Act 2003 for pay period 1 and \$1,500 in annual holiday pay for pay period 2 (a total of \$3,000). A's employer later discovers that the payments were incorrectly calculated

and A should have been paid \$1,600 for each pay period (a total of \$3,200). A's employer pays A \$200 to satisfy the difference. The payment of \$200 is an employment-related remedial payment. It is therefore an extra pay under the Income Tax Act 2007.

*Example 2*

An employee (**B**) was paid \$300 in sick leave under the Holidays Act 2003 and \$1,700 in long service leave under B's employment agreement (a total of \$2,000). B's employer later discovers that both payments were incorrectly calculated. B should have been paid \$350 in sick leave and \$2,000 in long service leave (a total of \$2,350). The difference between the amounts paid to B and B's actual entitlements is \$350. B's employer pays B \$200 to satisfy part of the difference. The payment of \$200 is an employment-related remedial payment. Later, B's employer pays B \$150 to satisfy the remainder of the difference. The payment of \$150 is a separate employment-related remedial payment. Each employment-related remedial payment is an extra pay under the Income Tax Act 2007.

*Example 3*

A person (**C**) was employed by Company D for 2 years. C was paid \$6,000 in annual holiday pay under the Holidays Act 2003 during C's employment and \$2,000 in annual holiday pay upon termination of C's employment (a total of \$8,000). Company D later discovers that C should have been paid \$6,500 in annual holiday pay during C's employment and \$2,500 upon termination of C's employment (a total of \$9,000). Company D pays C \$1,000 to satisfy the difference. The payment of \$1,000 is an employment-related remedial payment. It is therefore an extra pay under the Income Tax Act 2007.

*Example 4*

An employer (**E**) fails, on the regular payday of one of its employees (**F**), to pay any of the \$1,000 in wages owed to F for the relevant pay period. E later makes a payment of \$1,000 to F to address the failure to pay F's wages on F's regular payday. The payment of \$1,000 is not an employment-related remedial payment.

*Example 5*

An employer (**G**) fails, on the regular payday of one of its employees (**H**), to pay any of the \$1,000 in wages owed to H for the relevant pay period. G later makes a payment of \$800 (**payment 1**) to H to address the failure to pay H's wages on H's regular payday, but a shortfall of \$200 remains outstanding. Payment 1 is not an employment-related remedial payment.

Sometime later still, G makes a further payment of \$200 (**payment 2**) to H to address the shortfall in payment 1. Payment 2 is an employment-related remedial payment. Payment 2 is therefore an extra pay under the Income Tax Act 2007.

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Michael Webster,  
Clerk of the Executive Council.

## **Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations come into force on the day after the date of their notification in the *Gazette*. They declare a remedial payment made to correct the underpayment of employment-related entitlements (such as annual holiday pay) to be an extra pay for the purposes of the Income Tax Act 2007 (the **Act**). Under the PAYE rules, employers are required to use a different method to calculate the amount of tax they must withhold from a payment that is an extra pay (as defined in section RD 7 of the Act) than for a payment of salary or wages (as defined in section RD 5 of the Act).

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 17 August 2017.

## **Reprints notes**

### **1 *General***

This is a reprint of the Income Tax (Employment-related Remedial Payments) Regulations 2017 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

### **2 *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3 *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4 *Amendments incorporated in this reprint***

Taxation (Annual Rates for 2017–18, Employment and Investment Income, and Remedial Matters) Act 2018 (2018 No 5): section 423