



VENTURE CAPITAL NZ TAX EXEMPTION

FOR INVESTMENTS ALONGSIDE THE NZ VENTURE INVESTMENT FUND LTD

1. Income derived by a non-resident, from the sale or other disposal of a share or option in a company, is exempt income, if the share or option was acquired under a Venture Investment Agreement with the New Zealand Venture Investment Fund Limited, and the other requirements for the exemption to apply are met.

Venture Investment Agreement

2. A Venture Investment Agreement is an agreement that meets all the following requirements;
 - (a) It is made between parties that include:
 - (i) A Venture Capital Manager; and
 - (ii) The NZ Venture Investment Fund Limited or a subsidiary company.
 - (b) It provides for investments under the agreement to be managed by the Venture Capital Manager.
 - (c) It provides that when an investment is first made in a company, the company has in New Zealand:
 - (i) More than 50% in value of the company's assets; and
 - (ii) More than 50% in number of the company's employees.

Requirements For The Exemption To Apply

3. The non-resident investor's investment in the company must be made through the Venture Capital Manager. At the time the non-resident first acquires a share or option in the company, (the "first interest"), the Venture Capital Manager must acquire, at the same time and on the same terms:
 - (a) The first interest on behalf of the non-resident; and
 - (b) An identical interest on behalf of the Venture Investment Fund Limited or a subsidiary, under a Venture Investment Agreement.
4. When the share or option in the company is first acquired, the company must have in New Zealand:
 - (a) More than 50% in value of the company's assets; and
 - (b) More than 50% in number of the company's employees.

5. The investee company must not have any of the following activities (the prohibited activities) as its main activity:
 - (a) Land development or land ownership.
 - (b) Mining.
 - (c) Provision of financial services.
 - (d) Insurance.
 - (e) Construction or acquisition of public infrastructure assets.
 - (f) Investing to derive interest, dividends, rent, or personal property lease payments that are not royalties.

6. At the time when the non-resident investor disposes of the share or option all the following requirements must be met:
 - (a) The Venture Capital Manager must have complied with its obligations under the Venture Investment Agreement.
 - (b) The non-resident investor must have complied with any obligations under any agreement with the NZ Venture Investment Fund Limited or a subsidiary.
 - (c) No New Zealand resident together with associated persons can have an interest that exceeds 10% in the share or option.

Inland Revenue has published the following explanation of the VIA Exemption at the following website address:

<http://www.ird.govt.nz/technical-tax/legislation/2006/2006-3/2006-3-venture-capital/>

Taxation (Depreciation, Payment Dates Alignment, FBT, and Miscellaneous Provisions) Act 2006 [2006 No 3]: Venture capital investment alongside the Venture Investment Fund

Venture capital investment alongside the Venture Investment Fund

Section CW 11C of the Income Tax Act 2004

1. The amendments introduce a tax exemption on realised gains for investments made by non-residents alongside the New Zealand Venture Investment Fund Ltd (VIF).

Background

2. The VIF is a Crown-owned company which promotes the development of the New Zealand venture capital industry and invests alongside private-sector co-investors in early stage New Zealand companies. The exemption removes an impediment to New Zealand companies gaining access to offshore venture capital and is consistent with the government's growth and innovation framework.
3. The amendments complement reforms included in the Taxation (Venture Capital and Miscellaneous Provisions) Act 2004 aimed at removing tax barriers to international venture capital investment in New Zealand.

Key features

4. Section CW 11C has been added to the Income Tax Act 2004 so that income derived by a non-resident from the sale or other disposal of a share, or an option to buy a share, is exempt income if the following conditions are met.

Conditions relating to investment agreement

5. The VIF (or a company owned by the VIF) must have an agreement with a venture capital manager. This agreement must specify that the venture capital manager will make and manage investments on behalf of the VIF. The non-resident may also be a party to this agreement, although this is not a requirement.
6. The agreement must require the venture capital manager to purchase a share or option on behalf of the VIF (or a company owned by the VIF) and an identical share or option on behalf of the non-resident.
7. The agreement must specify that when investments are first made they must be in companies that have more than 50% of the value of their assets and 50% in number of their employees in New Zealand.

Conditions relating to the acquisition of share or option

8. As required by the investment agreement, the venture capital manager must purchase a share or option on behalf of the VIF (or a company owned by the VIF) and an identical share or option on behalf of the non-resident.

Conditions relating to investment

9. When the non-resident acquires the share or option, the company must have more than 50% of the value of its assets and 50% in number of their employees in New Zealand.
10. The company invested into must not have one or more of the following activities as a main activity:
- (a) Land development;
 - (b) Land ownership;
 - (c) Mining;
 - (d) Provision of financial services;
 - (e) Insurance;
 - (f) Construction of public infrastructure assets;
 - (g) Acquisition of public infrastructure assets; or
 - (h) Investing with the main aim of deriving income from the investment in the form of interest, dividends, rent, or personal property lease payments that are not royalties.

Conditions relating to the situation at the time of disposal of the share or option

11. When the non-resident disposes of the share or option the following requirements must be met:
- (a) The venture capital manager must have complied with their obligations under the investment agreement; and
 - (b) The non-resident must have complied with their obligations under any agreement between the non-resident and the VIF (or a company owned by the VIF); and
 - (c) There must be no investors who are New Zealand resident who, with their associates, have an interest (direct or indirect) of more than 10% in the share or option.
12. The current dividend rules will continue to apply to dividends that non-residents derive from the investee companies.

Application date

13. The amendment applies from the date of enactment, 3 April 2006.
14. The exemption is intended to have a temporary effect because the VIF has a limited amount of funds to commit to investments. The exemption applies for investments in which the VIF has invested in, or committed to invest in, on or before 31 March 2010.