



## **PROFIT DISTRIBUTION PLANS (“PDPS”)**

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SECTION I: DEFINITION

<p><b>(1) Definition of a Profit Distribution Plan</b></p>	<p>Profit distribution plan:</p> <p>(a) Means a scheme comprising 1 or more steps undertaken by a company by which it:</p> <ul style="list-style-type: none"> <li>(i) Notifies some or all of its shareholders that shares are to be issued on a particular date; and</li> <li>(ii) Gives the notified shareholders an option to have some or all of the shares issued to them repurchased by the company.</li> </ul> <p>(b) Does not include an issue of shares under a share purchase agreement or a share purchase scheme.</p> <p>The definition of “share purchase agreement” in s. CE 7 applies: meaning an agreement to issue shares to an employee that is entered into in connection with the employee’s employment.</p> <p>[s. YA 1 definitions inserted by s. 154(31) &amp; (37) of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> coming into force on <b>1 October 2012</b>]</p>
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SECTION II: WHAT IS A DIVIDEND

<p><b>(1) The issue of a share under a PDP is a dividend</b></p>	<p>(a) A share issued by a company under a PDP is a dividend.</p> <p>(b) The amount of the dividend is the amount offered by the company for the repurchase of the share.</p> <p>[s. <b>CD 7B(1) &amp; (2)</b> inserted by s. 7 of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> coming into force on <b>1 October 2012</b>]</p>
<p><b>(2) The repurchase of a share issued under a PDP is not a dividend</b></p>	<p>When a company has issued a share to a shareholder under a PDP and the shareholder exercises the option to have the share repurchased by the company, the amount paid by the company to repurchase the share is not a dividend.</p> <p>Section CD 22, which contains rules for determining the portion of a payment by a company that is a return of capital (and is not a dividend), does not apply in relation to a share issued under a PDP and repurchased by the company as part of the plan.</p> <p>[s. <b>CD 23B &amp; 7B(3)</b> inserted by s. 9 &amp; 7 of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> coming into force on <b>1 October 2012</b>]</p>

SECTION III: WHAT IS AVAILABLE SUBSCRIBED CAPITAL

<p><b>(1) A share issued under a PDP is available subscribed capital</b></p>	<p>(a) When a share is issued under a PDP, the amount offered by the company for the repurchase of the share is included in “<b>subscriptions</b>” for the purpose of determining the company’s available subscribed capital (“ASC”) under s. CD 43.</p> <p>(b) A payment by a company to repurchase a share issued under a PDP is included in “<b>returns</b>” for the purpose of determining the company’s ASC under s. CD 43.</p> <p>(c) A share issued by a company under a PDP is a dividend.</p> <p>(d) The amount of the dividend is the amount offered by the company for the repurchase of the share.</p> <p>[s. CD 43(6)(ab) &amp; CD 43(2)(c) inserted by s. 10 of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> coming into force on <b>1 October 2012</b>]</p>																
<p><b>(2) Tax accounting entries when a share is issued under a PDP</b></p>	<p>The tax accounting entries will be as follows:</p> <p>(a) <u>Upon issue of the share under a PDP:</u></p> <table data-bbox="507 981 1412 1070"> <tr> <td>Retained earnings</td> <td>Dr</td> <td>\$XXX</td> <td></td> </tr> <tr> <td>Available subscribed capital</td> <td>Cr</td> <td></td> <td>\$XXX</td> </tr> </table> <p>(b) <u>Upon repurchase of a share issued under a PDP:</u></p> <table data-bbox="507 1160 1412 1249"> <tr> <td>Available subscribed capital</td> <td>Dr</td> <td>\$XXX</td> <td></td> </tr> <tr> <td>Bank</td> <td>Cr</td> <td></td> <td>\$XXX</td> </tr> </table>	Retained earnings	Dr	\$XXX		Available subscribed capital	Cr		\$XXX	Available subscribed capital	Dr	\$XXX		Bank	Cr		\$XXX
Retained earnings	Dr	\$XXX															
Available subscribed capital	Cr		\$XXX														
Available subscribed capital	Dr	\$XXX															
Bank	Cr		\$XXX														

**PROFIT DISTRIBUTION PLANS (“PDPs”)**

**SECTION IV: TAXABLE BONUS ISSUE**

<p><b>(1) A share issued under a PDP is a bonus issue</b></p>	<p><b>Bonus issue:</b></p> <p>(a) Means the issue of shares in a company, or the giving of credit for or forgiveness of an amount unpaid on any share in a company, if the company receives no consideration for the issue, crediting, or forgiveness other than the shareholder choosing not to receive an amount as an alternative to the issue.</p> <p>(b) Includes the issue of shares under a profit distribution plan.</p> <p>[s. <b>YA 1</b> definition amendment inserted by s. <b>154(2)</b> of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> coming into force on <b>1 October 2012</b>]</p>
<p><b>(2) A bonus issue that is a share issued under a PDP is a mandatory dividend</b></p>	<p><b>A bonus issue that is not a bonus issue in lieu or a share issued under a profit distribution plan</b> is a dividend if:</p> <p>(a) The bonus issue:</p> <p>(i) Is issued fully paid from reserves of the company; or</p> <p>(ii) If a dividend, would not be exempt income under s. CW 10 (Dividend within New Zealand wholly-owned group); and</p> <p>(b) The company chooses under this section to treat the bonus issue as a dividend.</p> <p>[s. <b>CD 8(1)</b> amendment inserted by s. <b>8</b> of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> coming into force on <b>1 October 2012</b>]</p>
<p><b>(3) A share issued under a PDP is a taxable bonus issue</b></p>	<p><b>Taxable bonus issue</b> means:</p> <p>(a) A bonus issue in lieu.</p> <p>(b) A bonus issue that a company chooses to treat as a dividend under s. CD 8 (Elections to make bonus issue into dividend).</p> <p>(c) In the case of a bonus issue made before the enactment of this Act, a bonus issue that the company chose to treat as a dividend under a provision of an earlier Act corresponding to s. CD 8.</p> <p>(d) A bonus issue that is a dividend under section CD 10 (Bonus issue by foreign unit trust instead of money or property)</p> <p>(e) A bonus issue that is a share issued under a profit distribution plan</p> <p>[s. <b>YA 1</b> definition amendment inserted by s. <b>154(39)</b> of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> coming into force on <b>1 October 2012</b>]</p>
<p><b>(4) The amount of the dividend includes any RWT payable</b></p>	<p>The amount of the dividend is the money or money’s worth offered as an alternative.</p> <p>[s. <b>CD 7(2)</b> amendment inserted by s. <b>8</b> of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> coming into force on <b>1 October 2012</b>]</p> <p>Previously, the amount was “minus any RWT payable in relation to the dividend”.</p>

SECTION V: CALCULATION OF THE TAX ON SHARES ISSUED TO NZ RESIDENTS

<p><b>(1) Rule for non-cash dividends other than bonus issues in lieu does not apply</b></p>	<p>The general rule in s. RE 14 that applies to non-cash dividends other than bonus issues in lieu to NZ residents will not apply to shares issued under a PDP.</p> <p>Section RE 14 applies when a person makes a payment of resident passive income that consists of a non-cash dividend other than:</p> <ul style="list-style-type: none"> <li>(a) A bonus issue in lieu:</li> <li>(b) A share issued under a profit distribution plan.</li> </ul> <p>[s. <b>RE 14(1)</b> amendment inserted by s. <b>147</b> of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> coming into force on <b>1 October 2012</b>]</p>
<p><b>(2) The tax calculation rule for bonus issues in lieu will apply to shares issued under a PDP</b></p>	<ul style="list-style-type: none"> <li>1. Section RE 15 applies when a person makes a payment of resident passive income that consists of a dividend that is: <ul style="list-style-type: none"> <li>(a) A bonus issue in lieu:</li> <li>(b) A share issued under a profit distribution plan.</li> </ul> </li> <li>2. The amount of tax for the payment is calculated using the formula:  <math display="block">[\text{Tax rate} \times (\text{alternative amount} + \text{tax paid or credit attached})] - \text{tax paid or credit attached}</math> <p><b>Tax rate</b> is the basic rate set out in schedule 1, part D, clause 5 (Basic tax rates: income tax, ESCT, RSCT, RWT, and attributed fringe benefits): <b>33%</b>.</p> <p><b>Alternative amount</b> is, as applicable:</p> <ul style="list-style-type: none"> <li>(a) The net amount of money offered as an alternative to the bonus issue before the amount of tax is determined; or</li> <li>(b) For a share issued under a profit distribution plan, the net amount offered by the company for the repurchase of the share before the amount of tax is determined.</li> </ul> <p><b>Tax paid or credit attached</b> is the total of the following amounts:</p> <ul style="list-style-type: none"> <li>(a) If the dividend is paid in relation to shares issued by an ICA company, the amount of an imputation credit attached to the dividend.</li> <li>(b) If the dividend is paid in relation to shares issued by a company not resident in New Zealand, the amount of foreign withholding tax paid or payable on the amount of dividend.</li> <li>(c) If the dividend is paid in relation to shares issued by a company resident in New Zealand, the amount of an FDP credit attached to the dividend.</li> </ul> <p>[s. <b>RE 15</b> as amended by s. <b>148</b> of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> coming into force on <b>1 October 2012</b>]</p> </li> </ul>

SECTION VI: CALCULATION OF THE TAX ON SHARES ISSUED TO NON-RESIDENTS

<p><b>(1) Calculation of the tax on shares issued to non-residents</b></p>	<p>Section RF 10 applies when a person makes a payment of non-resident passive income that consists of a non-cash dividend to the extent to which the amount is not fully imputed.</p> <p><u>Dividends that are not fully imputed:</u></p> <p>The amount of tax, when the payment is a taxable bonus issue, is calculated using the formula:</p> <p style="text-align: center;"><b>(Rate A × dividend payment) + (rate B × amount paid).</b></p> <p>(a) <b>Rate A</b> is the rate of tax set out in section RF 8: <b>30%</b>.</p> <p>(b) <b>Dividend payment</b> is the amount of the dividend paid calculated under s. CD 7(2), CD 7B(2) (<b>in the case of a share issued under a PDP, the money offered by the company for the repurchase of the share</b>), or CD 8(3) (which relate to bonus issues):</p> <p style="padding-left: 20px;">(i) Other than a dividend referred to in the item <b>bonus issue</b>:</p> <p style="padding-left: 20px;">(ii) <b>To the extent to which the amount of the dividend is not fully imputed</b> or fully credited for FDP (as described in s. RF 9 and RF 14), before the amount of tax is withheld.</p> <p>(c) <b>Rate B</b> is the rate of tax set out in section RF 7: <b>15%</b>.</p> <p>(d) <b>Amount paid</b> is <b>the amount of the dividend</b> calculated under s. CD 7(2), CD 7B(2), or CD 8(3) together with the amount of an FDP credit attached <b>to the dividend to the extent to which the amount of the dividend is fully credited for FDP</b>, as described in s. RF 9(4), before the amount of tax is withheld.</p> <p><b>Note: The rate of withholding tax will be adjusted down to the maximum rate that applies under a relevant tax treaty.</b></p> <p><u>Fully imputed dividends:</u></p> <p>When a payment of non-resident passive income consists of a non-cash dividend, the rate of NRWT payable on the amount is 0% to the extent to which the amount is fully imputed.</p> <p>[s. <b>RF 10(5)</b> as amended by s. <b>151</b> of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> coming into force on <b>1 October 2012</b> and s. <b>RF 10(5B)</b>]</p>
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