

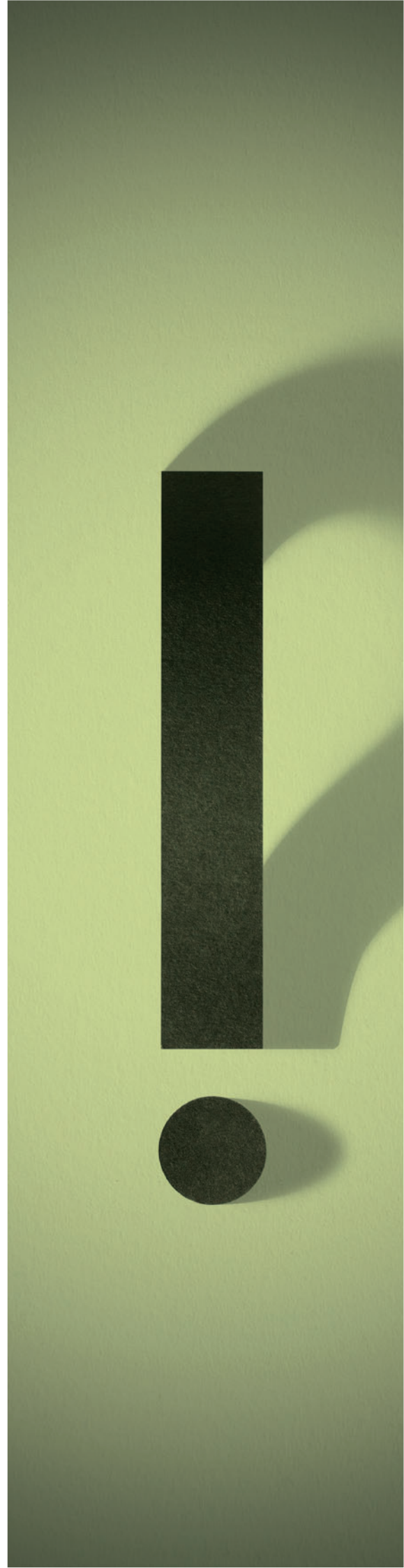
Non-resident directors' fees & withholding Inland Revenue provides some guidance

Many New Zealand companies have non-resident directors, and the taxation of payments to these directors has, historically, not been clear.

STORY

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In March 2019, Inland Revenue released an Interpretation Statement which gives guidance on when tax must be withheld from directors' fees paid to non-residents.

The Interpretation Statement sets out that directors' fees paid by a New Zealand company to a non-resident individual are generally schedular payments (subject to certain very limited exclusions). Payments to non-resident directors will be considered to have a New Zealand source regardless of whether the director's services are performed in New Zealand or elsewhere (via teleconference for example). The previous position was that tax applied only when the directorship services were provided in New Zealand.

Although this statement sets out Inland Revenue's view of when non-resident directors' payments will be New Zealand-sourced, this can be changed by certain double tax agreements (DTA) New Zealand has with other countries. Some DTAs, including that with the United States, contain a modified rule whereby non-resident directors may be taxed in New Zealand only for services performed in New Zealand or if the director has a permanent establishment here.

The Interpretation Statement not only discusses payments of director's fees to non-resident individuals but also payments to non-resident entities (for

example, companies or partnerships). The position Inland Revenue takes is directors' fees will have a New Zealand source to the extent they are attributable to a permanent establishment the entity has in New Zealand, or the services are performed in New Zealand.

The interpretation is somewhat complex. In a worst-case scenario, this change in interpretation can have serious consequences given most non-residents do not have IRD numbers, and therefore, the default rate of withholding would be 45%. If the non-resident has an IRD number the default withholding tax rate is 33%, but they can elect a rate as low as 15%. The tax is not a final tax so it may be possible for the director to file a New Zealand tax return and obtain a refund of any overpayment.

Inland Revenue has provided a concession to historic positions taken. The end date of the concession depends on the DTA (if any) between New Zealand and the country the director is resident.

Given the complexity of the new rules, we recommend contacting your Baker Tilly Staples Rodway advisor if your company has non-resident directors.

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The Interpretation Statement is available at www.ird.govt.nz (search for "is1706").