

Chris Maguire  
Tax Specialist  
Tax Counsel Office  
Inland Revenue  
New Zealand

Email: [Public.Consultation@ird.gov.nz](mailto:Public.Consultation@ird.gov.nz)

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CPA Australia Ltd

ABN 64 008 392 452

Level 20, 28 Freshwater Place  
Southbank VIC 3006 Australia

GPO Box 2820 Melbourne  
VIC 3001 Australia

P 1300 737 373  
Outside Aust +613 9606 9677

[cpaaustralia.com.au](http://cpaaustralia.com.au)

Dear Chris,

## PUB00443 Foreign investment fund (FIF) default calculation method

Thank you for the opportunity to comment on the exposure draft on **PUB00443 Foreign investment fund (FIF) default calculation method** prior to its finalisation.

CPA Australia represents the diverse interests of more than 170,000 members, including over 2,700 members in New Zealand, working in over a 100 countries and regions supported by 19 offices around the world. We make this submission on behalf of our members and in the broader public interest.

As was raised in our previous meeting with you and Grant Haley, we reiterate our deep concerns with the Commissioner's interpretation of s EX 48 of the *Income Tax Act 2007* and s 33 of the *Tax Administration Act 1994*.

Specifically, we do not agree with the Commissioner's view in the exposure draft that completing a return of income by filing a tax return means the tax return 'must be' filed by the tax return due date. The relevant legislation does not impart a condition that failing to file the tax return by the lodgment due date means the taxpayer has to use the FIF default calculation method. Section 33 only requires a person to file a return for each tax year. A tax return lodged after the lodgment due date does not mean it can no longer be 'filed'. Likewise, it also does not mean a taxpayer can no longer choose the FIF calculation method when filing after the lodgment due date.

Instead, the correct reading of the legislation should be that the taxpayer has a choice to elect the FIF calculation method up to and until the lodgment of the tax return. This interpretation is in accord with s EX 44(2) which states that "The person must *choose* which calculation method applies by completing their return of income accordingly." The law only required the choice to be made when completing the return of FIF income.

In reading the statute, it is illogical and inequitable that taxpayers lose the 'choice' to select the FIF calculation method if they do not lodge their income tax return by the lodgment due date. The juxtaposition is revealed by the wording of s EX 48, i.e. that the default calculation method only applies when "a person does not choose a calculation method...". Therefore, the legislation stipulates that taxpayers have a choice to select the FIF calculation method up to and until when they lodge their income tax return. Only when this choice was not made on lodgement of the tax return, would s EX 48 and the default calculation method have any potential application.

If the Commissioner disagrees with our interpretation, a test case should be funded by the Inland Revenue for the judiciary to determine the correct interpretation of the law and the right of taxpayers instead.

If you have any queries about this submission, contact Elinor Kasapidis, Senior Manager Tax Policy on +61 466 675 194 or [elinor.kasapidis@cpaaustralia.com.au](mailto:elinor.kasapidis@cpaaustralia.com.au).



Yours sincerely,

Dr Gary Pflugrath  
Executive General Manager  
Policy and Advocacy

Mr Rick Jones  
Country Head  
New Zealand



