INCOME TAX – TREATMENT OF UNCLAIMED AMOUNTS OF $100 OR LESS

PUBLIC RULING - BR Pub 13/03

This is a public ruling made under section 91D of the Tax Administration Act 1994.

Taxation Laws

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

This Ruling applies in respect of s CB 1.

The Arrangement to which this Ruling applies

The Arrangement is the receipt by a holder of an amount of $100 or less:

- to which the proviso to s 4(1) of the Unclaimed Money Act 1971 (UMA 1971) applies; and
- that is received by the holder in the ordinary course of carrying on its business (and, therefore, is not capital in nature).

The Arrangement does not include amounts while they are held on trust and cannot be applied by the holder for their own benefit (or for the benefit of any other person or for any purpose or object).

For the purposes of this Ruling, the term "holder" has the meaning attributed to it by s 5 of the UMA 1971.

For the purposes of this Ruling, the term "business" has the meaning attributed to it by s YA 1.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- The amount will be income derived under s CB 1 when it:
  - has been applied by the holder for its own benefit (or for the benefit of any other person or for any purpose or object); and
  - is probable that the amount will not have to be repaid.

The period or tax year for which this Ruling applies

This Ruling will apply for the period beginning on the first day of the 2013/14 income year to the last day of the 2016/17 income year.

This Ruling is signed by me on 6 June 2013.

Ainsley Simmonds
Acting Director, Public Rulings

INCOME TAX – TREATMENT OF UNCLAIMED AMOUNTS OF $100 OR LESS

PUBLIC RULING - BR Pub 13/04

This is a public ruling made under section 91D of the Tax Administration Act 1994.

Taxation Laws

All legislative references are to the Income Tax Act 2007 unless otherwise stated.

This Ruling applies in respect of s CB 1.

The Arrangement to which this Ruling applies

The Arrangement is the receipt by a holder of an amount of $100 or less to which the Unclaimed Money Act 1971 (UMA 1971) applies that is:

- received by the holder in the ordinary course of carrying on its business (and, therefore, is not capital in nature); and
- held on trust and cannot be applied by the holder for their own benefit (or for the benefit of any other person or for any purpose or object).

For the purposes of this Ruling, the term "holder" has the meaning attributed to it by s 5 of the UMA 1971.

For the purposes of this Ruling, the term "business" has the meaning attributed to it by s YA 1.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- The amount will not be income derived under s CB 1 while it is held on trust.

The period or tax year for which this Ruling applies

This Ruling will apply for the period beginning on the first day of the 2013/14 income year to the last day of the 2016/17 income year.

This Ruling is signed by me on 6 June 2013.

Ainsley Simmonds
Acting Director, Public Rulings

COMMENTARY ON PUBLIC RULING BR PUB 13/03 and BR PUB 13/04

This commentary is not a legally binding statement. The commentary is intended to help readers understand and apply the conclusions reached in Public Ruling BR Pub 13/03 and BR Pub 13/04 ("the Rulings").

Legislative references are to the Income Tax Act 2007 unless otherwise stated. Relevant legislative provisions are reproduced in the appendix to this commentary.

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Summary

1. Many businesses hold money that is owing to another person. In New Zealand, the Unclaimed Money Act 1971 (UMA 1971) sets out rules that apply to holders of this unclaimed money. Generally, after a certain period, unclaimed money becomes payable to the Commissioner of Inland Revenue. However, the amount ceases to be unclaimed money (although the owner of the money may still be entitled to repayment) where the amount of unclaimed money:

   - does not exceed $100 per owner (the person entitled to the money); and
   - the amount is applied by the holder for their own benefit (or for the benefit of any other person or for any purpose or object) within prescribed timeframes.

   If the holder does not apply the amount for its own benefit, that amount will continue to be unclaimed money and will be payable to the Commissioner of Inland Revenue.

2. At issue is the tax treatment of these amounts. In particular, whether they can be business income of a taxpayer.

3. For amounts of unclaimed money of $100 or less, it is concluded that while money is held on trust and cannot be (and has not been) applied by the holder for their own benefit (or for the benefit of any other person or for any purpose or object) it cannot be income of the holder. These amounts remain subject to the UMA 1971 and must be paid to the Commissioner within the specified timeframes.

4. An unclaimed amount (of $100 or less) not held on trust will be derived when it:

   - has been applied by the holder for its own benefit (or for the benefit of any other person or for any purpose or object); and
   - is probable that the amount will not have to be repaid (this would include situations that mean the amount is not legally recoverable – for example, a contractual term or limitation period).

5. Whether it is probable that an amount will not be repaid will depend on the particular business. Business records and accounting treatment are likely to be relevant to determining this.

6. If a holder has recognised a previously unclaimed amount as income and subsequently returns that amount to the owner, the holder will be entitled to a deduction under s DA 1(b).

Background

7. In the *Technical Rulings Manual*, paragraph 73.8.2 provided that unclaimed money applied by holders for their own benefit cannot be classified as either receipts or profits arising in the normal course of the holder's trading activities.

8. The *Technical Rulings Manual* has not been updated since September 1998 and cannot be relied on as representing the Commissioner's current view (see 'Inland Revenue Technical Rulings – now limited to historic value' *Tax Information Bulletin* vol 10, no 9 (September 1998)). It appears that since 1998 there has been some doubt about the correct tax treatment of these unclaimed amounts. These Rulings set out the Commissioner's current view.

Application of the Legislation

9. The following analysis starts with a summary of the provisions of the UMA 1971. It then considers relevant case law on the timing of derivation of income and a line of United Kingdom (UK) cases that look at when unclaimed money will be trading profits of the holder.

Summary of Unclaimed Money Act 1971

10. Section 4(1)(a)–(d) of the UMA 1971 defines amounts that are "unclaimed money". This section includes specific types of amounts that are unclaimed money and the period (6 years or 25 years) after which the amounts become unclaimed money.

11. Section 4(1)(e) of the UMA 1971 sets out a general catch–all provision. Broadly, any money that has been owing by any holder for 6 years immediately following the date on which the money has become payable by the holder will be "unclaimed money".

12. The proviso to s 4(1) of the UMA 1971 states:

> Provided that money of any of the kinds referred to in this subsection shall cease to be unclaimed money where—
>
> (i) In respect of any one owner it does not exceed $100 in total; and
>
> (ii) Before the 1st day of June next succeeding the end of the period of 6 years or, as the case may be, 25 years specified in this subsection, that unclaimed money is, without limiting any claim any owner may have thereto, applied by the holder for his own benefit or for the benefit of any other person or for any purpose or object.

13. Consequently, an amount will cease to be unclaimed money where it does not exceed $100 and it is applied for the benefit of the holder (or for the benefit of any other person or for any purpose or object) within the prescribed timeframes. However, this does not affect any claim that the owner of the money may have against the holder for repayment.

14. Section 4(2) of the UMA 1971 also excludes certain amounts from being unclaimed money. These include certain dividends, rebates payable by a mutual society, and benefits payable from any pension or superannuation fund.

15. "Holder" is widely defined in s 5 of the UMA 1971. The term includes any company incorporated in New Zealand and any company or bank carrying on business in New Zealand. It also includes certain holders (who are not companies) who are obliged to account for only particular kinds of unclaimed money (for example, auctioneers in respect of the balance of any proceeds of goods sold at auction and real estate agents in respect of money held in the real estate agent's trust account).

16. Other persons may elect to be holders and comply with the provisions of the UMA 1971.

17. The UMA 1971 imposes certain obligations on holders of unclaimed money. These obligations include:

- keeping a register of unclaimed money in accordance with s 6 of the UMA 1971;
- notifying owners and the Commissioner of entries in the unclaimed money register in accordance with s 7 of the UMA 1971;

- paying the unclaimed money to the Commissioner in accordance with the period specified in s 8 of the UMA 1971 (at this time the holder is relieved of all further liability to any claimant in respect of the money).

Failure to comply with these obligations is an offence (s 13 UMA 1971).

18. At issue is the tax treatment of amounts that come within the proviso to s 4(1) of the UMA 1971. In particular, whether these amounts can be business income of a taxpayer. These are amounts that would, in the absence of the proviso, be unclaimed money (and the holder subject to the obligations outlined above). Instead, where an amount does not exceed $100 and it is applied for the benefit of the holder (or for the benefit of any other person or for any purpose or object) within the prescribed timeframes, it will cease to be unclaimed money. Therefore, the UMA 1971 will no longer apply to it.

When an amount will be business income

19. Section CB 1 provides:

> **CB 1 Amounts derived from business**
>
> *Income*
>
> (1) An amount that a person derives from a business is income of the person.
>
> *Exclusion*
>
> (2) Subsection (1) does not apply to an amount that is of a capital nature.

20. An amount will be income where it is "derived" from a business. The following discussion applies where:

- a taxpayer is carrying on a business;
- the amounts in question are received in the ordinary course of that business;
- the amounts are not capital in nature; and
- no specific timing regime applies to deem derivation to be at a particular time.

21. Case law has established two main methods of recognising income for tax purposes: the cash or receipts method, and the accruals or earnings method. The accruals method is generally the most appropriate one for calculating business income. This usually requires the realisation of income on the basis of ordinary commercial principles (unless a more specific provision of the Act applies).

22. It is possible that derivation could occur on receipt or at some point following receipt, or that derivation never occurs. Determining the correct point in time requires consideration of the case law on the meaning of derivation.

23. The leading case in this area is *Arthur Murray (NSW) Pty Ltd v FCT* (1965) 114 CLR 314. In *Arthur Murray* the taxpayer carried on a business of giving dancing lessons. Courses of tuition were available for 5, 15 or 30 hours of private tuition to be taken within a year. Some students contracted for 1,200 hours of tuition to be taken at any time during the student's lifetime. Payment for a course of lessons was often made in advance. The students were given no contractual right to a refund (the terms of the contract prohibited it). However, refunds were sometimes given. The taxpayer

argued that fees received in advance of tuition were not taxable income at the time of receipt. The court agreed, finding (at 318) as follows:

> [Income] refers to amounts which have not only been received but have "come home" to the taxpayer; and that must surely involve, if the word "income" is to convey the notion it expresses in the practical affairs of business life, **not only that the amounts received are unaffected by legal restrictions, as by reason of a trust or charge in favour of the payer-not only that they have been received beneficially**-but that the situation has been reached in which they may properly be counted as gains completely made, so that there is neither legal nor business unsoundness in regarding them without qualification as income derived.
>
> **The ultimate inquiry in either kind of case, of course, must be whether that which has taken place, be it the earning or the receipt, is enough by itself to satisfy the general understanding among practical business people of what constitutes a derivation of income**. A conclusion as to what that understanding is may be assisted by considering standard accountancy methods, for they have been evolved in the business community for the very purpose of reflecting received opinions as to the sound view to take of particular kinds of items.
>
> ...
>
> Likewise, as it seems to us, in determining whether actual earning has to be added to receipt in order to find income, **the answer must be given in the light of the necessity for earning which is inherent in the circumstances of the receipt**. **It is true that in a case like the present the circumstances of the receipt do not prevent the amount received from becoming immediately the beneficial property of the company; for the fact that it has been paid in advance is not enough to affect it with any trust or charge, or to place any legal impediment in the way of the recipient's dealing with it as he will**. But those circumstances nevertheless make it surely necessary, as a matter of business good sense, that the recipient should treat each amount of fees received but not yet earned as subject to the contingency that the whole or some part of it may have in effect to be paid back, even if only as damages, should the agreed quid pro quo not be rendered in due course. **The possibility of having to make such a payment back** (we speak, of course, in practical terms) **is an inherent characteristic of the receipt itself**. In our opinion it would be out of accord with the realities of the situation to hold, while the possibility remains, that the amount received has the quality of income derived by the company. **For that reason it is not surprising to find, as the parties in the present case agree is the fact**, that according to established accountancy and commercial principles in the community the books of a business either selling goods or providing services are so kept with respect to amounts received in advance of the goods being sold or of the services being provided that the amounts are not entered to the credit of any revenue account until the sale takes place or the services are rendered: in the meantime they are credited to what is in effect a suspense account, and their transfer to an income account takes place only when the discharge of the obligations for which they are the prepayment justifies their being treated as having finally acquired the character of income. [Emphasis added]

24. Several New Zealand cases have followed *Arthur Murray*. *Arthur Murray* was cited with approval in *A Taxpayer v CIR* (1997) 18 NZTC 13,350 (CA) in relation to the principle that an amount needs to be received beneficially by the taxpayer before it will be derived.

25. In *CIR v Molloy* (1990) 12 NZTC 7,146 (HC) the taxpayer was a life insurance agent. He received commissions in advance subject to terms requiring repayment if the policy was terminated within a certain timeframe. The court found that the commissions were not income at the time of receipt. Thomas J stated at 7,152:

> In my view the advances made to the agent by the company in this case on account of commission do not have the quality of income derived by the agent at the time of receipt. **The possibility or inherent risk that such advances may have to be repaid (only about 5% in the case of the respondent but up to 30% on average for the company's agents as a whole) is significant, and it is an integral part of the advance, or the receipt of the advance, itself**. For the very good reason that the company wishes to provide an incentive for the agent to solicit soundly based business and then, if necessary, work to ensure that the policies entered into are sustained for a sufficient period to ensure that they are viable, the arrangement contemplates that he will not have earned his commission unless the policy remains in force for two years.

> In my opinion, it is these factors which deprive the advances made from having the quality of income earned and derived by the agent at the time they are received. [Emphasis added]

26. *Bowcock v CIR* (1981) 5 NZTC 61,062 (HC) concerned an employee who took study leave. Under the terms of the arrangement, the taxpayer received his normal salary. If he left his employment within a certain time after finishing his course, some of the money had to be repaid. The taxpayer did leave his employment and had to repay certain amounts. He claimed that these amounts were never part of his income. The court distinguished *Arthur Murray*, finding that the amounts became the absolute property of the taxpayer when they were paid. Whether any liability arose in the future to repay any part of the money depended entirely on the course the objector chose to take.

27. The principles from *Arthur Murray* were also applied in *Case N30* (1991) 13 NZTC 3,266 (TRA). The taxpayer in *Case N30* carried on a courier business. As part of its business, the taxpayer sold pre-paid books of tickets of varying denominations. The tickets had no expiry date. There was no contractual right to a refund, although the taxpayer would usually give a refund for unused tickets if asked. Some of the tickets were never redeemed. Amounts received were not returned as income when they were received, but were returned as income when they were redeemed. It was agreed that this was generally the appropriate tax treatment. At issue was the treatment of amounts that were never redeemed and whether these should be returned as income. It was accepted that the amount could not be accurately calculated. Judge Bathgate held that when the taxpayer could say as a matter of probability that a ticket would not be redeemed, the amount should be included as income.

28. The taxpayer in *A Elson (Inspector of Taxes) v Prices Tailors Ltd* [1963] 1 All ER 231 (ChD) carried on business as a tailor making made-to-measure garments. When a customer placed an order, they were required to pay a deposit. If, subsequently, the customer declined to take the garment, the taxpayer would refund the deposit (although contractually it did not have to do so). However, often neither the garment nor the deposit was claimed. At issue was whether the unclaimed deposits were trading receipts in the year in which they were paid.

29. The court found that the payments were true deposits, rather than part-payments (as the taxpayer had argued). Consequently, the amounts belonged to the taxpayer at the time they were paid (as there was no legal requirement to refund them). The court went on to find that the deposit amounts were trading receipts in the year in which they were received. That the taxpayer would always refund the amounts if asked did not change this.

30. It might be suggested that *Prices Tailors* is inconsistent with the decision in *Arthur Murray*. *Prices Tailors* concerned a deposit towards a supply of goods and the court held that the deposit was derived when it was received. On the other hand, *Arthur Murray* concerned a full payment for the provision of services in the future and the court held that the amount was not derived until the services had been performed. The cases are consistent in that they both look at the legal obligations (the amounts paid were non-refundable) rather than what happened in practice. However, *Prices Tailors* did not appear to consider the fact that, at the time the deposit was paid, the taxpayer had not fulfilled the requirements of the contract (ie making the suit available to the taxpayer).

Summary of principles from the cases

31. The following principles can be taken from the above cases:

- The word "income" conveys the notion it expresses in the practical affairs of business life. It is necessary to ask whether what has taken place is enough by itself to satisfy the general understanding among practical business people of what is derivation of income.
- An amount will be income when the earning process is complete. In the case of prepaid services, this will usually be when the services have been performed.
- Where it is probable that the services will not have to be performed and the amount will not have to be repaid, then the amount should be income.
- It is necessary to consider the circumstances of receipt. For example, whether the amount is subject to a contingency of repayment is a relevant factor. Similarly, for an amount to be derived it must have been beneficially received by the taxpayer (ie not be subject to legal restrictions such as a trust or charge that prevent the taxpayer dealing with the amount in their own interests).

United Kingdom cases

32. Several UK cases consider whether (and when) amounts received by taxpayers that may be subject to repayment are trading receipts that should be taken into account in calculating the taxpayer's profits.

33. *Lincolnshire Sugar Co Ltd (in liquidation) v Smart (HMIT)* [1937] 1 All ER 413 (HL) considered "advances" payable to sugar manufacturers. The advances became repayable in the event of imported sugar rising to a certain price, or in certain other events such as a winding up of the company. The appellant company received weekly advances amounting to £17,494 5s 7d. This sum was included as a liability in its balance sheet. No part of the sum ever became repayable. The issue was whether the £17,494 5s 7d was a trading receipt of the company in the year it was received. The company contended that the advances were not trading receipts or, if the advances were trading receipts, they could not be brought into account as such, so long as they remained subject to repayment.

34. Lord MacMillan concluded that the amounts were trading receipts. The fact the payments were called advances and were repayable if certain contingencies occurred was not decisive. Rather he was influenced by the fact the payments were made to the company so that the money could be used in its business.

35. *Morley (Inspector of Taxes) v Tattersall* [1938] 3 All ER 296 (CA) involved a firm of auctioneers. Its conditions of sale provided that vendors should receive the purchase money following the sale, and that no money would be paid without a written order. As a result of the operation of these conditions, large sums of money from time to time remained unclaimed in the hands of the firm. When a new partner was admitted in 1922, £13,022 6s 4d in respect of unclaimed balances for years before 1908 was transferred to the capital account of the old partner. In 1935 when a further partner was admitted, £10,406 10s 1d in respect of unclaimed balances between 1922 and 1928 was transferred partly to the current accounts and partly to the capital accounts of the former partners. A partnership deed in 1936 provided that such liability as subsisted in respect of those sums should be assumed by the partnership and that such unclaimed balances as

first arose six years before the taking of each annual account should be transferred at such account to the credit of the partners in accordance with their shares in the partnership. The partnership deed further provided that all liability in respect of the unpaid amounts should be borne by the partnership.

36. Sir Wilfrid Greene MR noted that the Statute of Limitation had not started to run in respect of the balances. Therefore, the taxpayer was still obliged to make payment to a customer at any time if requested (at 298):

> Many of those balances have remained unclaimed for a considerable number of years, but the Solicitor-General quite properly admitted that the vendors in question were entitled to claim payment of their money at any time, unaffected by the Statute of Limitation, which has not yet begun to run, owing to the absence of any written order as required by the conditions. We are dealing, therefore, with obligations which, as a matter of law, are existing obligations, which the firm can be called on to perform at any moment. That is a matter not without importance in the examination of this case.

37. Sir Wilfrid Greene MR went on to further explain the effect of the agreements between the partners (at 300). In particular, he noted that the agreements did not affect the legal position between the clients and the partnership. Rather the agreements related to the accounting treatment of the unclaimed amounts as well as what was in effect an indemnity between the partners and the partnership in relation to the amounts:

> Pausing there for a moment, and eliminating, for the purpose of simplicity, the changes in the partnership agreement, it is of the utmost importance in this case to appreciate the real nature of what was being done. I say that because, in the arguments addressed to us on behalf of the Crown, various metaphorical expressions were used, such as "holding a sum," "changing the capacity in which a sum is held," "turning a sum into an asset," and so forth—expressions which, to my mind, are both inaccurate and misleading. What happened was that the partnership, being indebted to outside persons; in respect of sums which it had received, and which had passed into the general mass of its assets, and having carried in its balance-sheet a proper liability item to express that liability, decided at a certain point, and on certain principles laid down, that that liability item should be written down and diminished. That is what happened in 1921, in 1934, and year by year after the provisions of the new partnership agreement came into operation—merely the alteration of a debit item in the balance-sheet by eliminating from it certain liabilities which had previously gone to make it up. If that matter had stayed there, the only result on the balance-sheet would have been to increase the credit balance. It would have shown a greater surplus of assets over liabilities than it had shown prior to that writing down. It so happened that, for domestic reasons of their own, the partners, instead of leaving the matter in that way, with an increased credit balance, decided that that increase in the credit balance should be carried in the balance sheet to the partners' accounts. That does not alter the reality of the position one jot. **The true position is—and I repeat it, because it is only when that is appreciated that what I, with respect, conceive to be the fallacies underlying the Crown's argument are perceived—that the only thing which was done on these occasions was the elimination from the liabilities side of the balance-sheet of something which had previously appeared as a liability therein**. [Emphasis added]

38. It was generally agreed between the parties that the money was not a trading receipt at the time it was received. However, it was argued that the amounts became trading receipts at the time the partners treated the amounts as their own. Sir Wilfrid Greene MR rejected this argument, finding that the writing down of the amount in the balance sheet did not convert that amount to income (at 301):

> It might be more convenient to deal with Mr Hills's argument first, because that is the one which starts off with the perfectly clear admission that the money, when received from the purchasers, was not a trading receipt. That proposition, I should have thought, was, in any case, quite incontestable. **The money received was money which had not got any profit-making quality about it. It was money which, in a business sense, was the clients' money, and nobody else's**. It was money for which Messrs Tattersall were liable to account to the clients, and the fact that Messrs Tattersall paid it into their own account, as they clearly did, and the fact that it remained among their assets until paid out, do not alter that circumstance. It would

> have been, for income tax purposes, in my judgment, entirely improper to have brought those receipts into the account at all for the purpose of ascertaining the balance of profits and gains. Indeed, as I have said, the Crown did not suggest that that would have been proper. What was said, however, was this. Mr Hills's argument was to the effect that, although they were not trading receipts at the moment of receipt, they had at that moment the potentiality of becoming trading receipts. That proposition involves a view of income tax law in which I can discover no merit except that of novelty. **I invited Mr Hills to point to any authority which in any way supported the proposition that a receipt which at the time of its receipt was not a trading receipt could by some subsequent operation ex post facto be turned into a trading receipt—not, be it observed, as at the date of receipt, but as at the date of the subsequent operation. It seems to me, with all respect to that argument, that it is based on a complete misapprehension of what is meant by a trading receipt in income tax law. No case has been cited to us in which anything like that proposition appears. It seems to me that the quality and nature of a receipt for income tax purposes is fixed once and for all when it is received**. What the partners did in this case, as I have said, was to decide among themselves that what they had previously regarded as a liability of the firm they would not, for practical reasons, regard as a liability. That does not mean, however, that at that moment they received something, nor does it mean that at that moment they imprinted on some existing asset a quality different from that which it had possessed before. There was no existing asset at all at that time. All that they did, as I have already pointed out, was to write down a liability item in their balance-sheet, and how by effecting that operation it can be said that a sum received years ago has been converted into something which it never was is a thing which, with all respect, passes my comprehension. [Emphasis added]

39. *Jay's the Jewellers Ltd v IRC* [1947] 2 All ER 762 (KB) involved the tax treatment of proceeds from the sale of pledged property. The Pawnbrokers Act 1872 required a pawnbroker to hold a pledge for 12 months and 7 days. If the pledged article had not been redeemed by then and the loan was no more than 10s, the pledge became the property of the pawnbroker, who could sell it and keep the proceeds. If the loan exceeded 10s, the pawnbroker was entitled to sell the pledged article by auction and to take the amount of the loan, the interest due and the cost of the sale out of the amount realised. Subject to the terms of any special contract, which were permitted if the loan exceeded 40s, at any time within three years of the sale the pledgor had the right to inspect the pawnbroker's books and demand payment of the surplus. After three years, the pledgor lost that right and the surplus became the property of the pawnbroker. Special contracts entered into by pawnbrokers with pledgors sometimes incorporated the three-year period, but in others the pledgor's rights to redeem were barred only by the ordinary period of limitation, six years.

40. The issue was whether the proceeds from the sales were subject to excess profits tax. The court held that, as a matter of law, the surpluses when received were not the taxpayers' monies at all; they belonged to their clients. Based on *Tattersall*, the court found that the surpluses were not trading receipts in the year that they were received. The court then went on to consider whether a surplus could be treated as a trade receipt in a later year when the taxpayer became entitled to retain it.

41. The court held that a new asset was created automatically by operation of law at the end of the three years (in the case of most of the loans) and common sense would seem to demand that that should be entered in the profit and loss account for the year and be treated as taxable. The court distinguished the decision in *Tattersall* as follows (at 766):

> It is, however, argued that I cannot give effect to that view because of *Tattersall's* case. Is there anything in *Tattersall's* case to indicate that that view is wrong? In that case there had been no change whatever in the character and nature of the money held. The Statute of Limitations had not commenced to run, and the court was dealing merely with the effect of a change in the method in which these sums were dealt with in the company's books.
>
> ...

> Here the position is different. Here, at the end of three years, the money in question, the three-year-old surplus, did attain a totally different quality. I think there was then a definite trade receipt. At the end of the three years a new asset came into existence, an asset which had arisen out of a trade transaction.

42. The court then considered whether the position should be different for pledges that were subject only to the application of a limitation period. The same conclusion was held to apply (at 767):

> The position is somewhat different as to pledges for over £10, because the only change which takes place at the end of six years is that the customer's remedy is barred, but, from the business point of view, I think, it ought to be treated as the same. In practice those amounts would be properly dealt with by the taxpayers as their own. They could not get into difficulties by so doing. They cannot be called on to pay. I do not think any distinction ought to be drawn between the three-yearly surpluses and the six-yearly surpluses, and I am not prepared to differ from the view held by the Special Commissioners. Therefore, both appeals will fail.

43. In holding that the unclaimed deposits were income of the taxpayer in the year received, *Prices Tailors* (see para 28) distinguished *Tattersall* and *Jay's the Jewellers* on the basis that, in those cases, the amounts in question did not belong to the taxpayers (at the time they were received) (at 235):

> In *Morley v Tattersall*, the vendors' unclaimed balances, in the hands of a firm of auctioneers, of proceeds of sale of horses were held not to be trading receipts; and in *Jay's, The Jewellers Ltd v Inland Revenue Comrs; Inland Revenue Comrs v Jay's, The Jewellers Ltd*, a pawner's unclaimed balance in the hands of a pawnbroker of the proceeds of sale of an unredeemed pledge, after satisfying the amounts due under the pledge, was held not to be a trading receipt until the pawner's claim was statute-barred. **In these cases, the balances in the traders' hands were not theirs at all but were held for others, and this fact is fundamental to the decisions. The traders had no beneficial interest in them at the relevant time, and, although it was because they were traders that they received them, they were not receipts of their trade at all**. [Emphasis added]

44. The taxpayer in *Pertemps Recruitment Partnership Ltd v HMRC* [2010] UKFTT 218 (TC) carried on business as a recruitment agent. Sometimes it would receive overpayments from customers (that is, payments of amounts that were not owing). Where these amounts could not be refunded or applied against a later liability, the taxpayer kept the payments. The court found that receipt of mistaken payments was an inevitable incident of the taxpayer's business. The court further found that:

- when the overpayments were deposited in the taxpayer's bank account, the taxpayer did not know that they represented an overpayment;
- the taxpayer treated the overpayments as its own money (that is, the overpayments were not kept in a separate account);
- the taxpayer did not hold the mistaken payments on trust for the customer (*Tattersall* and *Jay's the Jewellers* were distinguished on this basis);
- no limitation period would likely apply to the overpayments; and
- the amounts paid belonged to the taxpayer unless the customer made a successful claim in restitution, or the claim was settled by agreement.

45. The court held that the payments were profits from the taxpayer's trade in the year that they were received. The fact the customers had an entitlement to claim the money back did not change this. The Tribunal Judge stated (at paragraphs 43-44):

> HMRC's submission, with which we agree, is that an [sic] mistaken payment for services has the same characteristic in the hands of the recipient trader as a payment made not in error – **if the payment is made because the customer makes a mistake about owing something for services or for a trading transaction, the mistaken payment accrues from the trade of the recipient**. This is entirely

> consistent with the manner in which Pertemps operates its business. At the time payments are deposited into the Pertemps' bank account, it does not distinguish between overpayments and other receipts. Indeed it could not – as Pertemps banks payments before they are allocated to invoices on ledgers. Even if a receipt is eventually determined to be an overpayment, it will often be applied against other invoices rendered to the customer.
>
> ... HMRC submit, and we agree, that **the overpayments are a natural consequence of the efficient and lawful way in which Pertemps conducts its business**, and that these processes will mean that **sometimes it makes more money from the supply of its services than it had anticipated**. In doing so, it has supplemented its trading profits, and the receipt is a trading receipt. [Emphasis added]

46. In *Gower Chemicals v HMRC* [2008] UKSPC 713 (SpC) the taxpayer carried on business selling chemicals. Chemicals were sold in reusable containers. Customers paid a refundable deposit for a container that remained the property of the taxpayer. When a container was returned in good condition and in a reasonable time, the appellant would issue a credit note or refund the deposit. Sometimes containers were returned but the customer never took the credit or refund. At issue was whether the unclaimed deposits were trading income. The Special Commissioners found that the deposits belonged to the taxpayer as soon as they were received and should be brought into income at that point. This was because the taxpayer knew that in the course of its business, 20 percent of the deposits would not have to be repaid. Special Commissioner, Dr John Avery Jones stated (at paragraph 7):

> The issue for me turns primarily on the nature of the receipt of the deposit by the Appellant. The Appellant knows that about 20 per cent of deposits will not have to be repaid. In my view this makes it impossible to say that the Appellant is merely holding the deposit for the customer. The straightforward analysis is that the deposit is a trading receipt just as the payment for the goods is a trading receipt but with the difference that about 80 per cent of the deposits will have to be repaid, for which it is right to make a provision. While I agree that factually this distinguishes this case from *Prices Tailors*, I do not consider that this changes anything. In that case the deposit was security for the completion of the garment that the customer had ordered. Deposits were in fact repaid to customers who did not accept the garment even though there was not contractual obligation to do so. The decision relied on *Smart v Lincolnshire Sugar Co* 20 TC 643 in which there was a contractual right to repayment of the deposit if a contingency occurred. The need for a provision for this was discussed in the case and it is recorded in *Prices Tailors* that the same point was raised. In my view the Appellant's past accounting treatment was correct. The deposit belongs to the Appellant as soon as it is received and should be brought into income at that point.

Summary of principles from the United Kingdom cases

47. It may appear that the reasoning in the UK cases is not always consistent. For example, as noted above, in *Tattersall*, the court found that the nature of a receipt for income tax purposes is fixed at the time it is received. However, the court in *Jay's the Jewellers* took the view that a receipt could become income at a later date where its nature was changed by the operation of law.

48. Notwithstanding the apparent inconsistencies, it is considered that the above cases can all be reconciled. Where a later case has reached a different view than an earlier case, the later case has refined and/or expanded the principles set out in the earlier case and adapted them to the facts at issue. Consequently, the following principles can be taken from the above cases:

- Where an amount is no longer liable to be repaid (whether by virtue of contractual terms, limitation or other statute), then it will become income (if it was not previously) (*Jay's the Jewellers*).
- Just because an amount may be subject to repayment does not mean that the amount cannot be income (*Lincolnshire Sugar*, *Pertemps*).

- When an amount is held on trust for a third party, it will not be income (*Tattersall*).
- Changing the accounting treatment of an amount will not, by itself, make that amount income (*Tattersall*).
- Unsolicited overpayments that a taxpayer treats as their own money belong to the taxpayer unless the customer makes a successful claim (*Pertemps*).
- Unsolicited overpayments and unclaimed refundable deposits are income in the year they are received (*Pertemps*, *Gower Chemicals*).

Application to unclaimed amounts of $100 or less in New Zealand

49. As noted above, for an amount to be derived it must be received beneficially by the taxpayer (ie received free from legal impediments to the taxpayer dealing with the money in its own interests). In the context of unclaimed money, this is most likely to give rise to a question of whether an amount is held on trust or not. Therefore, the treatment of money held on trust is considered below.

Money held on trust

50. Most unclaimed money will not be held on trust. For example, where a customer has overpaid an account, the overpayment will not normally be held on trust by the holder. The relationship between a customer and a business will normally be a contractual one. Similarly, the relationship between a bank and depositor will normally be one of debtor-and-creditor and not trust (see *DFC New Zealand Ltd v Goddard* [1992] 2 NZLR 445). However, in certain circumstances, unclaimed money may be held on trust by the holder. Examples include funds held in a real estate agent's trust account or a solicitor's trust account.

51. A trust will often (but not always) be evidenced by the existence of a trust deed. A trust will be present where the holder holds the unclaimed money for the benefit of a third party (the "owner" for unclaimed money purposes) and cannot deal with the money in their own interests. Therefore, to determine whether an amount is held on trust, it is necessary to look at the terms on which the money was originally paid and on which it is currently held.

52. As noted above, money held on trust is unlikely to be able to be applied by the holder for their own benefit without breaching the terms of the trust. Consequently, the proviso to s 4(1) of the UMA 1971 will not be satisfied and the amounts will be unclaimed money. This is also likely to be the case for other amounts that are not received beneficially by a taxpayer. If s 4(1) is not satisfied, then the amounts cannot be income as they will be subject to the UMA 1971 and must ultimately be paid to Inland Revenue. If, on the other hand, the money is *in fact* applied by the holder for its own benefit, it is unlikely that the holder will be able to show that the money is held on trust (or otherwise not received beneficially).

53. The conclusion that money held on trust cannot be income of the holder is consistent with the case law considered above. None of the cases found that money held on trust could be income of the holder.

54. However, if money ceases to be held on trust (for example, by virtue of the terms of the trust or the application of a statutory provision) and the holder applies it for their own benefit, then s 4(1) of the UMA 1971 could apply and

the amount could become income of the holder. In this case, the amount should be treated the same as amounts not held on trust.

Money not held on trust

55. At issue is when (if at all) amounts of unclaimed money applied by the holder for their own benefit will be derived by the holder. As noted above, it is assumed that the amounts are received by the holder in the ordinary course of their business.

56. New Zealand case law on derivation has followed the Australian decision of *Arthur Murray*. Therefore, in New Zealand, income will be derived when what has taken place is enough to satisfy the general understanding among practical business people of what is derivation of income. The UK case law may be of assistance in determining this. However, that case law was not considering the meaning of derivation so care needs to be taken when applying the decisions in a New Zealand context.

57. In the case of unclaimed money, it could be argued that derivation occurs on receipt or at some point following receipt, or that derivation never occurs. As no New Zealand case law is directly on point, it is necessary to consider the principles taken from the case law to determine how a court would apply them to resolve this issue.

58. Where a contractual or statutory provision (such as the Limitation Act 1950 or Limitation Act 2010) applies so that the holder of money will no longer be required to repay it if requested by the owner, then the amount will be income. This is consistent with the UK case law. It is also consistent with *Arthur Murray* and the New Zealand derivation cases, because the holder has to do nothing further to earn the amount and there is no possibility that the amount will be repayable. However, in many cases of unclaimed money, it is unlikely that the relevant Limitation Act will apply and there will be no contractual terms limiting the holder's liability to repay. Therefore, it is necessary to consider whether these amounts could be income even though they are still subject to the possibility of repayment.

59. As noted above, that an amount may be subject to repayment will not necessarily prevent it being income (see, for example, *Lincolnshire Sugar*, *Pertemps, Gower Chemicals, Case N30, Bowcock*).

60. *Pertemps* is the decision that is closest to the facts being considered. It could be argued that *Pertemps* should be applied in New Zealand, which would lead to the conclusion that (at least in the case of overpayments) the relevant amounts are income when they are received. However, this is not considered the correct approach for two reasons. First, in New Zealand the UMA 1971 potentially imposes some statutory obligations in respect of the amounts until the proviso to s 4(1) applies to exclude the amount from being unclaimed money. Secondly, *Pertemps* is arguably inconsistent with the approach taken in *Arthur Murray* and the subsequent New Zealand cases. This is discussed in more detail below. In summary, it is considered that *Pertemps* provides support for the proposition that the amounts of unclaimed money are in the nature of income. However, it is not considered good authority in New Zealand for **when** that income is derived.

61. It could be argued that the fact (in many cases) the holder will always be liable to repay the relevant amounts to the owner (if asked) means applying *Arthur Murray* would lead to the conclusion that the amounts would never be derived. However, it is considered that the principles from *Arthur Murray* need to be interpreted in the context of the facts in that decision. *Arthur*

Murray was considering prepaid services. This meant its analysis was focused on establishing when an amount would be "earned" where there was a future requirement to perform services on request. No consideration was given to what the position would be where there was no (or no longer an) obligation to perform any services. *Case N30* expanded the scope of the principles from *Arthur Murray*. In *Case N30* income was held to be derived even though the services paid for had not been performed. The earning process was found to be complete once it was probable that the service would not be required to be performed.

62. In the context of an amount of unclaimed money, that amount will not be "earned" in the sense of goods or services being provided for it. However, it is an amount that is received in the ordinary course of the taxpayer's business and it is being treated by the taxpayer as its own money (in the sense of having been applied for the holder's use). As nothing further needs to be done by the taxpayer to earn the money, the only thing stopping it being derived is the fact it is subject to the contingency of repayment. As time passes, that contingency will become more remote.

63. Once it is probable that the unclaimed amount will not need to be repaid, it should be treated as income. The "probable" threshold is based on the test used in *Case N30*. A different standard may be more appropriate. For example, it could be argued that it is sufficient for an amount to be treated as income where it is "unlikely" that it will need to be repaid. However, on balance, it is considered that the case law better supports the slightly higher "probable" threshold. Practically, there may not be much difference in any event.

64. When it is probable that an amount will not be repaid will depend on the particular business. Business records and accounting treatment are likely to be relevant to determining this. For example, if business records show that once an amount is applied for the benefit of the holder under the proviso to s 4(1) of the UMA 1971, it is probable that it will not be paid back, then this would suggest that the amount should be returned as income at that time. If, on the other hand, the business records show that even after 10 years, customers still successfully request the return of unclaimed amounts (on more than just isolated occasions), then this may suggest that the amounts should not yet be treated as income. This will be a question of fact to be determined in each case. It is not possible to provide more prescriptive factors.

65. In summary, an unclaimed amount will be derived when it:

- has been applied by the holder for its own benefit (that is, the proviso to s 4(1) of the UMA 1971 applies); and
- is probable that the amount will not have to be repaid (which would include situations (described above) when the amount is not legally recoverable; for example, under a contractual term or the Limitation Act).

Amounts subsequently repaid to owners

66. Section DA 1 sets out the general permission for deductibility. In particular, s DA 1(b) allows a deduction for an amount of expenditure to the extent to which it is incurred in the course of carrying on a business for the purpose of deriving assessable or excluded income.

67. The Rulings apply to amounts of unclaimed money that are received by holders in the ordinary course of their business. The Commissioner's view is

that repayment of these amounts to their owners is also undertaken in the course of the holder's business. Consequently, if a holder subsequently returns an amount that has previously been recognised as income, the holder will be entitled to a deduction under s DA 1(b).

Conclusions

68. For amounts of unclaimed money of $100 or less, while money is held on trust and cannot be (and has not been) applied by the holder for their own benefit (or for the benefit of any other person or for any purpose or object) it cannot be income of the holder.

69. An unclaimed amount (of $100 or less) not held on trust will be derived when it:
    - has been applied by the holder for its own benefit (that is, the proviso to s 4(1) of the UMA 1971 applies); and
    - is probable that the amount will not have to be repaid (which would include situations when the amount is not legally recoverable; for example, under a contractual term or the Limitation Act).

70. When it is probable that an amount will not be repaid will depend on the particular business. Business records and accounting treatment are likely to be relevant to determining this.

71. If a holder has recognised a previously unclaimed amount as income and subsequently returns that amount to the owner, the holder will be entitled to a deduction under s DA 1(b).

Example: Unclaimed money not held on trust

72. The following example is included to assist in explaining the application of the law.

73. Supaphone Ltd is carrying on business as a telecommunications company. Many of Supaphone's clients pay their accounts by monthly automatic payment. Sometimes when clients close their accounts with Supaphone, they forget to cancel their automatic payments straight away. This results in overpayments to Supaphone. Supaphone attempts to contact customers to return these overpayments, but these customers are often impossible to locate. Supaphone also receives payment by cheque. Sometimes, despite its best attempts, Supaphone cannot match the cheque received with a particular customer's account. In both situations, the amounts received are subject to the UMA 1971.

74. Where unclaimed amounts are $100 or less, Supaphone applies them to its business (within the applicable timeframes) under the proviso to s 4(1) of the UMA 1971. At this time, the amounts are no longer subject to the UMA 1971.

75. Supaphone's business records show that over the past 10 years repayment requests are made for 50 percent of unclaimed amounts within four years of receipt. However, in the past 10 years only two people have requested the return of unclaimed money more than four years after it was received. Therefore, after four years it is probable that the amount will not have to be repaid.

76. Supaphone asks whether (and when) the unclaimed amounts of $100 or less are business income under s CB 1.

77. The unclaimed amounts are not held by Supaphone on trust. Therefore, the amounts will be income under s CB 1 when they are derived (assuming that no other timing regime applies). The amounts will be derived when:

- Supaphone applies the amounts to its business under the proviso to s 4(1) of the UMA 1971 (which occurs around six years after receipt); and
- it is probable that Supaphone will not have to repay the amounts (in this case four years after receipt).

78. As the later of these events is the application of the amounts under the proviso to s 4(1), the amounts are derived and should be returned as business income when Supaphone applies these amounts to its business.

References

Subject references
Business income
Derivation
Unclaimed money

Legislative references
Income Tax Act 2007, s CB 1
Limitation Act 1950
Limitation Act 2010
Unclaimed Money Act 1971, ss 4, 5, 6, 7 and 8

Case references
A Elson (Inspector of Taxes) v Prices Tailors Ltd [1963] 1 All ER 231 (ChD)
Arthur Murray (NSW) Pty Ltd v FCT (1965) 114 CLR 314
Bowcock v CIR (1981) 5 NZTC 61,062 (HC)
Case N30 (1991) 13 NZTC 3,266 (TRA)
CIR v Molloy (1990) 12 NZTC 7,146 (HC)
Gower Chemicals v HMRC [2008] UKSPC 713 (SpC)
Jay's the Jewellers Ltd v IRC [1947] 2 All ER 762 (KB)
Lincolnshire Sugar Co Ltd (in liquidation) v Smart (HMIT) [1937] 1 All ER 413 (HL)
Morley (Inspector of Taxes) v Tattersall [1938] 3 All ER 296 (CA)
Pertemps Recruitment Partnership Ltd v HMRC [2010] UKFTT 218 (TC)

Other references
'Inland Revenue Technical Rulings – now limited to historic value' *Tax Information Bulletin* vol 10, no 9 (September 1998)

Appendix – Legislation

Income Tax Act 2007

1. Section CB 1 provides:

CB 1 Amounts derived from business

Income

(1) An amount that a person derives from a business is income of the person.

Exclusion

(2) Subsection (1) does not apply to an amount that is of a capital nature.

Unclaimed Money Act 1971

2. Section 4 of the Unclaimed Money Act 1971 provides:

Unclaimed money

(1) Subject to this section, unclaimed money shall consist of—

(a) money, including the interest or any amount in the nature of interest thereon, deposited with any holder so as to bear interest for a fixed term, which has been in the possession of the holder for the period of 6 years immediately following the date of expiry of the term:

(b) money, including the interest or any amount in the nature of interest thereon, deposited with any holder so as to bear interest—

(i) without limitation of time; or

(ii) for a fixed term where, on the expiry of the fixed term, the money, if it is not withdrawn by the customer, is to be treated as reinvested,—

where in either case the customer has not operated on the account for a period of 25 years, whether by deposit, or withdrawal, or instruction in writing:

(c) money deposited upon current account or otherwise with any holder and not bearing interest, where—

(i) in any case where the holder is a savings bank, the customer has not operated on the account for a period of 25 years, whether by deposit, or withdrawal, or instruction in writing; and

(ii) in any other case, the customer has not operated on the account for a period of 6 years, whether by deposit, or withdrawal, or instruction in writing:

(d) money payable or distributable on or in consequence of the maturity of a policy of life assurance, being money which has been in the possession of any holder for the period of 6 years immediately succeeding the date on which—

(i) the policy matured otherwise than by death; or

(ii) the holder first had reason to suppose that the policy has matured by death, whether such death has been legally proved or not,—

whichever date is the earlier, and notwithstanding that by the terms of the policy the money is not payable or distributable except on proof of death, or on proof of age or any other collateral matter:

(e) any other money, of any kind whatsoever, which has been owing by any holder for the period of 6 years immediately following the date on which the money has become payable by the holder:

provided that money of any of the kinds referred to in this subsection shall cease to be unclaimed money where—

(i) in respect of any one owner it does not exceed $100 in total; and

(ii) before the 1st day of June next succeeding the end of the period of 6 years or, as the case may be, 25 years specified in this subsection, that unclaimed money is, without limiting any claim any owner may have thereto, applied by the holder for his own benefit or for the benefit of any other person or for any purpose or object.

(2) Unclaimed money shall not include—

(a) any dividends, not being dividends payable by a mutual association in relation to money deposited with the association, payable by a company to any of its shareholders:

(b) any rebate payable by a mutual association (other than a holder of the kind referred to in paragraph (f) of subsection (1) of section 5 of this Act) to any of its members in relation to the trading transactions of the member with the association, not being a rebate payable in relation to money deposited with the association:

(c) any benefits payable from any pension or superannuation fund.

(3) Where a holder has ceased to carry on business or has died, and the holder, or, as the case may be, his personal representative, has for a period of 6 months or more immediately succeeding the date of that cessation or death been in possession of or owed money which has remained unclaimed and—

(a) which would become unclaimed money when the period referred to in the appropriate paragraph of subsection (1) of this section had expired if the money had remained unclaimed; or

(b) which would have so become unclaimed money if it were not money of any of the kinds referred to in subsection (2) of this section,—

the holder or that personal representative may, if he thinks fit, pay the money to the Commissioner and furnish to the Commissioner particulars of the payment and of the person on whose behalf the money was held or to whom it was owed; and thereupon that money shall be deemed to be unclaimed money, and the provisions of this Act, as far as they are applicable, shall apply accordingly:

provided that this subsection shall not apply to any money of the kind referred to in section 330 of the Companies Act 1955.

(4) In subsection (2) of this section the expression **mutual association** means any body or association of persons, whether incorporated or not, which enters into transactions of a mutual character with its members, whether or not it also enters into transactions with other persons.

3. Section 5 of the Unclaimed Money Act 1971 provides:

Holder

(1) This Act shall apply to unclaimed money held or owing by the following holders:

(a) any company incorporated in New Zealand and any liquidator or receiver of any such company:

(b) any company incorporated out of New Zealand and carrying on business in New Zealand, and any liquidator or receiver of any such company:

(c) any bank, including a savings bank, carrying on business in New Zealand:

(d) any building society within the meaning of the Building Societies Act 1965:

(e) any person, firm, body, or institution carrying on the business of borrowing and lending money in New Zealand, in respect of money borrowed:

(f) any insurance office or company carrying on business in New Zealand, including the Government Life Insurance Corporation:

(g) any auctioneer within the meaning of the Auctioneers Act 1928, whether or not a company, in respect of any balance of proceeds of any auction sale:

(h) any agent within the meaning of the Real Estate Agents Act 2008, whether or not a company, in respect of money held in a trust account:

(ha) any conveyancing practitioner within the meaning of the Lawyers and Conveyancers Act 2006, in respect of money held in a trust account:

(i) any sharebroker within the meaning of the Sharebrokers Act 1908, whether or not a company, in respect of money held on behalf of clients:

(j) any chartered accountant (within the meaning of section 19 of the New Zealand Institute of Chartered Accountants Act 1996) in respect of money held on behalf of clients:

(k) any motor vehicle trader within the meaning of the Motor Vehicle Sales Act 2003, whether or not a company, for money held on behalf of any person for whom the trader has acted as agent in the course of carrying on the business of motor vehicle trading.

(2) Any person, firm, body, or institution may elect to be the holder in respect of such money held or owing by him or it as he or it thinks fit, not being—

(a) unclaimed money in respect of which he or it is the holder under subsection (1) of this section; or

(b) except where subsection (3) of section 4 of this Act applies, money to which subsection (2) of that section applies;—

and in that case he or it shall be deemed to be the holder in respect of that money.

4. Section 6 of the Unclaimed Money Act 1971 provides:

Register to be kept

(1) Every holder shall, on the 1st day of June in each year, enter in an alphabetical register, to be kept at the head or principal office in New Zealand of the holder, in the form prescribed in the Schedule to this Act, particulars of unclaimed money arising on or after the 1st day of June in the preceding year; and from and after the 8th day of June in each year that register shall be open to the inspection of all persons at that head or principal office during the hours within which the ordinary business of the holder is transacted, on payment of such fee as may be determined by the holder, but not exceeding 50 cents:

provided that—

(a) on ceasing to carry on business in New Zealand a holder shall deposit the register in the custody of the Registrar of the District Court nearest to the place where that register was theretofore kept:

(b) any holder may at any time so deposit any book or part of the register in which no entry has been made for a period of not less than 6 years immediately preceding the date of that deposit.

(2) Nothing in this section shall apply to any unclaimed money in respect of which special provisions are made by or under any other Act, or to any unclaimed money which, pursuant to the proviso to subsection (1) of section 4 of this Act, ceases to be unclaimed money.

Holder to notify Commissioner and owners of entries in register of unclaimed money

(1) Not later than the 30th day of June in each year, every holder shall, by letter addressed to the last known place of business or abode of the owner, post to every owner in respect of whom an entry as the owner of unclaimed money was required to be made on the 1st day of that month in the register kept by the holder pursuant to section 6 of this Act, a notice specifying the amount of that money and the fact that it is entered in the register as unclaimed money, and the holder shall thereupon enter in that register the date of posting of the notice.

(2) Not later than the 30th day of September in each year, every holder shall furnish to the Commissioner a copy of every entry made, on or after the 1st day of June in that year, in the register kept by the holder pursuant to section 6 of this Act, and shall indicate to the Commissioner which, if any, of the unclaimed money in respect of which the entry was so made, has, on or after that 1st day of June, been paid to the owner thereof.

(3) Nothing in this section shall apply to any unclaimed money in respect of which special provisions are made by or under any other Act.

6. Section 8 of the Unclaimed Money Act 1971 provides:

Payment of unclaimed money to Commissioner

(1) All unclaimed money arising in any year ending with the 31st day of May which has not, before the next succeeding 30th day of September, been paid by a holder to the owner thereof, and in respect of which no person has before that 30th day of September established a valid claim, shall be paid, on or before the next succeeding 31st day of October, by the holder to the Commissioner:

provided that this subsection shall not apply to any unclaimed money in respect of which special provisions in relation to payment to the Commissioner are made by this Act or in respect of which special provisions are made by or under any other Act.

(2) All money payable to the Commissioner in accordance with this section shall be recoverable by the Commissioner on behalf of the Crown by action in his official name in any Court of competent jurisdiction against the holder as a debt due to the Crown.

(3) All unclaimed money received by the Commissioner under this or any other Act shall be paid into the Crown Bank Account.

(4) Where unclaimed money is paid by a holder to the Commissioner in accordance with this Act, the holder shall thereafter be relieved of all further liability to any claimant in respect of the money so paid.

7. Section 13 of the Unclaimed Money Act 1971 provides:

Offences

(1) Every person commits an offence, and is liable on summary conviction to a fine not exceeding $500, who wilfully or negligently—

(a) being a holder, fails to comply with any provision of section 6, section 7, subsection (1) of section 8, or section 10 of this Act, or with any condition on which the Commissioner has granted exemption under section 9 of this Act; or

(b) being a director, manager, secretary, or other officer of the holder, authorises or permits that failure to comply.