

**APPENDIX B TO TIB NO. 11, JUNE 1990**

**EXPLANATION OF INCOME TAX AMENDMENT ACT 1990 AND THE ESTATE AND GIFT DUTIES AMENDMENT ACT 1990**

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**PART I - SECTION BY SECTION DISCUSSION  
OF THE INCOME TAX AMENDMENT  
ACT 1990**

**1. REBATE IN RESPECT OF GIFTS OF MONEY  
AND PAYMENT OF SCHOOL FEES - Section  
3**

Adds the "Cyclone Ofa Relief Fund" to the list of organisations and funds granted donee status under section 56A(2) of the Income Tax Act 1976. As a result, taxpayers making donations which exceed \$5 will be able to claim a rebate in respect of the Gifts of Money and Payment of School Fees rebate. The amendment applies as from 1 April 1989.

**2. LOCAL AUTHORITIES - Sections 4,13 and 15**

These sections clarify parts of the Income Tax Act in relation to the tax treatment of local authority trading enterprises, port companies and the transfer of losses incurred by Harbour Boards.

**Income Tax Position of Local Authority  
Trading Enterprises and Port Companies**

Section 2 of the Income Tax Act provides that:

"Local authority" means a local authority within the meaning of the Local Government Act 1974 and any Harbour Board, Hospital Board, Education Board, or other incorporated instrument of local government in New Zealand, whether possessing rating powers or not.

Local authority trading enterprises and port companies fall within the definition of a "local authority" because they are "incorporated instruments of local government".

**Local Authority Trading Enterprises**

The Local Government Amendment Act (No 2) 1989 allows local authorities to incorporate certain trading activities. A "local authority trading enterprise" is defined in section 594B of the Local Government Act 1974 as follows:

"Local authority trading enterprise" -

(a) Means -

- (i) A company in which a local authority holds equity securities that carry 50 percent or more of the voting rights at any general meeting of the company;

or

- (ii) A company in which any combination of local authorities holds equity securities that carry 50 percent or more of the voting rights at any general meeting of the company; or

- (iii) Any organisation through which a local authority or local authorities operate a trading undertaking with the intention or purpose of making a profit (being an organisation over which the local authority or local authorities have significant control); but

(b) Does not include

- (i) Any airport company within the meaning of the Airport Authorities Act 1966; or
- (ii) Any port company within the meaning of the Port Companies Act 1988;
- (iii) Any energy supply operation to which section 197C of the Income Tax Act 1976 applies.

Other relevant definitions in section 594B are:

"Organisation" means any partnership, trust, arrangement for the sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or other similar arrangement; but does not include a company or a committee or joint committee of a local authority.

"Significant control" means, in relation to an organisation,

- (a) Control of 30 percent or more of the votes at any meeting of the members or controlling body of the organisation; or
- (b) The right to appoint trustees, directors, or managers (howsoever described) of the organisation, -

whether or not jointly with other local authorities or persons.

Section 35 of the Local Government Amendment Act (No 2) amended section 61(2A) of the Income Tax Act 1976 to provide that income (other than rates) derived by a local authority trading enterprise should be excluded from the income tax exemption.

Section 4 of the Income Tax Amendment Act 1990 provides that income derived by a local authority trading enterprise is also excluded from the exemption.

### **Port Companies**

The Port Companies Act 1988 requires Harbour Boards to form port companies for the purposes of operating ports. The Act provides for Establishment Units to be set up to, among other things identify and value "port related commercial undertakings" and transfer these undertakings to the port company.

"Port related commercial undertakings" are defined in section 2 of the Port Companies Act as follows:

"Port related commercial undertaking", in relation to any Harbour Board,

- (a) Means the property and rights of the Harbour Board that -
  - (i) Relate to the activities of commercial ships and other commercial vessels, and commercial hovercraft and commercial aircraft, or to the operation of facilities on a commercial basis for ships, vessels, hovercraft, and aircraft of any kind; or
  - (ii) Facilitate the shipping or unshipping of goods or passengers; and
- (b) Without limiting the generality of paragraph (a) of this definition, includes -
  - (i) The provision by a Harbour Board of any building or facility wherever situated for use in connection with the handling, packing, or unpacking of goods for shipping or unshipping through any port; and
  - (ii) Items such as breakwaters and dredges and other items that, although they may not themselves be revenue producing and may have a number of purposes or uses, are nevertheless related to the operation of the port on a commercial basis; but
- (c) Does not include any undertaking that is a statutory function or duty of the Harbour Board relating to safety or good navigation.

Most Harbour Boards set up port companies during the 1989 and 1990 income years. There is one exception however. Although port companies have been registered in respect of all New

Zealand ports, at one port the port operations have not yet been transferred to that company. The operations are instead being managed by a subcommittee of the Regional Council for the area concerned.

Finally, all Harbour Boards were disbanded as at 1 November 1989.

Section 4 of the Income Tax Amendment Act 1990 amends section 61(2A) of the Income Tax Act 1976 to exclude from the income tax exemption applying to local authorities, income derived by:

- A port company, and
- A port operator.

The reference to a port company is self explanatory. Port operator is defined in section 15 of the Amendment Act. The definition refers to the situation at the port where operations are being managed by a subcommittee of the Regional Council. The reference to port operator ensures that income derived at that port is treated in exactly the same way as at other ports where port companies are operating.

### **Transfer of Losses from Harbour Boards**

Initially it was considered that losses incurred by Harbour Boards should be carried forward by the Harbour Board concerned, and should not be allowed to be transferred to the port companies. However with the demise of the Harbour Boards it has been decided that these losses will be able to be transferred to port companies. The rationale for this decision is that effective ownership of the Harbour Boards and port companies are the same, and that if the transfer is not allowed, the benefits of the tax losses would be lost.

Section 15 of the Amendment Act provides for the transfer.

Losses relating to the transfer of assets from a Harbour Board to the port company or port operator which replaces it, cannot be transferred. The same applies to the transfer of assets from the port operator to the eventual port company. This rule ensures that tax advantages cannot be gained by manipulating values of assets.

Section 13 of the Income Tax Amendment Act 1990 provides that the rate of tax applying to income derived by local authorities, where that income is taxable, is 33 cents in the dollar.

### **3. RESIDENT WITHHOLDING TAX- Section 5**

The section clarifies the operation of the resident withholding tax regime as it applies to dividends paid by building societies to their members on withdrawable shares. These dividends will be classified as interest for the purposes of resident withholding tax, as the payments are in the nature of interest rather than dividends payable in respect of equity capital held in companies.

The amendment takes effect from the commencement of the withholding tax regime.

### **4. PAYE SYSTEM - Sections 6 to 12**

These sections provide for two changes to the legislation regarding the payment of twice monthly PAYE deductions.

Before the Income Tax Amendment Act 1990, the then legislation, which would have come into effect on 1 May 1990, provided that employers whose PAYE deductions were less than \$50,000 in the previous year could continue to pay PAYE and SSCWT deductions once a month. The legislation as now amended provides that in order to qualify for payment once a month the *aggregate* of PAYE and SSCWT deductions must be less than \$50,000.

The second change is that, the payment date for PAYE deductions, specified superannuation contributions and overpayments of family support made in the previous month may, where the employer falls below the \$50,000 threshold, be deferred from the 5th, to the 20th of the month.

### **5. FIRST SCHEDULE - Section 13**

This section repeals and reinserts clause 9 of the First Schedule to the Income Tax Act 1976.

The newly inserted clause 9 differs from the original clause in 2 ways. An obsolete reference to specified trusts from the heading of the clause has been deleted as the distinction between specified and non-specified trusts was removed from the legislation upon the introduction of the current trust regime.

The clause further differs in that the wording of the clause has been amended to ensure that income which is assessable to a beneficiary and also assessable to a trustee as agent for the beneficiary is not taxable at the rate of tax applicable to trustees. This amendment is

necessary to align the wording of the clause with the other sections of the Act and is to apply from the date on which the trust regime came into effect, being 1 April 1988.

### **6. TAXATION OF TRUSTS - Section 14**

This section amends the application provision of the trust taxation regime to ensure that distributions made from superannuation funds after 1 April 1990 are exempt from income tax in the recipient's hands.

### **7. RATES OF INCOME TAX - Sections 16 and 18**

These sections confirm that the annual rates of income tax for the year commencing on 1 April 1989 shall be those specified in the First Schedule to the principal Act.

### **8. RATES OF EXCESS RETENTION TAX - Section 17**

This section confirms the annual rate of excess retention tax for the year commencing on 1 April 1989 at the rate specified in Clause 11 of Part A of the First Schedule to that Act.

## **PART II - SECTION BY SECTION DISCUSSION OF ESTATE AND GIFT DUTIES AMENDMENT ACT 1990**

### **1. INTERPRETATION - Section 2**

Raises the charitable allowance for Estate Duty purposes from \$25,000 to \$100,000.

### **2. EXEMPTION FROM GIFT DUTY - Section 3**

Section 3 inserts an exemption from gift duty for the transfer of assets made under section 23 and 24 of the Waikato Electricity Authority Act 1988. This amendment ensures that the amalgamation of the Waikato electricity authorities, which is being undertaken in accordance with the Waikato Electricity Authority Act 1988, does not result in those authorities being subject to gift duty.