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Court Decision - Station Wagons and FBT

A recent High Court decision allowed Tisco to treat certain station wagons as work-related vehicles. The Court based its decision on special circumstances relating to this particular case, as the presiding Judge emphasised. The vehicles were also a specific model of station wagon, which is no longer in production.

This is a one-off situation, and does not set a precedent.

Conclusion

Inland Revenue's policy is to define station wagons as motor cars for FBT purposes unless the necessary alterations are made to convert them to work related vehicles. This policy is not changed by the Tisco decision.

Ref: HO TA P 007 F

Valuation of Buildings Occupied as Dwellings for GST Purposes

Background

In Public Information Bulletin 171 of March 1988, we discussed the valuation of residential dwellings for GST purposes where the dwelling is part of the business premises. The dwelling is treated as either a private asset or as having been acquired for an exempt activity when used as a place of residence or abode.

In the article we gave the example of a farm dwelling and showed how the value of the land on which it stands is apportioned on an area basis. In these situations that method of apportioning the value of the total farm land is generally the most appropriate.

We have recently been asked if we would accept valuations of residential land on farm

properties based on normal sales evidence of residential sections in nearby rural townships. It was suggested that this would give a more realistic value than the arithmetical calculations given in our example.

Ruling

Inland Revenue will accept valuations of residential land on farm or other properties based on sales evidence where it is clear that a straight mathematical apportionment is inappropriate.

Any valuation other than an arithmetical calculation should be made by a registered valuer. The valuation should be supported by a statement from the valuer setting out the method and reasons for the valuation.

Reference GST V.1.4

Fringe Benefit Tax - Prescribed Rate of Interest for Quarter Commencing 1 April 1991

The Minister of Revenue has confirmed that the prescribed rate of interest used to calculate the fringe benefit of low interest employment related loans will be 13.75 percent for the quarter commencing 1 April 1991.

GST - Contingency Debt, Consumer Credit and Payment Protection Insurance

Introduction

Public Information Bulletin No. 175 of July 1988 described the GST consequences of Contingency Debt (CDI) and Consumer Credit (CCI) insurance policies. Since that statement there has been some confusion with these definitions, so we are providing this explanation of the differences between these policies.

This item confirms the views in PIB 175.

Contingency Debt Insurance (CDI)

A Contingency Debt Insurance is an indemnity policy to cover a creditor against the risk of debtor's default under the credit contract; usually the debtor's failure to make repayment.

These factors are evident in such policies:

- such a contract is entered into by the provider of the credit (eg. dealer in a hire purchase, finance company in a mortgage) with the insurance company.
- the contract is entered into to indemnify the "creditor" against the loss arising in the event that the "debtor" fails to perform the obligation in terms of the credit contract.
- the insurer's liability arises only upon failure by the debtor to perform the obligation in terms of the credit contract.

Contingency Debt policies are financial services within section 3(1)(h) of the Goods and Services

Tax Act 1985. They are therefore deemed exempt supplies in terms of section 14 of the Act.

Consumer Credit and Payment Protection Insurance (CCI)

A Consumer Credit and Payment Protection Insurance is a policy in which the insurer will pay the policy owner (the creditor) upon the happening of the insured events as set out in the respective policies.

Note: in these policies, it is not necessary for the debtor to fail to make repayment. Further, the policy owner need not be in a position of loss before payment is made by the insurers. It is sufficient that the insured event occurs and the terms and conditions of the contract are met (eg. an illness which results in the insured being totally disabled from engaging in or attending to usual business or occupation prior to such person's 65th birthday).

The mere fact that the quantum of the insurer's liability under contract is determined partly by reference to the credit contract between the insured and policy owner does not make the policy in itself an indemnity in respect of the performance of the obligations under a credit contract.

Consumer Credit and Payment Protection policies are consideration for a supply of services on which GST is payable. However, any portion of a premium which is paid for life cover included in such a contract continues to be exempt as consideration for a financial service.

Reference: GST E.3.2.



Foreign Investment Fund Regime

Minister of Revenue's Recent Announcement to Delay the Application of the FIF Regime

Introduction

The Minister of Revenue, Hon Wyatt Creech, recently announced that the Government intends to delay the application of the Foreign Investment Fund ("FIF") Regime to 1 April 1991. He also indicated that an international tax policy review would be undertaken, after which new FIF rules would apply from 1 April 1991. He made this announcement in a Ministerial press release on 6 March 1991.

Following the Minister's announcement, the Commissioner released a media statement commenting on implications for taxpayers. A copy of this media statement is on page 7.

Effect of Announcement

The Minister's announcement indicates that once passed, the amending legislation to delay the FIF regime will remove the obligation for taxpayers to disclose their interest in any FIF and to account for any FIF income in their tax returns for the period prior to 1 April 1991. An exception to this is where a taxpayer makes an investment in a FIF on or after 6 March 1991 (the date of the Minister's announcement), in which case the new FIF rules will apply to that investment from that date.

Current Position

As the Commissioner pointed out in his media statement, at the moment an IR4H Disclosure Schedule is still required to be filed for any interest held in a FIF at any time since 1 April 1988. Taxpayers must also include FIF income in their income tax returns for the period up to 31 March 1991. This requirement remains until the current legislation is amended, which is expected to be by 31 March 1991.

If taxpayers choose to comply with their obligations under the current law, Inland Revenue will hold their Disclosures, but will not make an assessment in relation to them until the amending legislation is passed and the position is clear. If the amending legislation is passed as proposed, no assessment of FIF income would then be required.

If taxpayers choose to "wait and see" the Commissioner has stated that Inland Revenue will not take action against taxpayers who have yet to file their Disclosure Schedule, in the light of the proposed delay in application of the FIF regime. However, in the event that the current legislation is not amended as proposed and the current obligations remain, Inland Revenue will then seek outstanding Disclosure Schedules and tax payments in accordance with the existing law.

Implications for IEP Shareholders

Inland Revenue's stance will have particular significance for shareholders in Industrial Equity (Pacific) Ltd ("IEP"), who may still be endeavouring to meet the 31 March 1991 deadline for filing their IR 4H Disclosure Schedules, so as to avoid any tax penalties that would otherwise arise. Inland Revenue's stance set out above applies equally to those shareholders. In the IEP case, if the current legislation is not amended as proposed and the current obligations remain, the Commissioner has indicated that he would set a new deadline for the Disclosures at that stage.

Reassessment and Refund Action

Inland Revenue will initiate any reassessment and refund action that is required once the amending legislation is passed. This will be done for all taxpayers who have already filed an IR4H Disclosure Schedule and been assessed on that FIF income. Those who have already paid the tax will have it refunded. Refunds will be issued as soon as possible once the legislation is passed. Taxpayers do not need to make a special application for a refund.

Information to be made Available

Once Parliament passes the amending legislation, Inland Revenue will send a letter to all taxpayers who have either;

- already filed an IR4H Disclosure Schedule, or
- responded to the recent IEP advertisement by sending in a coupon for the information pack, or
- made application for a FIF Determination.

This letter will explain the effect of the amended legislation and set out the position for them in the light of the change to the law. A copy of this letter will also be available to any other interested taxpayers from Inland Revenue District Offices.

A letter will be issued at that time to all Tax Practitioners and Members of the New Zealand Stock Exchange.

Enquiries

If you have any queries about this item, please contact the International Tax Liaison Officer in your local Inland Revenue Office. Alternatively, you can contact the International Tax Central Unit at P.O. Box 895 Wellington, Ph (04) 859-809, Fax (04) 852-306.

Foreign Investment Funds - Effect on Taxpayers

The Commissioner of Inland Revenue, David Henry, today explained how the Government's announcement to delay the Foreign Investment Fund ("FIF") legislation to 1 April 1991 would affect taxpayers. He added that the Minister of Revenue had indicated that the legislative amendments were expected to be passed by 31 March 1991.

Up to now Inland Revenue has designated nine organisations as FIFs for tax purposes. This included Industrial Equity (Pacific) Limited, a subsidiary of Brierley Investments Limited.

At the moment a Disclosure Return must be filed by anybody having an interest in a FIF after 1 April 1988. If the legislation is passed by 31 March as

the Government's announcement indicates there will be no obligation at that stage for people to disclose their interest in any FIF or to account for any FIF income prior to 1 April 1991.

The Commissioner said that once the legislation was passed those people who had already filed Disclosure Returns and paid tax, would have that tax refunded.

"In the meantime, in the light of the Government's statement I have instructed my officers not to take action against those taxpayers who have yet to file Disclosure Returns. Should Parliament not ratify the Government's proposal I would at that stage be seeking Disclosure Returns and tax payments in

accordance with the existing law," Mr Henry said.

Mr Henry said that once the legislation was passed Inland Revenue would write to all taxpayers who have filed a Disclosure Return, to advise them about their position.

Mr Henry said that the Department was in the process of briefing its International Tax liaison officers in District Offices. Anyone wanting to discuss their individual position should contact the International Tax liaison officer in their local Inland Revenue office from Friday (8 March) onwards. A freephone service will also be available from 8 March, the number is 0800-808-010.

Due Dates Reminder

April

5 PAYE deductions for last 16 days of March due - "Large" employers only.

7 First instalment of 1992 Provisional Tax due for taxpayers with December balance dates.

Second instalment of 1991 Provisional Tax due for taxpayers with August balance dates.

Third instalment of 1991 Provisional Tax due for taxpayers with April balance dates.

14 Interest PAYE deducted during March 1991 due - monthly payers.

Interest PAYE deducted 1 October 1990 to 31 March 1991 due - six-monthly payers.

Dividend PAYE deducted during March 1991 due.

Non-Resident Withholding Tax deducted during March 1991 due.

20 PAYE Deductions for first 15 days of April 1991 due - "Large" employers.

Tax Deductions for March 1991 due - "Small" employers.

Completed Tax Deduction Certificates for the year ended 31 March 1991 should have been distributed to all employees.

FBT Return and payment for quarter ending 31 March 1991 due.

Annual FBT Return (1 April 1990 to 31 March 1991) due for employers who pay no fringe benefits.

30 GST Return and payment due for period ended 31 March 1991.



*TAX INFORMATION
BULLETIN*



INLAND
REVENUE

TE TARI TAAKE

THIS IS AN INLAND REVENUE DEPARTMENT SERVICE
TO PEOPLE WITH AN INTEREST IN NEW ZEALAND TAXATION.