TAX INFORMATION BULLETIN VOLUME TWO, NO. 9

APRIL 1991

CONTENTS

ISSN 0114-7161

A Legislative Affairs Production

TIB Video

A video is available which covers all the major and minor issues in the recently enacted Amendment Acts. It is professionally produced, and is 30 minutes long, The price of this video is $20, to cover costs.

If you would like a copy, please fill in the coupon at the bottom of page 33, and send it to this address, with payment for $20.

Neville Whitlock
Communications Unit, Taxpayer Services
Head Office
Inland Revenue Department
P O Box 2198
WELLINGTON

Introduction

The Acts covered in this TIB came from the Taxation Reform Bill (No.2) (introduced on 24 July 1990) and the Taxation Reform Bill 1990 (introduced on 19 December 1990).

The Acts resulting from the Taxation Reform Bill (No.2) 1990 are the:

- Income Tax Amendment Act 1991
- Goods and Services Tax Amendment Act 1991
- Inland Revenue Department Amendment Act 1991
- Stamp and Cheque Duties Amendment Act 1991

The Acts resulting from the Taxation Reform Bill 1990 are the:

- Income Tax Amendment Act (No.2) 1991
- Goods and Services Tax Amendment Act (No.2) 1991
- Accident Compensation Amendment Act 1991

Some provisions from the Taxation Reform Bill 1990 have been held over and are now contained in the Taxation Reform Bill (No.3) (currently before the Finance Expenditure Select Committee).

Income Tax Amendment Act 1991

Accruals

Sections 2 and 3

There are two minor changes to the accruals regime.

Exemption for Issuers

Section 2 amends section 64C of the Act to allow the Commissioner to exempt from the requirement to make returns on an accruals basis, certain issuers who derive income in respect of a financial arrangement. The present power of exemption relates only to expenditure incurred by issuers.

Application Date

The amendment applies with respect to tax on income derived in the income year commencing 1 April 1990 and every subsequent year.

Suspensory Loans

Section 3 amends the base price adjustment calculation in the accruals legislation (section 64F of the Act).

One of the effects of the base price adjustment is to bring to account as income of the debtor any forgiveness of debt in relation to a financial arrangement. The income is derived in the year the debt is forgiven.

Where the financial arrangement is a specified suspensory loan in terms of section 172 of the Act, and that loan is remitted, section 172(2) provides that the amount remitted is assessable income, spread over three income yuears. There is therefore conflict between sections 64F and 172. It is appropriate that the specific provisions in section 172 should apply. Accordingly, amounts remitted in these circumstances have been removed from the base price adjustment calculation.

Application Date

This amendment applies from the date of assent of the Act - 31 March 1991.

Attributed Foreign Income and Losses

Section 6

Introduction

This item explains the legislative changes introduced to the Income Tax Act to clarify and expand the interpretation of attributed foreign income.

There are two changes. The first one clarifies the definition of the term “income interest of 10 percent or greater”. The second one clarifies the provisions relating to elections to determine control and income interests on a daily measurement basis instead of a measurement day basis.

Background

(1) Definition of the term “income interest of 10 percent or greater”

A legislative formula reduces aggregate income interests in a controlled foreign company to 100 percent. The application of this formula may also reduce a person’s income interest in that controlled foreign company to below 10 percent.

The legislation currently used to ensure that persons holding income interests of less than 10 percent, where those interests have been reduced through the operation of the above formula, is not consistent in its application with other provisions contained in Part IVA of the Act.

(2) Election not to use measurement day basis

The proviso to section 245A(2)(e) currently refers to “such income interest or control interest” and “that income interest or control interest”. The words “such” and “that” provide inadequate identification of control and income interests. Consequently, the proviso does not sufficiently detail the treatment of variations of interests in a foreign company subsequent to an election to use the daily measurement basis. Further, the current wording of the proviso makes it unclear as to whether the election must be made in relation to both income and control interests, or whether a person can make an election in relation to one of the types of interest to the exclusion of the other.

Key Issues

(1) Definition of income interest of 10 percent or greater

The amendment to section 245A(1) modifies the definition of the term "Income interest of 10 percent or greater". The amendment was made to specifically include in that definition income interests reduced below 10 percent through the operation of the formula contained in section 245H(1). Before this amendment, a separate subsection provided that where an income interest was reduced to less than 10 percent through the application of section 245H(1), the exclusion from the requirement to calculate attributed foreign income will not apply.

The amendment simplifies the legislation and clearly defines the term "income interest of 10 percent or greater" as including interests that have been reduced by section 245H(1).

(2) Election not to use measurement day basis

The amendments to the proviso to section 245A(2)(e) make it clear that where an election is made to determine control and income interests on a daily measurement basis instead of a measurement day basis, the election will apply to both control and income interests. Separate elections cannot be made in respect to each of the interests in isolation.

Application Date

This Amendment applies from the date of Assent of the Act - 31 March 1991.

Definition of Term "Associated Persons"

Section 7

Introduction

This item explains the legislative changes made to the Income Tax Act to restrict the operation of the associated persons provisions and correct minor drafting oversights.

Background

Under the current legislation, the scope of the associated persons provisions of Part IVA of the Income Tax Act is inconceivably broad. If no restriction was made to the operation of the provisions, the paragraphs would, in effect, operate ad infinitum.

In addition, a few legislative anomalies exist with the provisions as they were drafted.

Key Issue

The intention of the associated persons provisions is to associate any person and any company or partnership where that person is associated with a person who is associated with the company or partnership. For example, where A is married to B who holds an income interest of 50% in company 1, the associated persons provisions operate to associate A and company 1. The same scenario applies to partnerships.

The scope of the provisions is not limited at that stage. Subsequent application of these provisions would deem any person who is associated with A via any of the provisions of section 245B to be associated with company 1. For example, C is associated with A as he is her father, thereby becoming associated with company 1 as A is associated with the company. Any person who is associated with C is then deemed to be associated with company 1. It can be seen that a continuous chain of associations can occur through continual application of sections 245B(c) or (f). Clearly this was not intended.

The amendment ensures that paragraphs (c) and (f) of section 245B only apply where persons are associated under the other paragraphs of section 245B, and not to persons associated by virtue of paragraphs (c) and (f). This provides a restriction to the operation of the associated persons provisions.

The other items are of a minor corrective nature ensuring completeness and accuracy.

Application Date

This Amendment applies from the date of Assent of the Act - 31 March 1991.

Calculation of Control Interest

Section 8

Introduction

This item explains the legislative changes introduced to remove an unintended effect of the associated persons provisions contained in Part IVA of the Income Tax Act.

Background

As the legislation currently stands, where a non-resident interest holder is related to a person resident in New Zealand, and that New Zealand resident relative holds no interest in the foreign company, a foreign company may be deemed to be a controlled foreign company although in fact less than 50% of the interests in the company may be held by New Zealand residents.

This is an unintended result and the amendment seeks to rectify this anomaly.

Key Issue

The amendment inserts a new subsection in section 245C, (which applies to determine a person's control interest), to ensure that the associated persons test, as it applies to natural persons, only applies to New Zealand interest holders. As a result only interests held by New Zealand residents and their relatives would be used when determining whether or not a foreign company is a controlled foreign company.

Application Date

This Amendment applies from the date of Assent of the Act - 31 March 1991.

Calculation of Income Interest

Section 9

Introduction

This item explains the legislative changes introduced to the Income Tax Act to clarify the provisions on the calculation of income interests.

Background

Currently the section 245D contains terminology which is inconsistent with the rest of Part IVA of the Income Tax Act. In addition the proration formula, used to determine the income interest over the accounting period where the income interests vary over that period, is susceptible to incorrect interpretation.

The present wording of section 245D(6) only applies in relation to persons who utilise the "measurement day" basis to determine their income interests in a controlled foreign company. This unintentionally ignores persons who have elected to use a daily basis for the purposes of determining their income interests.

Key Issues

(1) New Zealand resident income interest

Throughout Part IVA of the Income Tax Act an income interest which is less than 10 percent is referred to as an income interest which is "not an income interest of 10 percent or greater".

Section 245D(4) uses the term "less than 10 percent".

The amendment to this section rectifies this inconsistency.

(2) Variation of income interest during accounting year

Item "b" of the proration formula contained in section 245D(5)refers to an "income year".

The objective of the formula in section 245D(5) is to calculate the income interest of the taxpayer in relation to the accounting period of the controlled foreign company. The calculation relates to the instances where interests vary during an accounting period.

The insertion of the term "accounting period" in substitution for "income year" will permit the application of the proration formula to the whole of the accounting period of the controlled foreign company irrespective of the dates of the taxpayers income year.

(3) Holder of income interest ceases to be resident

The amendment inserts a new subsection in place of subsection (6) of section 245D. The effect is to remove inconsistent use of terminology by deleting the reference to a person being "a resident in New Zealand" and replacing it with the phrase "resident in New Zealand".

In addition the deletion of the word "measurement" ensures that a person shall not be treated as holding an income interest on any day on which that person was not resident in New Zealand. The subsection is expressly subject to the provisions of the measurement day basis contained in section 245A(2)(e), thereby providing that section 245D(6) applies to all persons income interests irrespective of the measurement basis used. However, if the measurement day basis is used, the provisions of section 245A(2)(e) continue to apply.

Application Date

This Amendment applies from the date of Assent of the Act - 31 March 1991.

Attribution of Income and Losses using Branch Equivalent Method

Section 10

Introduction

This item explains the legislative change made to the Income Tax Act to maintain consistency in Part IVA of the Act.

Background

The attribution of income or losses using the branch equivalent method applies only where a person who holds an income interest in a controlled foreign company is resident in New Zealand. A person will be treated as not holding an income interest on any measurement day on which that person was not resident in New Zealand.

As with section 245D(6), section 245G(7) only operated where a person measured their income interest on a "measurement day" basis to the exclusion of interests measured on a "daily basis".

Key Issue

A consequential amendment has been made to section 245G(7) as a result of the modification to section 245D(6). The word "measurement" has been deleted to ensure consistency between the sections.

Application Date

This Amendment applies from the date of Assent of the Act - 31 March 1991.

Cases where Aggregate Income Interests are Greater than 100 percent

Section 11

Introduction

This item explains the legislative changes made to the Income Tax Act to remove drafting anomalies.

Background

A person's income interest is determined by reference to the highest percentage of interests held by each person in the five different categories of income interest. Through the use of this provision, it is possible for income interests held by New Zealand resident persons in a controlled foreign company to exceed 100 percent in aggregate.

Where aggregate income interests exceed 100 percent a proration formula contained in section 245H(1) reduces the income interests to 100 percent. Currently the formula incorrectly uses the term attributable foreign income.

As a result of the amendment to section 245A(1), section 245H(2) is now redundant.

Key Issue

Other parts of Part IVA of the Income Tax Act refer to the term "attributed foreign income". Thus the amendment removes an incorrect reference to "attributable foreign income" and substitutes the correct term "attributed foreign income".

Section 245H(2) operated to remove the exclusion from the requirement to calculate foreign income where an income interest was reduced through the operation of the proration formula.

This section is no longer necessary as the amendment to section 245A(1) makes specific reference to the operation of the proration formula, by providing that an income interest of 10 percent or greater will include an income interest equal to or greater than 10 percent before the application of the proration formula.

Application Date

This Amendment applies from the date of Assent of the Act - 31 March 1991.

Foreign Tax Credits

Section 12

This section makes a number of amendments to the foreign tax credit provisions contained in the CFC regime.

Subsection (1) amends section 245K(1) of the Principal Act. Under the foreign tax credit provisions contained in the CFC regime credit is allowed for any withholding taxes paid on income derived by the CFC. The legislation specifically excludes credit for withholding tax that is actually deducted and accounted for by the CFC on amounts paid by the CFC to other persons, i.e. withholding taxes deducted from dividends paid by the CFC.

An amendment has been made to remove the words "..but does not include withholding tax paid or payable by that CFC on amounts that are not income derived by that controlled foreign company".

The words were removed because it could be inferred that, in their absence, credit should be allowed for those withholding taxes and also because they stated the obvious.

Subsection 2 amends section 245K(2) of the principal Act to remove the proviso to section 245F(2). The intention of the proviso was to attack the practice of foreign tax credit averaging, whereby a CFC could, by diverting income flows from a high tax jurisdiction to a low tax jurisdiction, lower their rate of tax paid to ensure a full tax credit for all taxes paid was available in New Zealand.

If for example the CFC derived all its income from a high tax jurisdiction the tax paid may not have been all fully credited in New Zealand to the extent that the foreign tax paid exceeded the New Zealand tax payable on the attributed foreign income.

The proviso attempted to restrict the CFC's tax credit available in this instance by apportioning the tax credit to the income in respect of which tax has been paid.

The problem with the method in which the legislation achieved this was that the legislation operated incorrectly to deny the amount of foreign tax credit available to the CFC in instances when it shouldn't. For example, if a CFC derived income from Hong Kong of $100 and paid tax on that income of $18; and also derived $100 from a jurisdiction that levied no taxes, the formula in the legislation would operate to restrict the foreign tax credit available to $9. This is unduly harsh as clearly foreign tax credit averaging would not have been contemplated or entered into, as the full credit would have been allowable in New Zealand.

Also, the provision only focused on foreign tax credit averaging where income was diverted through jurisdictions which impose no tax. Clearly the provision should apply where income is diverted through low income tax jurisdictions as well.

To remove the anomalies created by the proviso, the proviso has been repealed.

Subsection 3 amends section 245K(6) of the Principal Act to bring the formula contained in that section into line with an equivalent formula contained in section 293 of the Act.

The formula contained in section 245K(6) operates to restrict the credit for withholding taxes to the portion of the distribution which is taxable.

Subsection 4 amends section 245K(10). Section 245K(10) deals with the situation where a person, with an interest in a CFC, has been allowed a tax credit against the income tax payable on the attributed foreign income arising in respect of that interest, and the CFC subsequently receives a refund of income tax paid.

The amendment ensures both refunds of foreign and New Zealand taxes paid by the CFC give rise to a reduction of tax credits allowed to be carried forward under the CFC regime or an income tax liability if the refund exceeds the tax credits available to be carried forward or there are no tax credits available.

Currently the section only refers to "foreign" income tax. The amendment removes the word foreign.

Application Date

Subsection (2) applies with respect to the tax on income derived during the income year commencing 1 April 1990, and every subsequent income year. The othar subsections apply from the date of Assent of the Act - 31 March 1991.

Controlled Foreign Companies in Certain Countries

Section 13

Introduction

This item explains the legislative change made to the Income Tax Act to remove minor drafting errors.

Background

Section 245P(2) currently refers incorrectly to the "income year" of a "foreign company".

Key Issue

A company does not measure its income or loss in relation to an "income year", but does so in relation to its "accounting period".

Section 245P is concerned specifically with the exemption from the requirement to attribute foreign income or loss where the controlled foreign company is at all times resident in a country or territory specified in the Fifteenth Schedule of the Act.

Application Date

This Amendment applies from the date of Assent of the Act - 31 March 1991.

Payment of Fringe Benefit Tax on Annual Basis

Sections 16 to 25

Introduction

Section 16(1) of the Amendment Act amends section 336N of the principal Act to ensure that this section applies where an employer calculates the FBT on an income year basis.

Section 16(2) inserts a definition of the term "shareholder-employee" to ensure that this class of employee can be correctly identified and the correct basis of furnishing an FBT return and paying the tax is applied. Employers of shareholder-employees may elect to pay FBT on an income year basis in relation to those employees. In relation to ordinary employees an employer may elect to furnish a return on an annual basis (1 April to 31 March).

A shareholder-employee is defined as a person who, in relation to a private company (as defined in section 2 of the Companies Act), is-

(a) A shareholder in and an employee of the private company, and includes a shareholder who is deemed to be an employee under section 336N(8)(c).

(Section 336N(8) provides for the FBT treatment of non-cash dividends. Under that subsection a shareholder is deemed to be an employee for the purposes of subjecting that shareholder to the fringe benefit tax provisions); or

(b) Anyone to whom section 6(2) of this Act applies. While not strictly necessary, it makes it clear which employees comprise shareholder-employees.

Section 16(3) amends section 336N by adding a new subsection (9). The new subsection 336N(9) covers an employer who-

(a) Elects under 336TB to pay FBT on an income year basis in respect of shareholder-employees; and

(b) Furnishes a return of income for an accounting year other than 31 March (i.e., either an early or a late balance date taxpayer) under section 15 of the Act-

any reference to an income year shall, unless the context otherwise requires, be a reference to an accounting year. This effectively ensures that references in the legislation to an income year are also references to a person's accounting year. It should be noted that this results in 2 sections 336N(9). This will be corrected in a subsequent Act.

Section 16(3) also inserts a new subsection 10 which provides a definition of "early balance date" and "late balance date". An early balance date is any balance date from 1 October to 30 March inclusive. A late balance date is any balance date from 1 April to 30 September inclusive.

Application Date

Section 16(4) provides that this section shall come into force on 1 October 1991.

Value of Fringe Benefit

Section 17(1) of the Act amends section 336O(1) to set out 3 methods of determining the fringe benefit value of a motor vehicle under the options an employer has for paying FBT. These options are quarterly, annually for employees, and for an income year in the case of shareholder-employees.

When paying FBT on a quarterly basis section 336O(1)(a) applies. This is simply the old section 336O(1) carried forward.

When paying FBT on an annual basis according to section 336TA, or in other words for a year which commences 1 April and ends 31 March, section 336O(1)(b) applies. In this case the employer simply determines the annual value of the fringe benefit by applying the quarterly formula provided in paragraph (a) to each of the 4 quarters.

When paying FBT on an income year basis according to section 336TB, i.e. for shareholder-employees and for a year which may be an accounting year, section 336O(1)(c) applies. In that case the fringe benefit is calculated over the entire year rather than as a total of 4 quarters. This is done through the application of the following formula -

$$\frac{Y \times Z}{365}$$

where -

Y is the number of days in the income year reduced by the number of days the motor vehicle is a work related vehicle; and

Z is the amount calculated in accordance with the Tenth Schedule that is the value of the benefit to the employee of having the use, or the availability for use, of the motor vehicle for the year.

Section 17(2) of the amendment Act amends section 336O of the Act to include income year references as appropriate.

Application Date

Section 17(3) provides that this section shall come into force on 1 October 1991.

Taxable Value of Fringe Benefit

Section 18(1) of the amendment Act amends section 336P of the Income Tax Act to insert income year references as appropriate.

Section 18(2) proceeds to amend section 336P(1). The original subsection provided that the taxable value of a fringe benefit shall be -

(a) The amount of the fringe benefit provided by the employer reduced by any amount paid by the employee for that fringe benefit (excluding low interest loans); and

(b) In relation to motor vehicles, reduced by 2.5 percent of that amount of the cost price of the motor vehicle to the employee.

Section 18(2) replaces the existing subsection (b) with a new paragraph which simply continues the existing legislative policy but adapts it to take into account the introduction of the annual and income year basis for payment of FBT. The new paragraph states that where a motor vehicle is partially owned by both the employer and the employee the taxable value of the fringe benefit received by the employee is reduced by-

(a) Where the employer pays on a quarterly basis, 2.5% of so much of the costs price of the vehicle as is the cost price of the motor vehicle to the employee.

(b) Where the employer pays FBT on an annual basis, 2.5% of so much of the cost price of the motor vehicle to the employee. This is calculated for each quarter during the year in which the employee owns part of the vehicle.

(c) Where the employer pays FBT on an income year basis according to section 336TB, 10% of so much of the cost price of the vehicle to the employee. This is subject to newly inserted sections 336P(1A) and 336P(1B), which are explained later.

Section 18(3) of the amendment Act inserts new sections 336P(1A) and 336P(1B).

Section 336P(1A) provides for the correct calculation of the amount of taxable fringe benefit where a employer to whom section 336TB applies accounts for FBT for a period which is shorter than or longer than a normal income year. This subsection applies where the employer is ceasing or commencing business or where the employer is changing balance date (with the Commissioner's permission). In these cases the taxable value of the fringe benefit of a motor vehicle is reduced by -

$$\frac{a}{365} \times 10 \text{ percent}$$

where (a) is the number of days in the period that is less or more than a normal income year.

This provision simply ensures that an employer is not penalised or rewarded by the application of section 336P(1) when changing a balance date. It must be noted that this subsection ties in with subsection 336P(1B), which also may apply.

Section 336P(1B) provides for the case where an employee only owns part of the motor vehicle for part of an income year or a period. The term "period" has the same meaning as in subsection (1A) of this section. The amount of the reduction of the taxable value of a motor vehicle is reduced by the proportion of the days in the year or the period the employee was not a part owner of the motor vehicle. It is important to note that this provision actually increases the amount of the taxable fringe benefit.

It is arguable that this provision should be extended to annual s.336TB and quarterly FBT payers to cover circumstances where a motor vehicle is owned by an employee for only part of a quarter. As the intention of these provisions is to simplify the legislation this was not done.

Application Date

Section 18(4) provides that this section shall come into force on 1 October 1991.

Fringe Benefit Tax Imposed

Section 19 amends section 336S to provide that the standard quarterly reduction in value for fringe benefits coming within paragraph (e) of the definition of "fringe benefit" applies appropriately for an income year basis. The benefits in paragraph (e) are known as "other" fringe benefits. The first change is that the exemption for other fringe benefits has been raised from $50 to $75 per quarter, or on an annual basis $300 per year.

Subsection (2) repeals the proviso to section 336S(2) and inserts new subsections 336S(3) to 336S(7). The new subsection 336S(3) provides that where an employer provides other fringe benefits to an employee, and the employer is required to pay tax on a quarterly basis, the aggregate value of those other fringe benefits paid to that employee in that quarter shall be reduced by $75.

The new subsection 336S(4) provides for similar treatment as subsection (3) for employers who have opted to pay on an annual basis in relation to their employees under section 336TA. Where the employer provides other fringe benefits to an employee, the aggregate amount of other fringe benefits provided is reduced by $75 for each quarter in the year the employee was provided an other benefit.

For example, where an employer provides an other benefit of $50 a quarter for the first 2 quarters of the year, then $500 of other benefits in the 3rd quarter, and no other benefits in the final quarter, the following amount of FBT is payable -

Total Benefits Provided in		Number of Quarters Year Benefit Provided		Exemption		Taxable Value
$600	-	(3	x	$75)	=	$375

The new subsection 336S(5) provides for employees who have elected to pay fringe benefit tax on an income year basis in relation to shareholder-employees. Where these employers are provided other benefits the taxable value of other fringe benefits provided to shareholder-employees is reduced by $300 ($75 x 4) for the year.

Section 336S(6) provides for a correct calculation of the amount of taxable fringe benefit provided where a employer to whom section 336TB applies is required to account for FBT in relation to a period shorter or longer than a complete income year. This can occur where the employer ceases or commences business or where the taxpayer changes balance date. The $300 deduction provided by subsection (5) of this section is replaced by a deduction calculated in accordance with the following formula:

$$\frac{a}{365} \times \$300$$

where (a) is the number of days in the period that is less or more than a normal income year.

The new subsection 336S(7) clarifies the legislation in relation to two issues. The first is that when the legislation refers to "aggregate taxable value" it means before the deduction of any exemption provided under this section. The second provides that where the amount of any aggregate taxable value of fringe benefits is less than the reduction available under this section, the fringe benefits provided shall be reduced to nil.

Application Date

Section 19(3) provides that this section shall apply from 1 April 1992 in the case of employers who pay on the quarterly basis or the annual basis in relation to employees under section 336TA of the Act. It also applies from 1 October 1991 in the case of employers who have elected to pay on an income year basis in relation to shareholder-employees and whose income year commences on or after 1 October 1991.

Payment of Fringe Benefit Tax Every Quarter

Section 336T of the Income Tax Act provides that 20 days after the expiry of a quarter, an employer shall furnish a fringe benefit tax return for that quarter in a form prescribed by the Commissioner.

Section 20 of the amendment Act provides that section 336T does not apply where an employer has elected to pay FBT on an annual basis in respect of employees (section 336TA) or an income year basis for shareholder-employees (section 336TB). Instead, sections 336TA and TB apply.

Application Date

Section 20(4) provides that this section shall come into force on 1 October 1991.

Payment of FBT on Annual Basis in Respect of Employees, Shareholder-Employees, and the Imposition of Interest

Payment of Fringe Benefit on Annual Basis in Respect of Employees: Section 336TA(1) to (7) sets out the qualifying requirements for an annual basis of payment in relation to employees. It also sets out when returns must be furnished and what is required in those returns.

Subsection (2) sets out the 2 criteria under which an employer may pay FBT in respect of ordinary employees on an annual basis. These criteria are -

(a) Where the employer's "gross tax deductions" and specified superannuation contribution withholding tax deductions in the preceding year did not exceed $100,000. "Gross tax deductions" is defined in section 353(6) of the Act to be tax deductions payable by the employer under Part XI (effectively the PAYE system) before deducting any Family Support tax credits; or

(b) The employer was not an employer in the preceding year.

Subsection (6) requires that where an employer ceases business and begins a new business, or operates two or more businesses, the gross tax deduction and specified superannuation contribution withholding tax shall be aggregated for the purposes of subsection (1), and effectively (2), of this section.

Once an employer has determined that he or she is eligible to account for FBT on an annual basis he or she must provide a notice to the Commissioner. Subsection (3) provides that the notice of election must be in writing and state the first year (being a year commencing on the 1st day of April) to which that election applies. It must be furnished to the Commissioner not later than -

(a) In the case of an employer who was an employer in the preceding year (being from 1 April to 31 March), 30 June in that year in which the election is to first apply; and

(b) In the case of an employer who was not an employer in the preceding year (being from 1 April to 31 March), the last day of the quarter that first ends after the day the employer first becomes an employer of employees (other than shareholder-employees).

(For example, a sole proprietor who has not employed any person in the last 12 months employs 3 persons on 15 May. The notice of election must be furnished by 30 June.)

Section 336TA(4) provides that once a valid election is made, an employer pays FBT on an annual basis in respect of his or her employees. The amount of fringe benefit that must be paid is calculated in relation to the 4 quarters that comprise that year. In effect the employer does not pay FBT in respect of a year, but for the 4 quarters that comprise a year.

Section 33TA(5) provides that an employer who has made an election to account for FBT on an annual basis in accordance with this section is required to furnish a return by 31 May following the end of the year. The employer must set out the fringe benefits received or enjoyed and also the interest imposed under section 336TC by way of time value of money. The FBT liability and interest is also due on 31 May following the end of the income year.

Payment of Fringe Benefit on Annual Basis in Respect of Shareholder-Employees: Section 336TB(1) to (7) sets out the qualifying requirements for an income year basis of payment in relation to shareholder-employees. It also sets out when returns must be furnished and what is required in those returns.

A private company (as defined in section 2 of the Companies Act 1955) that is an employer may elect to pay fringe benefit tax on shareholder/employee benefits on an income year basis in respect of the income year in which they first qualify and subsequent income years. Section 336TB(2) sets out 2 criteria under which an employer may qualify as an employer who may quantify and pay their fringe benefit tax liability in relation to shareholder employees on an income year basis -

(a) Where the employer's "gross tax deductions" and specified superannuation contribution withholding tax deductions in the preceding year did not exceed $100,000. Gross tax deductions is defined in section 353(6) of the Act to be tax deductions payable by the employer until Part XI (effectively the PAYE system) before deducting any Family Support tax credits; or

(b) The employer was not an employer in the preceding year.

In effect these criteria are the same as those applying to an employer wishing to qualify as an annual payer under section 3336TA. The real difference arises in that for the purposes of the eligibility test the term "preceding year" has a different meaning. Subsection (7) provides that the term "preceding year" means -

(a) In the case of an employer with a standard balance date, the year that ended on 31 March; and

(b) In the case of an employer with a late balance date, the year ending 31 March that last ends before the beginning of the employer's current income year.

(For example, an employer has a 30 June balance date. The preceding year would be the year from 1 April to 31 March preceding the 30 June.)

(c) In the case of an employer who has an early balance date the term “preceding year” can have two meanings-

   (i) Where the employer has been an employer in prior years, it is the year commencing on 1 April which occurs before the beginning of the employer’s income year; or

   (ii) For the purposes of determining whether an early balance date employer meets the new employer test, it is that part of the year which commences on 1 April which occurs before the beginning of the employer’s income year and which ends on the day before the commencement of the employer’s income year.

Once an employer has determined that he or she is eligible to account for FBT on an income year basis, the employer must provide a notice in accordance with section 336TB(3) of the Act. The notice of election must be in writing and state the first income year to which that election applies. It must be furnished to the Commissioner not later than -

(a) In the case of an employer who was an employer in the preceding year, the last day of the quarter that first ends after the commencement of the income year to which that election applies; or

(b) In the case of an employer who was not an employer in the preceding year, the last day of the quarter that first ends after the day the employer first becomes an employer of employees.

Section 33TB(5) provides that an employer who has made an election to account for FBT on an income year basis in accordance with this section is required to furnish a return by the terminal tax date for that year. The employer must set out the fringe benefits received or enjoyed and also the interest imposed under section 336TC by way of time value of money. The FBT liability and interest is also due on the same terminal tax date.

Section 336TB(6) requires that where an employer ceases business and begins a new business or operates two or more businesses, the gross tax deduction and specified superannuation contribution withholding tax shall be aggregated for the purposes of subsection (1) of this section.

Time Value of Money Interest: The new section 336TC provides for the payment of interest where an employer pays fringe benefit tax on an annual (section 336TA) or income year basis (section 336TB). The section provides for regulations to charge interest.

Subsection (2) provides that any interest payable shall be -

(a) Calculated in accordance to regulations issued by the Governor-General by Order in Council; and

(b) Be payable at the same time as the FBT to which it relates; and

(c) Shall be of the same nature as FBT.

Subsection (3) provides for the Governor-General to issue an order in council from time to time specifying how the interest may be calculated.

Subsection (4) provides that in specifying a method to be used to calculate interest, the regulations shall have regard to -

(i) Any period or average period for which the payment of FBT has been deferred when compared with the quarterly basis of paying FBT; and

(ii) The annual rate of interest specified under section 398A of the Act (provisional tax “use of money” interest provisions); and

(iii) The fact that any amount of interest calculated is deductible to the employer.

Subsection (4) goes on to provide that the regulations may specify different methods of calculation and the use of different variables if appropriate.

Application Date

Section 21(2) provides that this section shall apply from 1 April 1992 in the case of employers who pay on the quarterly basis or the annual basis under section 336TA of the Act. It also applies from 1 October 1991 in the case of employers to whom section 336TB applies and whose income commences on or after 1 October 1991.

Additional tax to be charged if default made in payment of fringe benefit tax

Subsection (1) of this section amends section 336U to ensure that the charging of additional tax commences on the appropriate due dates if payment is not made.

Additional tax shall be charged at the expiry of the day specified in -

(a) Section 336T(1), where the employer pays fringe benefit tax on a quarterly basis (20 days after the expiry of the quarter); or

(b) On the expiry of the relevant 31 May (the due date for furnishing the PAYE reconciliation form), where the employer pays on an annual basis; or

(c) At the expiry of the relevant terminal tax date in relation to that employer, where the employer pays FBT on an income year basis.

Subsection (2) inserts a new subsection 336U(3) which provides that the term "fringe benefit tax" also includes any interest imposed under section 336TC of the Act.

Application Date

Section 22(3) provides that this section shall come into force on 1 October 1991.

Assessment of fringe benefit tax

This section makes two amendments to section 336V. The first adds the words "or any income year" after the words "quarter" and the second is to add a subsection (4) which provides that the term "fringe benefit tax" includes any interest imposed under section 336TC of this Act.

Application Date

Section 23(3) provides that this section shall come into force on 1 October 1991.

Changes in period for which fringe benefit tax payable

This section introduces a new section 336VA-

Section 336VA(1) provides that where an employer has been paying FBT on an annual basis in accordance with section 336TA of the Act, and the employer no longer meets the criteria of -

(a) Gross tax deductions and specified superannuation contribution withholding tax does not exceed $100,000 in the preceding year; or

(b) The employer was not an employer in the preceding year,

then the employer is required to furnish and pay FBT on a quarterly basis from the commencement of the 1st day of the year.

Section 336VA(2) is a similar provision to subsection (1) to cover shareholder-employees. In this case the employer is required to furnish and pay FBT on a quarterly basis in respect of fringe benefits provided to shareholder employees on of after the first day of the income year of the employer.

Section 336VA(3) provides that an employer paying on an income year basis or an annual year basis may at any time elect, by notice in writing to the Commissioner, to pay FBT on a quarterly basis. Where an employer so elects the employer shall furnish returns and pay fringe benefit tax on a quarterly basis. The employer commences to furnish and pay FBT quarterly on or after -

(a) In relation to an employer who pays annually, 1 April following the date of election to cease paying annually; or

(b) In relation to an employer who pays on an income year basis, the first day of the income year which follows the date of the election; or

(c) Such other date as may be agreed between the employer and the Commissioner.

Subsection (4) of section 336VA covers the position where -

(a) An employer transfers from paying FBT on an income year basis to a quarterly basis; and -

(b) The date determined in the earlier provisions of this section as the date on which the employer should start paying quarterly is not the same day as the first day of a quarter.

In that event the employer is required to furnish and pay FBT, in accordance with section 336T, as if the period between the date specified in the earlier section and the commencement of the next quarter was in fact a quarter.

(For example, An employer with a 31 May balance date elects, in accordance with section 336TB, to pay FBT in respect of shareholder-employees on an annual basis. After 2 years the employer elects, on 3 September, to pay FBT on a quarterly basis again. This election will, under paragraph (b) of subsection 3), apply from the following 31 May. As 31 May is not the commencement of a quarter the period from 1 June to 30 June is required to be treated as a quarter.)

Subsection (5) is similar to subsection (4) but applies to employers of shareholder employees. Where the employer has elected, in accordance with section 336TB, to pay FBT on an annual basis but the first day of the first income year to which that election applies is not the first day of a quarter. The employer is required to furnish a return in relation to the quarter as if it where a complete quarter, rather than on ending with the first day of the employer's income year.

Application Date

Section 24(2) provides that this section shall come into force on 1 October 1991.

Application of other provisions to fringe benefit tax

Section 25(1) simply amends section 336Y to insert the appropriate income year references.

Application Date

Section 25(2) provides that this section shall come into force on 1 October 1991.

Various Due Date Changes

Sections 14, 15, 29, 30, 32, 33, 34, 35 and 36

Section 14 changes the due date for the payment of non-resident withholding tax deductions from the 14th day of the month following the month of deduction to the 20th day of the month following the month of deduction.

Application Date

This change applies to non-resident withholding tax payable on or after 1 July 1992. Non-resident withholding tax deductions made during June 1992 must now be accounted for on the 20th day of July 1992 instead of the 14th.

Section 15 amends section 327E of the principal Act, which establishes the due dates for the payment of resident withholding tax, by replacing all references in that section to the 14th day with references to the 20th day.

Application Date

The section applies to all deductions of resident withholding tax made on or after 1 July 1992. People who account for resident withholding tax deductions on a monthly basis will now be required to account for resident withholding tax deductions made during July 1992 by 20 August 1992, instead of 14 August.

For people who are required to account for resident withholding tax deductions in two instalments, the change will first apply to the October instalment.

Section 29 changes the due date for furnishing company dividend statements from 31 May following the end of the company's imputation year to the due date for furnishing the company's income tax return.

Application Date

This amendment applies to company dividend statements which must be furnished for dividends declared in the imputation year commencing 1 April 1991. Company dividend statements that would (apart from this amendment) have been required to be furnished by 31 May 1992 must now be furnished by the due date applicable to the company's 1992 return of income.

Section 30 changes the due date for furnishing annual imputation returns from 31 May following the end of the company's imputation year to the due date for furnishing the company's income tax return.

Application Date

This amendment applies to annual imputation returns which must be furnished for the imputation year commencing 1 April 1991. The annual imputation return for this year that would (apart from this amendment) have been required to be furnished by 31 May 1992 must now be furnished by the due date for the company's 1992 return of income.

Section 31 changes the due date for the payment of further income tax from 31 May following the end of the company's imputation year to 20 June following the end of the company's imputation year.

Application Date

This amendment applies to payments of further income tax made for the company's imputation year commencing on 1 April 1991.

Section 32 changes the due date for the payment of imputation penalty tax from 31 May following the end of the company's imputation year to 20 June following the end of the company's imputation year.

Application Date

This amendment applies to payments of imputation penalty tax made for company's imputation year commencing on 1 April 1991.

Section 33 changes the due date for accounting for dividend withholding payment deductions to the Department from 14 days following the end of the quarter to 20 days after the end of the quarter.

The section also changes the date dividend withholding payments are deemed to have become payable to the Department in cases of default; from 14 days after the end of the quarter in which the liability to deduct arose to 20 days after the end of the relevant quarter.

Application Date

The section applies to all deductions and amounts of dividend withholding payments payable on or after 1 April 1992. For people who are required to account for dividend withholding payments, the changes will first apply to the dividend withholding payment deductions made during the quarter ended March 1992. These deductions must now be accounted for by 20 April 1992 instead of 14 April.

Section 34 changes the due date for furnishing an annual dividend withholding payment account return from 31 May following the end of the company's imputation year to the due date for furnishing the company's income tax return.

Application Date

This amendment applies to annual dividend withholding payment account returns required to be furnished for the imputation year commencing 1 April 1991. The annual imputation return for this year that would (apart from this amendment) have been required to be furnished by 31 May 1992 will now be furnished on the due date applicable to the company's 1992 return of income.

Section 35 changes the due date for the payment of further dividend withholding payment from 31 May following the end of the company's imputation year to 20 June following the end of the company's imputation year.

Application Date

This amendment applies to further dividend withholding payments made for the company's imputation year commencing on 1 April 1991.

Section 36 changes the due date for the payment of dividend withholding payment penalty tax from 31 May following the end of the company's imputation year to 20 June following the end of the company's imputation year.

Application Date

This amendment applies to payments of dividend withholding payments penalty tax made for the company's imputation year commencing on 1 April 1991.

Imputation

Sections 26 - 28

Group Companies

Section 26 amends section 383 of the Income Tax Act, to make section 383 apply for the purposes of the imputation regime. Where a company included in a group of companies allocates provisional tax to another company in the group (as that section allows) both companies must adjust their imputation credit accounts. A credit will arise to the ICA of the underpaid company (as that term is defined in section 383) and a debit will arise to the ICA of the excess company (see sections 27(2) and 28(1) of the Amendment Act).

The adjustments are made on the date on which notice in writing of the allocation of the tax is given to the Commissioner in accordance with section 383(4).

Application Date

These amendments apply to tax on income derived in the 1991 and subsequent income years.

Section 27 amends section 394D(1)(a) of the Income Tax Act. It makes it clear that where the Commissioner issues a joint assessment of income tax under section 191(8) of the Act, the imputation credits that arise from the payment of that tax are to be allocated to the ICA of each company in the group in proportion to the amount of tax that would have been assessed to each company had separate assessments been made.

This is achieved by ensuring an imputation credit arises to the ICA of a company only for tax paid on income derived by that company.

Application Date

The amendment applies to tax on income derived in the income year commencing 1 April 1990, and in every subsequent year.

General

Section 28(2) amends paragraph (c) of section 394E(1) of the Act. It ensures that refunds of excess retention tax paid by a company before it becomes an imputation credit account company do not give rise to a debit in the imputation credit account.

Section 28(3) amends paragraph (j) of section 394E(1) of the Act to ensure that refunds of any credit under section 156F(4) of the Act in relation to export market development expenditure or tourist-promotion expenditure incurred by a company during an income year prior to the year the company became an imputation credit account company do not give rise to a debit to the imputation credit account.

Subsection (5) inserts a paragraph in section 394E(2) of the Act. It provides that the debit arising in the imputation credit account of a company as a result of the refund of any credit under section 156F(4) of the Act shall arise on the date the credit is refunded.

Application Date

The amendment effected by subsection (2) will apply to a refund of excess retention tax made on or after 1 April 1990.

The amendment effected by subsections (3) and (5) are deemed to have come into force on 1 April 1989.

Imputation and Refunds of Tax paid on FIF Income

Because the introduction of the Foreign Investment Fund (FIF) regime has been deferred, Inland Revenue will be reassessing all taxpayers' returns that include FIF income or losses for the 1988 to 1991 income years.

A full discussion of the FIF regime deferral is on page 25 of this bulletin.

Inland Revenue has recently discovered problems for companies that have paid tax on FIF income and subsequently allocated that tax as imputation credits attached to dividends.

The problem is caused by the operation of section 394M(l) of the Act, which will not allow a refund of tax paid by an Imputation Credit Account (ICA) company to exceed the credit balance in the company's ICA (This is to prevent an ICA company from receiving a refund of tax that has been allocated as imputation credits attached to dividends that it has paid). ICA companies may therefore not receive a full refund of tax paid on FIF income.

Officers or Agents of companies in this position should contact:

John Tresize
International Tax Central Unit
Wellington Inland Revenue Office

Ph (04) 859-809

Goods and Services Tax Amendment Act 1991

Hybrid Basis of Accounting for GST

Sections 2(1), (4) and (5), 3, 4, 5, 6 and 7

Introduction

This amendment introduces a third basis of accounting for GST. This accounting basis is called the hybrid basis and is a combination of the invoice and payments bases. Output tax will be accounted for on an invoice basis and input tax on a payments basis.

Background

The Tax Simplification Consultative Committee recommended in its report that the GST Act should be amended to allow registered persons to adopt the hybrid basis of calculating their GST liability. This basis of accounting will assist registered persons who currently do not meet the payments basis criteria but incur significant compliance costs in accounting for GST on the invoice basis. A registered person who accounts for GST on the invoice basis must maintain a creditors ledger in order to calculate that person's input tax. The hybrid basis will alleviate the need for a creditors ledger to be maintained. This method of accounting for GST has been adopted by many registered persons without any legal authority. The amendment regulates this practice.

Key Issues

Accounting basis

The amendment repeals the current section which deals with basis of accounting for GST and substitutes four new sections which operate as follows:

- Section 19 provides that a registered person must account for GST on the invoice basis unless application in writing is made to account for GST on either the payments or hybrid basis. This provision also sets out when the new basis of accounting is to take effect from.
- Section 19A sets out the criteria for the adoption of the payments basis of accounting. The criteria have not changed.
- Section 19B deals with changes in accounting bases. In particular it provides for certain information to be furnished in calculating the tax payable in respect of the change in the accounting basis. The provision also sets out when a list of creditors and / or debtors must be prepared.
- Section 19C sets out the adjustments that must be made when a registered person changes accounting bases. The effect of the adjustment is to ensure that all output and input tax in previous taxable periods is accounted for on the basis of the new accounting basis as at the date of the changeover. This adjustment may result in either further GST being payable or a refund. Appendix B outlines the adjustments that must be made when a registered person changes to or from the hybrid basis. The adjustments made in respect of changes between the invoice and payments basis have not changed.

Application must be made to adopt Hybrid Basis

All registered persons who wish to adopt the hybrid basis of accounting must make written application to Inland Revenue.

Persons using hybrid basis prior to enactment

If a registered person has been operating the hybrid basis of accounting prior to the enactment of this amendment, that person must make application in writing to the Commissioner to adopt that basis. In addition, that person will need to exercise care in making the adjustment required on the changeover, if an adjustment needs to be made. The adjustment will only reflect taxable supplies received (input tax) that have been accounted for on the invoice basis for which payment is still outstanding at the date of the formal changeover. See Appendix B for details as to which particular supplies are subject to the adjustment.

Calculation of tax payable

Section 20 of the GST Act (which deals with the calculation of tax payable) is also amended to reflect the hybrid basis of accounting. This is a key provision as it provides the mechanism for the hybrid basis to work. The mechanism is that output tax is accounted for on the invoice basis while input tax is accounted for on the payment basis. Appendix B illustrates the calculation of tax payable under the hybrid accounting basis.

Consequential amendments to the rate change provisions

A number of consequential amendments have been made to section 78B and section 78C of the GST Act, which deal with a GST rate change.

Section 78B, which requires an adjustment to be made by a registered person who accounts for GST on a payments basis following a rate change, has been amended. The provision has been expanded to include persons who account for GST on the hybrid basis. The adjustment required under this provision will only apply in respect of taxable supplies received (input tax). The amendments to this section will only apply in the event of a further rate change.

Section 78C deals with changes in the accounting basis coinciding with or occurring after a change in the rate of tax. The amendment ensures that a direction to change accounting basis which coincides with a rate change applies in respect of the hybrid basis of accounting. This amendment will only apply in the event of a further rate change.

Where a registered person changes their accounting basis subsequent to a rate change, section 78C also imposes a number of rules for any adjustment made in terms of the new section 19C and the calculation of input and output tax. The amendment ensures that these rules apply to the hybrid basis of accounting. This provision will apply in respect of any change in accounting basis where pre GST rate change supplies are included in any adjustment made under section 19C.

Other consequential amendments

A number of other consequential amendments are made to the GST Act. These amendments correct cross-references as a result of the repeal of section 19 and substitution of section 19 to 19C.

Application date

These amendments to implement the hybrid basis of accounting came into force on 1 April 1991. Accordingly, registered persons are entitled to make application to the Commissioner from that date to adopt the hybrid basis of accounting.

Office of Parliament

Section 2(2), (3) and (6)

Introduction

This amendment ensures that an Office of Parliament such as the Ombudsman is treated in the same manner for GST purposes as a public authority. It has always been the intention that such instruments of Parliament should be subject to GST.

Background

A public authority (such as a government department) is deemed to supply goods and services in relation to an appropriation of public money by the Crown. The previous definition of a public authority did not include an Office of Parliament. An Office of Parliament is not an instrument of the Government, but an instrument of Parliament.

Key Issues

The amendment defines what an Office of Parliament is for the purposes of the GST Act. This new term is in turn included in the definition of public authority. This ensures that Offices of Parliament are subject to GST in the same way as public authorities.

An Office of Parliament is defined as being the administrative and support services and staff of:

- The Parliamentary Commissioner for the Environment;
- The Wanganui Computer Centre Privacy Commissioner;
- The Ombudsman; and

- The Controller and Auditor-General.

The administrative function of an Office of Parliament is a public authority and therefore is carrying on a taxable activity. The appropriation of public money for that function is deemed to be consideration for a supply of goods and services. As a result of this interaction, the amendment ensures appropriations of public money in respect of the administrative and support services and staff of the above mentioned offices are subject to GST.

An appropriation of public money in respect of the employment or engagement of (say) the Controller and Auditor-General is not subject to GST under this amendment. The GST Act explicitly excludes the Controller and Auditor-General, the Ombudsman, Commissioner for the Environment, and Privacy Commissioner from carrying on a taxable activity.

Application date

This amendment applies from 1 July 1991, being the commencement of the new fiscal year.

Inland Revenue Department Amendment Act 1991

Power of Taxation Review Authority to Award Costs

Section 3

On a number of occasions The Taxation Review Authority has expressed the wish that it should have power to award costs in its own favour in appropriate circumstances.

Circumstances such as the failure to appear at fixtures allocated for the hearing of objections, the giving of inadequate notice of the abandonment or settlement of objections, and the making of frivolous or vexatious objections have been of particular concern to The Authority. Primarily this concern arises because such abuses operate to deny The Authority the ability to deal expeditiously with other matters. The abuses also result in significant and largely avoidable costs to The Authority.

Section 3 of The Inland Revenue Department Amendment Act 1991 inserts a section 39A in the Principal Act. The amendment permits the Authority, if it considers it proper to do so, to order either the Commissioner or the Objector to pay to the Crown such sum in respect of the costs of the Authority as it considers reasonable. A right of appeal against an order of costs is provided. An order of costs made under this provision is enforceable and recoverable as a final judgement in the District Court.

This provision applies from the date of assent of the Act - 31 March 1991.

Stamp and Cheque Duties Amendment Act 1991

Definition of Term “Public Authority”

Section 2

The definition of the term “public authority” in section 2 of the Stamp and Cheque Duties Act 1971 is amended to correct a drafting error in a consequential amendment made in the Stamp and Cheque Duties Amendment Act (No.2) 1988.

The amendment ensures that the stamp duty exemption enjoyed by public authorities (e.g. State Owned Enterprises) is confined to property held by public authorities on behalf of the Crown.

This provision applies from the date of assent of the Act - 31 March 1991.

Income Tax Amendment Act (No. 2) 1991

Amendments Resulting from the Abolition of Family Benefit

Sections 2(1) and (3), 3, 4, and 5

Introduction

The abolition of family benefit has necessitated a number of consequential changes to the Income Tax Act 1976 in relation to:

- the definition of "income-tested benefit" to remove the reference to family benefit; and

- the rebates where eligibility depends upon the payment of family benefit in respect of a child.

The changes to the family support and guaranteed family minimum income tax credit regimes as a result of the abolition of family benefit are discussed on pages 27 - 30 of this TIB.

Background

A number of provisions in the Income Tax Act make reference to the payment of family benefit in respect of a child as criteria for determining whether a taxpayer is eligible to a rebate. With the abolition of family benefit is necessary to remove such references and provide an alternative criteria where necessary.

Key issues

Definition of "income-tested benefit"

The definition of the term "income-tested benefit" has been amended to remove reference to an emergency benefit similar to family benefit. This amendment also removes the reference to grants payable under the Tertiary Assistance Grants Regulations 1982, which was repealed in 1988.

Rebate in certain cases for children

Section 50A entitled a child to whom family benefit was payable a rebate in respect of certain income derived. The reference to family benefit has been removed from the criteria for determining the eligibility of the rebate.

To ensure that eligibility for the rebate is consistent with previous basis, the criteria for the rebate has been changed. Family benefit was payable in respect of a child to the end of the calender year in which that child turned 18 where the child was still attending school. Accordingly, the criteria has amended to reflect this.

Transitional tax allowance

Section 50C provides a rebate to a full-time earner whose assessable income is below a certain threshold. The provision has amended to remove the references to family benefit where appropriate.

In particular, the following changes have been made:

- the definition of family benefit has been repealed;

- the definition of qualifying person has been amended to exclude from that definition a child under the age of 18 who is still attending school;

- item "z" of the formula for calculating the amount of allowance has been amended by removing the reference to weeks in which neither the taxpayer nor the taxpayer's spouse (if any) where receiving family benefit; and

- the repeal of the proviso which dealt with cessation of family benefit.

A taxpayer's entitlement to this rebate will not change as a result of these amendments.

Rebate in certain cases for housekeeper

Section 54 allows a taxpayer to claim a rebate in respect of certain payments made to a "housekeeper". The definition of child has been amended to remove the reference to whom family benefit is payable. The rebate will now be allowed in respect of a child under the age of 18 or who is suffering from any mental or physical infirmity or disability.

Application date

These amendments apply with respect to the income year commencing on 1 April 1991.

Living Alone Payments

Section 2(2) And (4)

Introduction

This amendment corrects a drafting oversight in respect of the definition of the term "salary and wages".

Background

A living alone payment is an additional amount paid to unmarried person who either receives guaranteed retirement income (GRI) or a veteran's pension. This amount is a supplementary payment to GRI which is treated as being salary and wages for PAYE purposes. Due to a drafting oversight, living alone payments were not included in the definition of "salary and wages".

Key Issues

This amendment corrects this drafting oversight to ensure that living alone payment are treated as being salary and wages and therefore subject to PAYE deductions.

Application date

This amendment applies with respect to the income year commencing on 1 April 1990 to coincide with the income year in which living alone payments first become payable.

Guaranteed Retirement Income Earner Surcharge

Section 12

Introduction

The amendment to the Guaranteed Retirement Income Earners' Surcharge regime corrects a drafting oversight to ensure that the taxpayer does not pay surcharge in excess of their net guaranteed retirement income.

Background

With the advent of the new superannuation and life insurance tax regimes, the determination of "other income" for the purposes of the GRI surcharge regime was amended. "Other income" was amended to include one-half of any pension or annuity received from a superannuation fund or a life insurance fund where that pension or annuity is exempt for tax purposes. However, the definition of "net guaranteed retirement income" was not consequentially amended to ensure that this income was excluded from the calculation of this amount.

Key issues

The definition of "net guaranteed retirement income" has been amended to exclude such pensions or annuities from the calculation of this amount. A person's "net guaranteed retirement income" is the gross GRI less the tax applicable to that income as if it were the last income earned and taxed accordingly. This amendment ensures GRI earners who receive such pensions or annuities do not pay surcharge in excess of their "net guaranteed retirement income".

Application date

This amendment applies with respect to the income year commencing on 1 April 1990, to coincide with the application date of the amendment to include such pensions and annuities in the determination of "other income".

Basic Tax Deductions

Section 29

Introduction

This amendment replaces the weekly PAYE tables in the Second Schedule to the Income Tax Act.

Background

The Tax Simplification Consultative Committee recommended that the steps in the PAYE tax tables be amended from 20 cents to $1 steps. The purpose of this was to reduce the size of the tax tables and make them easier to use.

Key issues

The basic weekly tax deductions table specified in Appendix A of the Second Schedule to the Income Tax Act has been amended by removing the 20 cent steps and replacing them with $1 steps.

Application date

The new PAYE tables apply with respect to tax deductions made from payments of salary and wages paid on or after 1 April 1991.

Life Insurance Taxation Regime

Sections 7, 8, 26 and 30

Introduction

A number of provisions which amend the Life Insurance taxation regime contained in the Income Tax Act 1976 ("the Principal Act") are incorporated into the Income Tax Amendment Act (No.2) 1991 ("the Amendment Act"). For a full explanation of the Life Insurance taxation regime itself, please refer to Appendix C of TIB Volume Two, Number 3 issued in October 1990.

Non Resident Life Insurers issuing policies in New Zealand

Section 7 of the Amendment Act amends section 204L of the Principal Act. This section deals with non resident life insurers who issue policies in New Zealand. The amendment redefines a nonresident life insurer's New Zealand policy income to ensure that it includes both investment income and underwriting income derived from policies offered or entered into in New Zealand.

This income will be subject to the life insurance taxation regime, whilst any other income derived by the life insurer's overseas business will be taxed under the "ordinary" provisions of the Principal Act.

Separation of Superannuation Business

Section 8 of the Amendment Act amends section 206 of the Principal Act, which relates to the separation of a life insurer's superannuation business from its other activities.

Extension of due date for 1991 tax year applications

Firstly, in consideration of the timing of the amendments, section 8(1) of the Amendment Act allows the separation to be backdated to the beginning of the life insurer's 1991 income year if the life insurer makes application to the Government Actuary for approval of the arrangements on or before the later of 30 June 1991 or the life insurer's balance date. This represents an extension from the original deadline of the later of 31 March 1991 or balance date.

Should the life insurer wish to delay the application for approval of the transfer arrangements, the final date for applications remains unchanged at 1January 1992, and the effective date of the transfer is also unchanged as the first day of the income year in which the transfer actually takes place.

Transfer of financial arrangements

Section 8(2) of the Amendment Act substitutes a new section 206(3) into the Principal Act. This provision deals with the transfer of financial arrangements from a life insurer to the trustee of a superannuation fund pursuant to an arrangement approved by the Government Actuary. It should be noted that this provision deals only with financial arrangements which are subject to the "accruals rules" contained in sections 64B to 64M of the Principal Act.

The new section 206(3) of the Principal Act provides that the effective date for the transfer of financial arrangements will be the same as for other assets, namely the beginning of an income year. The value at which the transfer takes place is (at the option of the life insurer) either the market value as at the beginning of the income year or an adjusted base price as at that date.

The only exception to this is for financial arrangements which were acquired by the life insurer after the beginning of that income year, and the effective date for the transfer of these arrangements is the date upon which the life insurer acquired them, and they are deemed to be transferred at the acquisition price incurred by the life insurer.

All income derived and expenditure incurred during the period from the effective date of the transfer to the actual date of the transfer is deemed to be derived or incurred by the life insurer as agent for the trustee of the superannuation scheme.

Transfer of superannuation liabilities

A new section 206(6A) is inserted into the Principal Act by section 8(3) of the Amendment Act. This provides the rules for the transfer of the superannuation liabilities from the life insurer to the trustee of the superannuation scheme pursuant to a transfer arrangement approved by the Government Actuary.

Subsection 6A deems the trustee of the superannuation scheme to be liable to provide the superannuation benefits rather than the life insurer, and all amounts relating to the liabilites are transferred to the trustee of the superannuation scheme as from the beginning of an income year. In addition, there are provisions to ensure that the actuarial reserves of the life insurer do not include any amounts relating to the superannuation liabilities, even if the liabilities at the end of the previous year did include amounts relating to the superannuation policies.

For the period from the effective date of transfer until the actual date of transfer, there is a deemed life reinsurance policy between the life insurer and the trustee of the superannuation scheme to ensure that the underwriting income relating to the life insurance element inherent in the superannuation policies is taken into account. This contract is treated as if a premium has been paid by the trustee of the superannuation scheme and received by the life insurer and as if it were entered into on an arm's length basis by the life insurer and trustee of the superannuation scheme. The life insurer's actuarial reserves are deemed to include amounts relating to this reinsurance policy.

Tax rate for superannuation business

Section 8(4) of the Amendment Act inserts a provision to clarify the taxation rate applying to superannuation schemes which receive superannuation assets and liabilities from a life insurer pursuant to an arrangement approved by the Government Actuary. This provision confirms that, for the period before 1 April 1990, the income relating to the transferred assets is taxed at the same rate as would have applied to the life insurer in respect of that income. As at 1 April 1990 the tax rate for all superannuation business was set at 33 cents.

Non-standard balance dates

In addition, section 8(4) of the Amendment Act inserts a new section 206(10) which is a standard provision ensuring that section 206 of the Principal Act applies with appropriate modifications to allow for taxpayers with nonstandard balance dates.

Credits arising to policyholder credit account of other person

Section 26 of the Amendment Act amends section 394ZZZG(6) of the Principal Act. This amendment makes it clear that a life insurer which is not a New Zealand resident company obtains a credit to its policyholder credit account for tax paid on its net underwriting income as well as its net investment income.

Transitional provision

Section 30 of the Amendment Act makes a minor amendment to correct a drafting error and ensures that an election by a life insurer to become a policyholder credit account person is retrospective to the life insurer's early 1991 income year in line with the implementation of the life insurance tax regime itself.

Transitional Provisions - Attributed Foreign Income and Losses and Foreign Investment Fund Income and Losses

Section 9

Introduction

This item explains the legislative changes made to the Income Tax Act to extend the transitional provisions relating to the Controlled Foreign Company (CFC) regime, and defer the application of the Foreign Investment Fund (FIF) regime.

Background

Section 245Y of the Income Tax Act provided that if a controlled foreign company was resident at all times during the period commencing 1 April 1988, (or the date of the acquisition of the interest if the interest was acquired after 1 April 1988), and ending on 31 March 1990 (or the date of disposition of the interest if the interest was disposed of before 31 March 1990), in a country or territory not listed on the Seventeenth Schedule to the Act, any person who holds an income interest in that CFC is not required to calculate attributed foreign income or attributed foreign loss until 1 April 1990.

The application date of the FIF regime was 1 April 1988 unless a fund is resident in a country or territory not listed on the Seventeenth Schedule to the Act. Any person with a interest in a fund resident in a non-seventeenth schedule country was not required to calculate any FIF income or loss until 1 April 1989.

Key Issues

An amendment is made to section 245Y of the Act to extend the period to which the transitional provisions, in relation to the CFC regime, will apply. Prior to this amendment these provisions were due to expire on 31 March 1990. They will now apply until 31 March 1991.

In effect, this amendment defers the application date of the regime in relation to persons holding income interests in CFCs resident in non-seventeenth schedule countries. Note that the application date has not changed in relation to interests held in CFCs resident in a country listed on the seventeenth schedule.

In comparison, application of the FIF regime has been deferred until 1 April 1991. However where a person acquired an interest in a FIF on or after 6 March 1991 (the date of the announcement of the deferral of the regime), special provision has been made to ensure that the FIF regime has application, in relation to that interest only, from the date of acquisition. The intention of the inclusion of this provision is to ensure that persons who acquire an interest in a FIF after 6 March 1991 and subsequently dispose of that interest before 31 March 1991 will be subject to the FIF regime; thus it is anti-avoidance in nature.

This provision does not apply to any interest acquired by virtue of any rights attached to an interest held in a FIF before 6 March 1991. For example, any bonus issues received after 6 March 1991 in respect of an interest acquired before 6 March 1991 will not be subject to the special provision. This situation also applies where the receipt of an interest in a FIF is in respect of the exercising of an option.

In addition, the provision does not apply where the relevant interest was acquired through the operation of law. This will include instances where an interest has been bequeathed to a person by way of a will, and where mortgagees in possession or receivers obtain an FIF interest.

Section 245Y(4) is amended, with the effect that companies with late balance dates will be able to return the attributed foreign income derived from 1 April 1991 to their 1991 balance date, in the 1992 return of income. An amendment with similar effect has been made with respect to the FIF regime.

In estimating provisional tax for the income year commencing on 1 April 1991, a person is not required to take into account any FIF income for that year. Persons may however take anticipated FIF losses into account if they wish.

Tax payable in relation to any FIF income will not be taken into account when calculating any underestimation penalty charged under section 384, additional tax charged under section 398, and any interest payable in terms of section 398A.

Refunds of tax arising as a result of the new application date of the FIF regime will not generally qualify for interest on tax overpaid. However, where a person who is entitled to receive interest on tax overpaid under section 413A, receives a refund of tax previously paid on FIF income, that person will be entitled to receive interest in relation to the amount of tax refunded.

International Tax Regime

Recent Disclosure Exemptions Issued by the Commissioner

(This is not part of the No. 2 Amendment Act, but it relates directly to the previous article.)

Introduction

Under the International Tax regime, taxpayers must disclose interests held at any time during an income year (e.g. by way of shares or units) in a foreign company or foreign investment fund. S.245W requires this disclosure, which must be made by completing Part A of the form IR 4G or form IR 4H, as appropriate.

Three disclosure exemptions have recently been made under s.245W(2), resulting from the amendments outlined in page 25 of this TIB.

The exemptions relate to each of the income years commencing 1 April 1988, 1 April 1989 and 1 April 1990 and are reproduced in Appendix A to this TIB. They have the effect of cancelling and replacing the two exemptions made on 8 February 1989 and 26 November 1990.

Scope of Exemptions

Broadly, all three exemptions remove the requirement to disclose the following categories of interests, for the 1989, 1990 and 1991 income years:

1. an interest held in a foreign investment fund;

2. an interest held in a foreign company which is not an "income interest of 10% or greater";

3. an interest held in a foreign company resident at all times, in a country or territory not listed in the schedule of Low Tax Jurisdictions contained in the Seventeenth Schedule to the Act, provided that:

    (i) an election has not been made under s.245Y(2); and

    (ii) (for the 1990 and 1991 income years only) an "income interest of 10% or greater" is not held in any underlying foreign company to which the exemption does not otherwise apply.

Explanation & Examples

Income Interest of 10% or Greater (Categories 2 & 3(ii))

When determining whether or not an interest in a foreign company is an "income interest of 10% or greater", the following interests must be taken into account:

- income interests held directly in that foreign company and indirectly through any interposed foreign company;

- income interests held by associated persons (not being CFCs), as defined by s.245B.

Example

The disclosure exemptions would not apply to an income interest held in a Cayman Islands company by a husband and wife (associated under s.245B(d)) of 5% each as:

(i) their combined income interest is 10%, being an "income interest of 10% or greater"; and

(ii) Cayman Islands is listed on the Seventeenth Schedule.

Categories 1 & 2

Mr. A held 1,000 shares in Hong Kong based Industrial Equity (Pacific) Ltd during the years ended 31 March 1989, 1990 and 1991.

This interest would not be required to be disclosed as an interest in a foreign investment fund (on Part A of form IR 4H), as category 1 (outlined above) applies to each of those years.

This interest would also not be required to be disclosed as an interest in a foreign company (on Part A of form IR 4G), as category 2 (outlined above) applies to each of those years.

Category 3(i)

NZ Ltd held a 30% shareholding in K Ltd, a Dutch company. NZ Ltd also held a 15% share holding in S Ltd, a Spanish CFC in relation to which an election has been made under section 245Y(2) (to attribute foreign income or loss from 1 April 1988).

The interests held by NZ Ltd in both K Ltd and S Ltd are precluded from the scope of the disclosure exemptions by category 3(i) (outlined above). The interests in both companies are therefore required to be disclosed on Part A of separate IR 4G forms.

(Part B of the IR 4G form must also be completed by NZ Ltd to attribute income in relation to the interest held in S Ltd. This would also apply to the interest held in K Ltd if that company is a CFC, as an income interest of 10% or greater was held).

Category 3(ii)

This category applies for the 1990 and 1991 income years only, in instances where there is a chain of foreign companies. It ensures that the disclosure exemption will not apply to an interest held in any foreign company interposed between the taxpayer and any underlying foreign company which is not exempted from the requirement to disclose.

Example

NZ Ltd held at all times during the 1990 income year a 50% income interest in B Ltd, resident in Australia. At all times B Ltd held a 50% income interest in HK Ltd (resident in Hong Kong). NZ Ltd has not made an election under s.245Y(2).

The exemption does not apply to the interest held by NZ Ltd in HK Ltd, as:

(i) the interest is an income interest of 25% (50% x 50%), being an “income interest of 10% or greater”; and

(ii) Hong Kong is listed on the Seventeenth Schedule.

Therefore NZ Ltd would have to complete Part A of the form IR 4G in relation to its 25% interest in HK Ltd. (NZ Ltd would also have to complete Part B of that form to attribute income from HK Ltd, as that interest is an income interest of 10% or greater.)

As the exemption does not apply to the interest held by NZ Ltd in the underlying company HK Ltd, the exemption would not operate to preclude disclosure of the interest held by NZ Ltd in B Ltd.

Therefore, NZ Ltd would also have to complete Part A of a separate form IR 4G in relation to its 50% interest held in B Ltd.

Summary

For the 1989, 1990 and 1991 income years, an interest held in a foreign investment fund will not be required to be disclosed.

An interest held in a foreign company will not generally be required to be disclosed for those years, where that interest is not an “income interest of 10% or greater”, or where there is no requirement to attribute foreign income or loss under the CFC regime in relation to that and any underlying foreign company.

Amendments to the Family Support and Guaranteed Minimum Family Income Tax Credits Schemes

Sections 13 to 20

Introduction

These amendments make further changes to the family support and guaranteed minimum family (GMFI) tax credits schemes following the abolition of family benefit. Further, these amendments also streamline the methods of delivery of interim payments of family support and GMFI tax credits.

Background

The family support and GMFI tax credits schemes were dependent upon the payment of family benefit in respect of a child to determine whether a family was eligible to such tax credits. With the abolition of family benefit it is necessary to devise new rules for determining whether or not a family is entitled to receive family support and GMFI tax credits.

In its 1990 Budget, the Government announced that from 1 April 1990 the family support and GMFI schemes would be no longer administered by the Inland Revenue Department. However, the new Government decided that the Department should continue to administer these schemes for the 1992 income year. As a result of this decision, it was further decided that the delivery methods should be streamlined. The streamlining of the delivery method reflects the Tax Simplification Consultative Committee recommendation that family support and GMFI tax credits should be paid by one agency.

Key issues

Family support tax credits increased: Section 14(3)

The maximum amount of family support tax credit payable in respect of a child has been increased by $6 a week. This increase ensures that the level of assistance to low income earners is maintained following the abolition of family benefit.

The maximum annual entitlements of family support are increased to $2184 ($42 per week) for first the first child and those children aged 16, 17, or 18. For each subsequent child the maximum annual entitlement is increased to $1144 ($22 per week).

The maximum amount of the GMFI tax credit has not been increased.

Criteria for determining eligibility: Section 13(2), (3), & (4), Section 15(1)

With the abolition of family benefit as the criteria for determining the eligibility of family support and GMFI tax credits, it has been necessary to devise a new criteria. The new criteria is based on the concept of a person having the primary responsibility for the day to day care of a child who is financially dependent upon that person.

To reflect this concept, the following amendments have been made:

- A "qualifying person" for the purposes of both tax credit schemes is a person who:

  (a) Is aged 16 years or over; and

  (b) Is a principal caregiver of one or more dependent children; and

  (c) Either has been both resident and present in New Zealand for a continuous period of 12 months at any time, or each dependent child is both resident and present in New Zealand.

- A "qualifying person" does not include a person who receives:

  (a) War widows mother's allowance for family support purposes; and

  (b) An income-tested benefit, a specified war pension, or a war widows mother's pension for GMFI purposes.

- A "principal caregiver" is the person who, in the opinion of the Commissioner, has the primary responsibility for the day to day care of a dependent child other than on a temporary basis. The "principal caregiver" need not be a parent of the dependent child. Explicitly excluded from being a "principal caregiver" is:

  (a) Any unincorporated or corporate body of persons;

  (b) Any person who is a proprietor of or an employee in a home, institution or residence in which the child is cared for. For example, the proprietor of a residence established under the Children, Young Persons, and Their Families Act 1989 is not a "principal caregiver" for the purposes of these tax credit schemes.

- A "child" is any unmarried person under the age of 18. A person aged 16 or 17 years who is financially independent is excluded from being a "child". See also Key Issue - 18 year old attending school.

- A "dependent child" is one:

  (a) Who is being cared for by the person claiming the credit (qualifying person); and

  (b) Who is being maintained as a member of the person's family; and

  (c) Who is financially dependent on the person; and

(d) Who is not in receipt of payments under the Children, Young Persons, and Their Families Act 1989.

- A "financially independent" person is one:

  (a) Who is in "full employment". A person is in "full employment" if that person is employed under a contract of service or an apprenticeship for at least 30 hours a week on average, self-employed in a business for at least 30 hours a week on average, or is employed under a contract or award which is regarded as full-time employment; or

  (b) Who receives a grant under the Student Allowances Regulations 1988; or

  (c) Who receives payments under a Government-assisted scheme which the Department of Social Welfare consider analogous to a social security benefit; or

  (d) Who receives a social security benefit.

- A "resident" is a person who is ordinarily resident in New Zealand. A person who is unlawfully resident in New Zealand or lawfully resident by virtue of (say) a visitor's permit is excluded as being a resident.

The interaction of these terms ensures that family support and GMFI tax credits are paid to the principal caregiver in respect of a dependent child.

Commencement and cessation of tax credits: Section 14(2) & (4), Section 15(3) & (4), Section 16(3) & (4)

Eligibility to receive family support and GMFI tax credits commences or ceases when a person either commences or ceases to be the principal caregiver of a dependent child. Alternatively, a person ceases to be eligible for such credits where the child ceases to be a dependent child.

A person who has been issued a certificate of entitlement is required to notify the Commissioner on ceasing to be the principal caregiver. This applies where a person or their spouse ceases to be the principal caregiver of a dependent child and does not expect to resume that role of principal caregiver for a period of more than 56 consecutive days.

Shared custody: Section 14(5)

Where the parents of a dependent child are living apart, the eligibility for each parent to receive family support tax credits is dependent upon each parent having exclusive care of the child for at least 4 weeks out of every 12 weeks. Where a parent has at least 4 weeks exclusive care of the child, the tax credit is apportioned on the basis of the time that the child spends with that parent over the eligible period.

As this provision provides that both parents are qualifying persons, each parent is eligible for GMFI tax credits over the eligible period.

Both spouses principal caregivers: Section 14(5), Section 15(5)

Where both spouses are principal caregivers in respect of different dependent children, the Commissioner has the power to determine which spouse is the principal caregiver of all the children.

18 year olds attending school: Section 14(1), section 15(2)

Family benefit continued to be paid in respect of child who had attained the age of 18 years and continued to attend school or a tertiary educational establishment. Family benefit was paid to the end of the calendar year in which the child attained 18 years.

The family support and GMFI tax credits regimes have been amended to allow tax credits to be paid in respect of such dependent children. The payment of such tax credits is left to the discretion of the Commissioner. The eligibility to such tax credits ceases no later that the pay day after 31 December of the year in which the child attains 18 years. The eligibility may cease earlier if the child leaves school part way through the academic year.

Streamlining the delivery of credits: Section 16(1), (2), & (5), Section 17, Section 18, Section 19, Section 20

From 1 April 1991 the interim methods of delivery of family support and GMFI tax credits have been rationalised. Employers have been relieved of the burden of paying these credits through the PAYE system. Further, family support and GMFI tax credits will not be able to be credited as a provisional tax payment. The legislation that provided for the delivery of family support and GMFI tax credits through the PAYE and provisional tax systems has been repealed. A number of provisions which have application in the current income year in respect of those methods of delivery have not been repealed.

Interim payments by Social Welfare

If a family wishes to receive family support and GMFI tax credits by way of interim instalments, that family will need to apply for entitlement to the Inland Revenue Department. Once the entitlement has been determined, the information is transferred to the Department of Social Welfare for payment to commence. The Commissioner still has the ability to make payment where the Department of Social Welfare fails to make payment.

Such families will still be required to furnish a return of income at the end of the income year, to enable their actual entitlement to be determined.

Beneficiaries will continue to deal direct with the Department of Social Welfare in respect of their entitlements to family support.

End of year payment

If a family wishes to receive family support and GMFI tax credits as an end-of-year payment, there is no need to furnish an application for entitlement. A claim for family support and GMFI tax credits is made with the annual return of income.

Consequential amendment: Section 13(1)

The definition of Director-General has also be amended to reflect that the Director-General is the chief executive of the Department of Social Welfare appointed under the State Sector Act 1988.

Application date: Sections 13(5), 14(7), 15(7), 16(7), (3), 18(3), 19(2) and 20(3)

These amendments apply with respect to the income year commencing 1 April 1991.

Provisional Tax

Provisional Tax Uplifts - Sections 21, 22, 23 and 24

These sections amend Part XII of the Act. Provisional taxpayers who have furnished a return of income for an income year can now base their provisional tax payments on 105% of the residual income tax for the previous year, instead of 110% as presently provided. This amendment applies to provisional tax payments due on or after 7 July 1991 in relation to provisional tax payable for the 1992 and subsequent income years.

Where a taxpayer has not furnished a return of income for the previous year, provisional tax payments are now to be based on 110% of the residual income tax for the year before that previous year. Any underestimation penalty incurred by a taxpayer who has made a high voluntary estimate will not be charged a penalty greater than one based on the new uplift factor.

Non-Charging of Small Penalties - Section 27

Section 27 inserts a new section 411A into the Act, which will require the Commissioner not to charge small amounts of additional tax where the amount calculated is $5 or less. At present there is no threshold for charging additional tax which results in very small amounts being charged. This amendment will ensure a more cost effective regime by not charging penalties on small overdue amounts below the $5 threshold. The amendment also makes provision for future adjustments to the non-charging threshold by way of Order in Council.

Interest on Provisional Tax Overpaid - Section 28

Section 28 amends section 413A of the Act to cater for the position of persons who, having paid tax in the belief that they were provisional taxpayers, subsequently turn out not to be provisional taxpayers. The amendment allows interest to be paid on amounts paid by such persons as if it were in fact provisional tax. Taxpayers will need to have paid provisional tax with the expectation of being a provisional taxpayer in order to qualify for an interest payment.

Subclause (4) effectively applies the amendment (which relates to the 1991/92 and subsequent income years) to the income years commencing on 1 April 1988, 1989 and 1990.

Other Amendments

Drafting Corrections: Sections 6, 10 and 25

These clauses make a number of minor drafting corrections to the Act.

Section 6 corrects a minor drafting error by renumbering as section 106F the former section 106C of the Act that relates to persons associated with petroleum miners.

Section 10 corrects a wrong cross-reference in the definition of the term "exempt interest" in section 327A(1) of the Act by changing the reference to "section 61(14)" to read "section 61(4)".

Section 25 corrects a minor drafting error in section 394D(2) by renumbering as paragraph (i) that one of the 2 paragraph (h)s currently in that provision that relates to policy holder credit accounts.

Resident Withholding Tax - Section 11

Section 11 amends section 327H of the Act to provide that payers of interest will not need to issue resident withholding tax deduction certificates to recipients of interest in respect of particular accounts where recipients have received $20 or less of interest in a year.

Goods and Services Tax Amendment Act (No. 2) 1991

Zero-Rating of Intellectual Property Rights

Section 2

Introduction

This amendment ensures that services supplied, in respect of intellectual property rights, for and to a non-resident who is outside New Zealand at the time services are performed, are zero-rated. Zero-rating applies regardless of whether or not the rights are for use in New Zealand.

Background

The GST Amendment Act (No. 2) 1990 amended the zero-rating provisions to reflect the Department's policy that services supplied to a non-resident directly in connection with choses in action situated in New Zealand were zero-rated. However, the 1990 amendment went further to exclude services supplied to non-residents in respect of intellectual property rights for use in New Zealand from being zero-rated. This amendment conflicted with the practice adopted since 1 October 1986 to zero-rate such services. Further, the 1990 amendment had the effect of invalidating some rights conferred as the prescribed fee (including GST) was not paid as required by statute.

Key issues

The amendment ensures that certain services supplied for and to non-residents in respect of intellectual property rights are zero-rated. For zero-rating to apply the non-resident must be outside New Zealand at the time that the services are performed.

The services zero-rated are the filing, prosecution, granting, maintenance, transfer, assignment, licensing, or enforcement of intellectual property rights. Intellectual property rights include patents, trade marks, designs, copyrights and other similar rights.

Refund of GST paid

Where a registered person has imposed GST on services supplied to a non-resident in respect of intellectual property rights which are zero-rated in terms of this amendment, that person is entitled to a refund of the GST paid. GST should have been charged on services supplied to non-residents in respect of intellectual property rights for use in New Zealand. GST was chargeable on such services from 1 August 1990 to 31 March 1991 (date of assent).

A credit note will have to be issued if a tax invoice has been issued to the recipient of the supply. The previously agreed consideration for the supply has been altered due the impost of tax being zero-rated.

Validating provision

The amendment also contains a validating provision. This is to ensure that intellectual property rights conferred under the Designs Act 1953, the Patents Act 1953, the Trade Marks Act 1953, the Plant Variety Rights Act 1987 and any regulation made under those Acts are not invalidated as a result of the 1990 amendment to the GST Act.

Application date

This amendment applies in respect of supplies made on or after 1 October 1986.

Non-Charging of Small Penalties

Section 3

Section 3 amends section 41 of the Act to provide that additional tax for late payment will not be charged where it would amount to $5 or less.

Accident Compensation Amendment Act (No. 2) 1991

Abolition of ACC 506 Return

Section 3

Introduction

For many years tax practitioners have used the ACC 506 return to declare ACC leviable earnings allocated to shareholder-employees after 31 May each year, where that income relates to the year ending on 31 March of the same year.

This return will be dispensed with from the income year beginning 1 April 1991. This is part of the Department's FIRST Systems, and will also implement the Consultative Committee on Tax Simplification's recommendation to reduce the number of returns that small business groups must file.

Background

Section 43(1) of the Accident Compensation Act has been amended by the insertion of a new subsection (1A). This subsection provides that where an employer pays, credits, or allocates to an employee any amount as earnings after 31 May in any year, those earnings are now to be included in the Statement of Earnings which must be delivered by 31 May in the next succeeding year. The levy payable on those earnings and calculated in terms of section 43 (3) of the Principal Act is to be paid at the same time.

The amendment applies from 1 April 1991.

Key Issues

From 1 April 1991, leviable earnings paid, credited, or otherwise applied on behalf on a shareholder-employee after the return date of 31 May provided for in section 43(1) may be returned by 31 May in the following year.

Where those leviable earnings are paid or determined before 31 May but after the balance date, then those earnings are to be returned and the levy paid by that date.

Non-Charging of Small Penalties

Section 2

Section 2 amends section 42 of the Act to provide that a penalty for late payment will not be charged where it would amount to $5 or less.

Correction - FBT Prescribed Rate of Interest

In TIB Volume Two, Number 8 (April 1991), there was an item on the FBT Prescribed Rate of Interest, for the quarter commencing1 April 1991.

The heading of the article had the correct date, i. e., 1 April 1991, but the text showed the date as being 1 January 1991. April, of course, is correct.

The correct figures are:

Quarter commencing 1 January 1991	14.8%
Quarter commencing 1 April 1991	13.75%

Due Dates Reminder

April

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

May

5 PAYE Deductions for last 15 days of April due - “Large” employers only.

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

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

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

7 1991 Land Tax return and payment due.

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

14 Dividend PAYE deducted during April 1991 due.

Non-Resident Withholding Tax deducted during April 1991 due.

20 PAYE Deductions for first 15 days of May 1991 due - “Large” employers.

Tax Deductions for April 1991 due - “Small” employers.

31 Annual PAYE Reconciliation (IR 68) and Employer AC Levy payment due.

Annual IR 4J Imputation return due.

Dividend PAYE - Specified Dividend reconciliation (IR 17S or IR 17SA) due.

Annual Interest PAYE reconciliation statement (IR 15S) due.

GST return and payment for period ended 30 April 1991 due.

Yes, I would like _____ (quantity) of the TIB Video at $20.

I have enclosed a cheque to the value of $_______

To: Neville Whitlock
Communications Unit, Taxpayer Services
Inland Revenue Head Office
P O Box 2198, WELLINGTON

Name:_______________________________

Address:_______________________________

____

____

TAX INFORMATION BULLETIN

INLAND REVENUE
TE TARI TAAKE

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

VOLUME TWO No. 9 *APRIL 1991*