Tax Information Bulletin

Volume Four, No. 1 August 1992

Contents

This TIB does not have a separate Appendix

Survey of TIB Readers Coming up

With the next issue of the Tax Information Bulletin, we will be sending out a survey questionnaire to find out what our readers think of the TIB, and what we can do to improve it.

You may wish to start thinking about what changes to the TIB you would like to see, so you can help us to improve our service to you.

More about this next issue.

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Inland Revenue Publications as at August 1992

No.	Subject	Latest Print
IR 24	IRD Calendar	March 1992
IR 40C	Tax Facts for Income Tested Beneficiaries	February 1989
IR 184	Employer's Guide	March 1992
IR 253	Education Centres*	June 1992
IR 254	Clubs and Societies*	July 1992
IR 257	Running a Small Business?	May 1992
IR 259	National Superannuitant Surcharge	February 1992
IR 260	Depreciation	May 1991
IR 266	Objection Procedures	June 1991
IR 274	Imputation (for companies)	February 1990
IR 274A	Foreign Dividend Withholding Payments (for companies)	January 1989
IR 274B	Dividend Imputation (for shareholders)	May 1989
IR 275	International Tax Guide	June 1989
IR 275A	Trusts and International Tax	January 1989
IR 276	Taxation of Profits from Selling Shares	September 1989
IR 278	Koha	August 1991
IR 279	Interest PAYE	June 1990
IR 282	Putting Your Tax Affairs Right	March 1990
IR 283	Interest PAYE Payers' Guide	June 1990
IR 283L	Interest Earnings and Your IRD Number	October 1991
IR 284	Dividend PAYE	September 1989
IR 287	Problem Resolution Service	May 1989
IR 288	Taxation of Trusts	May 1989
IR 289	Provisional Tax	June 1992
IR 292	New Zealand Tax Residence	April 1991
IR 409	Fringe Benefit Tax Guide	June 1992
IR 634	Estate and Gift Duties	November 1991
IR 665	Stamp Duties	June 1992
IR 680A	Gaming Machine Duty	February 1992
GST 600	GST Guide	September 1991
GST 605	GST - Do you need to register?	June 1992
GST 605A	GST for Non-Profit Bodies	June 1992
CS 1	Child Support - A Parent's Guide	March 1992
CS 3	Child Support - An Introduction	March 1992
CS 51	Child Support - How to Approach the Family Court	June 1992
CS 500	Child Support - A Guide for Employers	May 1992

* New Booklets - see page 12 for more information

Taxation Reform Bill (No.5) 1992

This article sets out the main points of the Taxation Reform Bill (No.5), which was introduced into Parliament on 1 July. Please remember that it has not been passed by Parliament yet, so there may be changes before it becomes law.

Consolidation for Group Companies

The new tax consolidation regime will allow a wholly-owned group of companies to consolidate and be treated as a single company for income tax purposes.

The regime simplifies the tax rules applying to corporate groups and lowers their tax costs, since intra-group transfers won't be liable for income tax, stamp duty, or gift duty. It also allows groups of companies to improve their economic efficiency by rationalising large and complex group structures.

Entering the regime will be entirely optional, and companies may consolidate on a functional, regional or industry basis.

All companies in a consolidated group will be jointly and severally liable for payment of the group’s income tax. The Commissioner may relax this requirement if a group applies for approval for joint and several liability to be limited to specific companies. This will enable companies to consolidate where their prudential supervision requirements or group financing pledges do not permit undertakings of joint and several liability for tax.

The new provisions will apply from the 1993-94 income year.

Inter-Corporate Dividend Exemption extended to wholly-owned groups

The inter-corporate dividend exemption will be extended to wholly-owned groups (whether or not they choose to consolidate) from 1 April 1993. As long as the company paying the dividend and the company receiving it are within the same wholly-owned group, and they have the same tax balance date, the dividend may be exempt from income tax. This extension overcomes concerns that companies might otherwise feel that they have to consolidate just to obtain the exemption.

The single balance date requirement is intended to counter tax avoidance schemes that utilise different balance dates within a group. The Commissioner will have the discretion to relax the requirement where it would distort assessable income because of differing business cycles within a group.

Taxation of petroleum exploration and mining amended

The tax rules for petroleum exploration and mining will be amended to make the New Zealand industry more competitive internationally and encourage foreign investment.

Exploration expenditure may be deducted in the year it is incurred, instead of when the licence is relinquished or commercial production begins, as at present.

Mining development expenditure may be depreciated over seven years, instead of the current ten. Depreciation will begin from the start of commercial production for onshore developments, and from the date expenditure is incurred for offshore developments, in recognition of the long lead times between the start of development and the beginning of production.

The treatment of farm-outs (the transfer of a licence or licence share in return for work undertaken) will also change. Where a petroleum prospector farms out development costs to outside investors, it will no longer be taxed on the transaction.

Changes to the treatment of exploration expenditure, development expenditure and farm-outs came into effect on 16 December 1991, when the Government announced the regime. New anti-avoidance and transitional provisions came into effect when the bill was introduced.

New Depreciation Regime

The new legislation will establish the statutory basis for the new depreciation regime announced last year.

Depreciation deductions will become a statutory entitlement, rather than being allowed at the Commissioner’s discretion. The Commissioner will continue to set depreciation rates, but in accordance with statutory criteria. Taxpayers will have the right to request a higher rate of depreciation in particular cases if they believe the general rate is too low. They may then object if the Commissioner declines to issue a special rate or if they are not satisfied with the rate issued.

Taxpayers may choose between the straight line and diminishing value depreciation methods for most assets. Using the straight line method will enable assets to be completely written off instead of being carried forward at low values. Assets with a book value of less than $2,000 may be depreciated collectively as one asset in a pool account, thus eliminating the necessity for keeping separate asset accounts.

Assets designed to be used for shift work or subject to abrasive or corrosive materials may no longer be depreciated at higher than general rates, since an adjustment for the conditions under which such assets operate will be built into the general rates.

The deductibility of repairs and maintenance, presently governed by section 108, will in future be dealt with under the normal deductibility provisions in the Income Tax Act.

The new depreciation regime will apply from the income year commencing 1 April 1993. The new rates will be announced when Inland Revenue's review of depreciation rates is completed. They will only apply to new assets purchased after 1 April 1993.

Changes to the QCET regime

The formula for calculating qualifying company election tax (QCET) will be fine-tuned. The existing formula does not work correctly where a company has imputation credits left in its imputation account. It also results in an over-calculation where a company has not yet paid its income tax for the year before it became a Qualifying Company, and causes an under-calculation where a company has overpaid its provisional tax for that year. The change will be retrospective to the beginning of the Qualifying Company regime.

The date for paying QCET for 1992-93 elections will be extended to the company's terminal tax date for the same income year. The concessional tax will be subject to use-of-money interest if it is not paid by the third provisional tax date for 1992-93.

Crown Research Institutes - income tax status defined

The legislation will bring the ten new Crown Research Institutes, which came into being on 1 July, within the income tax net. They are to be treated in the same way as state-owned enterprises, statutory producer boards and other statutory bodies for the purpose of determining voting and market value interests and the eligibility to carry forward or set off losses.

PAYE bonds for non-resident employees

The Commissioner will be able to accept from an employer a bond or other form of security to cover PAYE on non-resident employees in situations where their liability to tax in New Zealand is uncertain. Where a bond or other security is provided, an employer need not make PAYE deductions for non-resident employees until they become liable to tax in New Zealand, or the Commissioner specifies a date from which tax deductions are to be made. The employer is then liable for any PAYE incurred in the period covered by the bond.

It is expected that the Non-Resident Contractors' Unit of Special Companies Section in Inland Revenue's Wellington District Office will handle applications.

Refund period for wrong RWT deductions extended

The period in which payers of resident withholding tax can refund amounts deducted in error will be extended. Payers may make refunds at any time up to 31 March of the year in which the mistake was made. The amendment will be especially welcomed by banks because customer relationships are adversely affected when refunds of over-deducted amounts cannot be given if an error is discovered after the bank has paid the deductions to Inland Revenue.

Amendments to the GST Act

Inland Revenue will issue GST assessments whenever we process a GST return. At present, assessments are only made at a taxpayer's request or the Commissioner's initiative.

A time of supply rule for fringe benefit tax paid on an annual or income year basis will be provided.

Receivers and liquidators will no longer be allowed to charge GST on the sale of goods or services and then pay the GST component to secured creditors.

Goods sold outside New Zealand will be zero-rated even if imported into New Zealand, thus removing a potential double impost of GST.

Provisions relating to casinos will be corrected to ensure that commissions received from games such as baccarat are subject to GST. The redemption of chips and the receipt of commission will be taken into account in calculating the value of the supply by a casino.

Changes to the Gaming Duties Act

The period for delivering a gaming machine duty return where a licence has been cancelled will be extended from seven days after cancellation to twenty days after the end of the month, to bring it into line with the normal return due date.

Gaming machine operators may apply for a return period that ends within seven days either side of the last day of the month. This will reduce compliance costs for operators by allowing them to align the return period with their internal month end accounting period.

The Commissioner may write off amounts under $5 owed by a gaming machine operator.

The calculation of a casino win will be amended to ensure that unredeemed chips are not counted twice in determining the taxable win.

Change to Gaming and Lotteries Act

Machines or devices that dispense tickets only, such as Avago, will be removed from the definition of a gaming machine.

Other Legislation Before Parliament

Redundancy Payments (Taxation & Benefits) Bill

The Government announced on 28 July that the measures in the Redundancy Payments (Taxation & Benefits) Bill will apply from 30 November 1992.

The bill proposes provisions to bring tax on redundancy payments into line with other tax rates. Redundancy payments will no longer be mostly tax free, but are to be taxed in full as income. There will be no distinction between lump sum and instalment payments, and the specified sum calculation will no longer exist. The FBT liability on employers will also be removed, since the whole of the payment will be included in employees' assessable income (employers currently pay FBT on the amount of the redundancy which exceeds the specified sum).

Redundancy payments will not be subject to the ACC Earner Premium.

The 26-week unemployment benefit stand-down period for anyone receiving a redundancy payout will be scrapped. It will be replaced by a graduated stand-down ranging from two to ten weeks, depending on income.

Orders in Council

No Earner Premium on redundancy payments

Redundancy payments have been removed from the definition of "earnings as an employee". From 1 July 1992, Earner Premium does not have to be deducted from redundancy payments.

Provisional tax use-of-money interest rate lowered

The use-of-money interest rate for over- and under-payments of provisional tax has been lowered to 6 percent, effective from 1 July. In his announcement of 5 June, the Minister of Revenue said that lowering the rate the Government pays on over-payments of provisional tax would reduce the opportunity for using the regime to obtain higher than market rates for short-term deposits.

FBT Prescribed Rate of Interest reduced

The interest rate used to calculate the fringe benefit value of low interest employment-related loans was lowered from 10.5 to 10.3 percent for the quarters commencing 1 April and 1 June 1992. The new interest rate reflected the continued downward trend in market interest rates, and was the lowest since the FBT regime was introduced, the Minister of Revenue announced on 26 May.

Budget Announcements

Business entertainment deductions limited

Fifty percent of business entertainment expenses will be subject to FBT. For taxpayers not within the FBT regime, only 50 percent of entertainment expenditure will be deductible for income tax and can be claimed as a GST input credit. There will be limited exceptions to the 50 percent rule. The Government plans to make these changes in a tax bill to be introduced later this year. The new treatment will take effect from the income year commencing 1 April 1993.

Provisional tax deferral countered

Two-way interest will be extended back to the first provisional tax payment date for taxpayers above a certain threshold. The threshold has not been decided yet, but it will not be below $30,000 residual income tax. The change will apply from the beginning of the 1994/95 income year. It will affect early balance date provisional taxpayers from 7 February 1994. Most others will be affected from 7 July 1994.

Commissioner may issue binding rulings

The Commissioner will be given the discretion to issue binding rulings. Details have not been finalised. Legislation may be introduced early next year.

Penalties to be tightened

The 1992 Budget announced that the penalty provisions in the revenue Acts will be tightened up and rationalised. Some measures may be included in legislation early next year. The only specific measure announced in the Budget was the introduction of a penalty for late filing of tax returns.

International tax rules strengthened

The Controlled Foreign Company (CFC) regime will be strengthened by the inclusion of a de facto control test, and the "Grey List" (list of countries for which the FIF regime does not apply - see the 15th Schedule of the Income Tax Act) exemption will be reviewed. No decisions have been made yet on the countries to be listed. Changes to the regime will generally be effective from 1 April 1993.

An interest in a Foreign Investment Fund (FIF) will be defined as an interest in a foreign entity that does not fall within the CFC definition. Although more taxpayers will be caught by the definition, those with interests in FIFs of less than $10,000 will be exempt from the regime. Taxpayers will be given a number of ways to calculate FIF income. Changes to the FIF regime are effective from Budget night.

Foreign Dividend Withholding Payments (FDWP) remain and anti-avoidance rules will be introduced to stop non-cash dividend repatriations.

Inland Revenue action on Dishonoured Cheques

We have been asked to restate Inland Revenue's policy on advising taxpayers when their bank does not honour cheques we receive - either because of incorrect/incomplete details or insufficient funds.

Inland Revenue will not return cheques to taxpayers for alteration.

If a cheque is not honoured - either because it is completed incorrectly or because of insufficient funds - the bank will normally tell the client this. The client should deal directly with the bank to find out the reasons for the dishonour.

When a bank advises Inland Revenue that they won't honour a cheque, we will send a statement to the taxpayer showing "payment cancelled". This statement will reverse the payment in the taxpayer's account, and show the effect of this reversal - e.g. any balance that is now overdue, and any additional tax charged.

If a taxpayer's cheque is dishonoured for a reason other than lack of funds, and s/he made a genuine attempt to pay, we will consider a request for remission of any additional tax charged.

If you want to make such a request, please send it in writing to the Debt Management Unit of the district office that handles your file. You should also send all supporting documentation from the bank.

GST and Government Departments

Summary

This item is to advise that Inland Revenue has issued a memorandum to all Government Departments and Offices of Parliament, outlining certain consequential amendments to the Goods and Services Tax Act 1985. These amendments became necessary through the introduction of the Public Finance Act 1989. The memorandum explains the implications of the amendments for Government Departments and Offices of Parliament.

Background

The Public Finance Act 1989 brought about reforms in public sector financial management. These financial management reforms changed the appropriation process and the manner in which public authorities (excluding State Owned Enterprises) account for and report on their use of resources. These changes in turn altered the way in which Government Departments and Offices of Parliament account for GST. To ensure that the GST Act reflected these reforms, the First Schedule to the Public Finance Act 1989 contained a number of consequential amendments to the Goods and Services Tax Act 1985.

Enquiries

As these amendments only affect government organisations, we have not included details of the changes in this publication. However, government organisations can get any further information they need on their GST obligations from:

Richard Philp
Taxpayer Services
IRD Head Office
P O Box 2198
Wellington

Phone (04) 472 1032, extension 8415.

Local Inland Revenue district offices should ***not*** be approached on this matter.

GST and Non-Resident Importers

Introduction

A person who is non-resident for GST purposes may import goods into New Zealand. On importation of those goods, the Customs Department will usually levy GST under s.12 of the GST Act. Inland Revenue has been asked to set out the circumstances in which a non-resident can claim back the GST paid to Customs as an input tax deduction.

This item sets out:

(i) Who a non-resident is for GST purposes;

(ii) When a non-resident can register for GST;

(iii) Whether a customs agent can claim an input tax deduction on behalf of a non-resident principal;

(iv) When a supply is in New Zealand for GST purposes; and

(v) The documentation required to support an input tax deduction.

Non-Resident

There is no definition of "non-resident" for GST purposes but s.2 of the GST Act defines " resident". Any person who is resident in New Zealand in terms of s.241 of the Income Tax Act 1976 is also resident for GST purposes. Further, a person who is not resident for income tax purposes is still resident for GST purposes:

(i) to the extent that person carries on any activity while having a fixed or permanent place in New Zealand relating to that activity; or

(ii) if the person is an unincorporated body of persons (partnership, joint venture or trust) and its centre of administrative management is in New Zealand.

Registration for GST

If a non-resident carries on a taxable activity and makes more than $30,000 worth of supplies in New Zealand in any 12 month period, the non-resident is liable to be registered for GST and must register for GST. In the absence of registration for GST, the non-resident is deemed to be a registered person anyway.

Alternatively, a non-resident who is not liable to be registered can voluntarily register for GST. The only requirement for voluntary registration is that the non-resident carries on a taxable activity, or intends to carry on a taxable activity.

Input Tax Deduction

Customs will usually levy GST on the importation of goods by the non-resident. If registered, the non-resident will want to claim that tax back as a GST input tax deduction.

Legislation

A non-resident can only claim back the tax paid to Customs if that tax falls within the definition of “input tax” in s.2 of the GST Act. The definition of “input tax” includes GST levied on the importation of goods acquired for the principal purpose of making taxable supplies.

Principal Purpose of Making Taxable Supplies - Supply in New Zealand

A non-resident registered for GST may have difficulty showing that goods are acquired (imported) for the principal purpose of making taxable supplies. This is because only supplies *made in New Zealand* are taxable supplies and there is a general rule in s.8(2) that supplies made by a non-resident are made outside New Zealand.

However, the general rule in s.8(2) is subject to s.8(2)(a) and s.8(2)(b). If these sections apply, a non-resident may be deemed to make supplies in New Zealand. Assuming all the other requirements of a taxable supply are met (eg. the supply is charged with GST), the non-resident will then be able to claim an input tax deduction for the imported goods.

Section 8(2)(a) deems a supply by a non-resident to be in New Zealand if the goods are in New Zealand at the time the non-resident supplies them to a purchaser. Therefore, if s.8(2)(a) applies, the goods are imported to make a supply in New Zealand and the importer can claim an input tax deduction for those goods.

However, s.8(2)(a) is subject to s.8(2)(b). The effect of s.8(2)(b) is that, if the person who has purchased the goods from the importer can claim an input tax deduction for them, s.8(2)(a) will only apply if the importer and the purchaser expressly agree that s.8(2)(b) will not apply. If the parties fail to agree, s.8(2)(b) deems the supply to be made outside New Zealand and the importer cannot claim an input tax deduction for the imported goods.

In summary, a non-resident importer is deemed to make a supply in New Zealand;

(i) If the imported goods are in New Zealand at the time the importer supplies them to a purchaser; and

(ii) Where the purchaser of those goods can claim an input tax deduction, the importer and the purchaser have agreed that s.8(2)(b) will not apply to that supply.

Use of a Customs Agent

A non-resident registered for GST may employ an independent New Zealand customs agent to act on its behalf in New Zealand. The agent may arrange for clearance of the goods through Customs and pay the GST on behalf of the non-resident. The agent may carry out other administrative duties such as distributing the goods to separate purchasers and answering customer enquires.

The customs agent cannot claim an input tax deduction for GST paid to Customs because the tax paid is not input tax in terms of s.2 of the GST Act. The goods are imported by the non-resident who supplies them to the purchaser. The agent never acquires the goods but supplies services facilitating the supply by the non-resident. One of those services may be to pay the GST on behalf of the non-resident. However, because the agent never acquires the goods, GST paid by the agent on behalf of the non-resident does not qualify as input tax and the agent cannot claim an input tax deduction for GST paid to Customs.

Documentation Required by an Importer to Support an Input Tax Deduction

Section 24 of the GST Act requires a supplier to issue a GST tax invoice for taxable supplies made by that person. The recipient of a supply cannot usually claim an input tax deduction without a GST tax invoice. However, because Customs do not supply imported goods (they simply levy GST on them) there is no legislative requirement that Customs issue a GST tax invoice to an importer. Nor is there any requirement that the importer hold a GST tax invoice before an input tax deduction can be claimed.

However, before an importer can claim an input tax deduction for GST levied by Customs, the importer must have documentary proof to show that the goods were in fact imported and GST levied.

If the importer is not on the Customs Deferred Payment Scheme (discussed below), Inland Revenue will accept the Customs Entry Import Form as proof of import.

The Customs Department administers a scheme known as the Customs Deferred Payment Scheme. Where an importer is entitled to defer payment under the scheme, the Customs Entry Import Form or the Deferred Payment of Duty Statement is sufficient proof of import. Generally, a person approved to use that scheme does not pay duty (including GST) at the time of obtaining a Customs release, but has the amount of duty debited to an account. A statement detailing imports for a "duty accounting period" is forwarded to each approved importer. The importer then has 20 days from the end of the "duty accounting period" to make payment.

Documents used as evidence to support an input tax deduction must be in the name of the registered person claiming the input tax deduction.

Examples

Example 1

U.K. Corp., which is a non-resident company for GST purposes and registered for GST, imports clothing into New Zealand in its own name to sell to a large New Zealand retailer. U.K. Corp's independent New Zealand customs agent pays the GST levied by Customs and carries out other administrative duties on behalf of U.K. Corp. The New Zealand retailer paid for the goods 2 months before they entered New Zealand. U.K. Corp want to know if they, or their agent, can claim the GST paid to Customs as an input tax deduction.

GST Treatment

U.K. Corp. cannot claim the GST back as an input tax deduction. The supply from U.K. Corp to the New Zealand retailer is made by a non-resident and is deemed to be made outside New Zealand (s.8(2)). Section 8(2)(a) does not apply because the goods were not in New Zealand at the time the goods were supplied from the importer to the purchaser, i.e., at the time of payment for the goods. Therefore, U.K. Corp has not made a supply of goods in New Zealand. The tax was not charged on goods acquired for the principal purpose of making taxable supplies and the GST paid to Customs does not qualify as input tax in terms of s.2 of the GST Act.

The customs agent cannot claim an input tax credit. The agent did not acquire the clothing for the principal purpose of making taxable supplies, and therefore the tax paid is not input tax.

Example 2

Aust Co., which is a non-resident for GST purposes and registered for GST, imports scientific equipment into New Zealand and distributes it to New Zealand purchasers. Aust Co. recently imported equipment into New Zealand for sale to a hospital. The time of supply for this sale occurred when the goods were in New Zealand. The parties did not agree that s.8(2)(b) would not apply. GST was levied by Customs on the importation of the equipment and paid for by a customs agent on behalf of Aust Co. Aust Co. want to know if they, or their agent, can claim the tax paid to Customs as an input tax deduction.

GST Treatment

Aust Co. cannot claim an input tax deduction for the tax paid to Customs. Section 8(2)(a) deems the supply of equipment to be made in New Zealand because it is a supply by a non-resident of goods which are in New Zealand at the time of supply. However, because the purchaser can claim an input tax deduction for the supply and the parties did not agree that s.8(2)(b) would not apply, the goods are deemed to be supplied outside New Zealand by s.8(2)(b). Therefore, the tax was not charged on goods acquired for the principal purpose of making taxable supplies. Aust Co. has not made a supply of goods in New Zealand and the GST paid to Customs does not qualify as input tax in terms of s.2 of the GST Act.

The customs agent cannot claim an input tax credit. The agent did not acquire the equipment for the principal purpose of making taxable supplies and the tax paid is not input tax.

Example 3

The same as example 2 but this time Aust Co. and the hospital agree that s.8(2)(b) will not apply and the supply will take place in New Zealand. Aust Co. charges GST on the supply.

GST Treatment

Aust Co. can claim an input tax deduction for the tax paid to Customs. The supply is deemed by s.8(2)(a) to be a supply in New Zealand. Section 8(2)(b) does not apply because the parties have agreed it does not apply. Therefore, there is a supply in New Zealand and Aust Co. have acquired the goods for the principal purpose of making taxable supplies. The GST paid qualifies as input tax and Aust Co. can claim an input tax deduction.

Reference

Technical Rulings para. 108.8. H.O. GST N.2.1

The IR 10 and Section 25 of the Income Tax Act 1976

Background

This article follows on from the one in TIB Volume Three No. 5 about the IR 10. In that article, we state as part of our policy on reopening assessments on the grounds of omission of income:

"If an audit/investigation reveals an omission of income then:

- If that omission is because disclosure was not required on an IR 10 (but the income has been recorded in the financial statements which were not filed with Inland Revenue), then this will not be a reason of that fact for reopening a statute barred assessment.
- If the income was omitted from the financial statements then section 25(2) may be applied to reopen a barred assessment."

We have been asked how we will apply the policy in cases where there is no provision on the IR 10 to show an item, but when the profit has been disclosed in a Disclosure Return, IR 4A (covering "inter-related arrangements") or in a Property Disclosure Return, IR 4T.

Note: If someone is a party to a financial arrangement which must be disclosed to Inland Revenue under section 64H of the Income Tax Act 1976, s/he must file a Disclosure Return (IR 4A) or a Property Disclosure Return (IR 4T) as appropriate. However, this return won't have to be filed if there is a reporting exemption for the arrangement.

Policy

If the profit on an item has been disclosed in either the Disclosure Return or the Property Disclosure Return, there is not an omission of all mention of the item. This means there will not be reason to reopen an assessment. This is the case whether or not the profit in the disclosure return is recorded in the financial statement.

If a Disclosure Return IR 4A, or a Property Disclosure Return, IR 4T, has not been furnished, the policy set out in TIB Volume Three No. 5 applies.

Franked Australian Dividends and the 1992 IR 3 Guide

Background

It has recently come to our attention that the 1992 IR 3 Guide contains an error on the correct treatment of franked Australian dividends. This item sets out the correct treatment of franked Australian dividends.

Discussion

Australia has a dividend imputation regime similar to New Zealand's. An Australian dividend is said to be "franked" if it is carrying an imputation credit.

A New Zealand resident is not entitled to the benefit of any imputation credit under the Australian tax system.

At page 10, the 1992 IR 3 Guide states:

> "If you have received Australian Dividends they will be either "franked" or "unfranked". If your dividend is "franked", deduct the franked credits from your gross dividend and include the net amount that you received in Box 15B."

This is incorrect. The amount that is to be returned is the amount actually received (or receivable) from the company, plus any Australian non-resident withholding tax that has been deducted.

For example, a New Zealand shareholder will receive a notice from the Australian company that may show any or all of the following entries:

"Franked Amount", "Unfranked Amount", "Withholding Tax" and "Imputed Credit". The amount that is to be returned by the New Zealand shareholder is the total of the franked amount, unfranked amount and withholding tax. The amount of imputed credit is to be ignored.

A credit will be allowed for the withholding tax in the normal manner.

Example

A New Zealand shareholder in an Australian company receives the following dividend statement:

Franked Amount	$100.00
Unfranked Amount	$80.00
Withholding Tax	$12.00
Imputed Credit	$63.93

The amount that is taxable in New Zealand is $180.00. The amount that the taxpayer would have actually received from the Australian company is $168.00. The withholding tax credit of $12.00 will be allowed as an overseas tax credit.

Reference H.O.10.D.5.1.

Employers Opting out of PAYE System

Employers who attempt to opt out of their PAYE responsibility by putting employees on contract and treating them as self-employed are acting illegally in terms of the Income Tax Act.

Inland Revenue has noted an increasing number of such cases. Our audit staff are currently dealing with this problem, and investigating contracts offered by employers.

Already, many contracts have been overturned, and employees put back on PAYE deductions. Their employers are now facing claims for PAYE not deducted, plus additional tax amounts - totalling quite substantial amounts in some cases. Some of the employers involved may also be prosecuted.

Employee or self-employed?

Inland Revenue uses several tests to work out the correct employment status of staff. They include:

Control - who has control over how and when the work is done, and who is responsible for quality or pricing?

Integration - is the type of work or the way it is done the same as work performed by other staff who are employees? Is the work an integral part of the employer's business?

Independence - does the worker supply all the necessary tools? Does s/he work from home? Is s/he free to work for other people as well?

Intention - how are the payments for the work made? Did the worker carry out the same activity as a self-employed person (or as an employee) in the past? Why is the worker being treated as self-employed?

Economic reality - does the type or nature of business justify employing an independent contractor?

Overall, Inland Revenue is looking at who has control over the work done, and how and where it is done. If the answer is the employer, then the worker is almost certainly an employee.

IRD and Police Combine to Fight Organised Crime

Inland Revenue and the Police will soon combine forces to fight tax evasion in organised crime. Under an agreement signed by IRD Commissioner David Henry and Police Commissioner John Jamieson, Inland Revenue will use information supplied by the Police to conduct tax investigations on income from illegal activities.

Inland Revenue will assess profits from organised crime, and seek prosecutions where tax returns have not been filed. We will not be conducting criminal investigations, but we will assist the Police in their investigations. We will only pass on information where it is permitted under the tax laws.

The Police see Inland Revenue as a useful partner in countering organised crime such as drug dealing, wildlife smuggling, car conversions, bookmaking, protection rackets, prostitution and poaching. These businesses need cash to carry out their illegal activities and if that income is taxed, there will be less of it for the criminals to continue operating.

These activities are estimated to make up an "underground economy" worth some $1.3 billion a year. Illicit income is still fully taxable, as the tax laws make no distinction between legal and illegal revenue.

Inland Revenue is setting up a specialist unit based on a similar Australian Tax Office (ATO) unit. It will have six staff initially, with expansion over the next four years. Final numbers will depend on the unit's cost-effectiveness. The unit will be funded by reallocating existing resources into what is now identified as a "high compliance" risk area.

One of the unit's senior officers will train with the ATO, which has been successfully operating a similar investigation unit since 1987, identifying $200 million in taxes owed from the profits of organised crime. Based on the Australian experience, the unit is expected to bring in around $10 for every $1 spent on tracking down tax evasion in the criminal sector.

"Clubs and Societies" and "Education Centres"

New Booklets from Inland Revenue

Inland Revenue has recently published two new information booklets, "Clubs and Societies" (IR 254), and "Education Centres" (IR 253).

We wrote the Clubs and Societies book as a result of research we carried out last year, which indicated a need for better tax information in this area. It is designed to help members deal with the special tax obligations of clubs and societies, and will be most useful for people who look after financial or taxation responsibilities.

In addition to general information on taxes which affect clubs and societies, the booklet includes a section dealing with the income tax exemptions available. There is also detailed information about income and expenses for income tax and GST.

We sent a copy of this booklet out with taxpacks sent to the more than 30,000 clubs, societies and non-profit organisations throughout New Zealand.

The other new booklet, Education Centres, is written for people who administer the financial and taxation affairs of educational institutions. It contains general information about income and expenses for both GST and income tax.

We have posted copies of this booklet to all of New Zealand's 4,500 educational institutions, from early childhood centres to universities.

Please contact your local Inland Revenue office if you want copies of either of these booklets.

Due Dates Reminder

August

31 GST return and payment for period ended 31 July 1992 due.

September

5 PAYE deductions and IR 66ES for last 16 days of August 1992 due - "large" employers only.

7 First instalment of 1993 provisional tax due for taxpayers with May balance dates.

Second instalment of 1993 provisional tax due for taxpayers with January balance dates.

Third instalment of 1992 provisional tax due for taxpayers with September balance dates.

Terminal tax due for taxpayers with October balance dates.

Income tax return due for non-IR 5 taxpayers with balance dates from 8 - 31 May 1992.

20 PAYE deductions and IR 66ES for first 15 days of September 1992 due - "large" employers.

PAYE deductions and IR 66ES for August 1992 due - "small" employers.

RWT on interest deducted during August 1992 due for monthly payers.

RWT on dividends deducted during August 1992 due.

Non-Resident Withholding Tax deducted during August 1992 due (or approved issuer levy).

Gaming machine duty return and payment for month ended 31 August 1992 due.

30 GST return and payment for period ended 31 August 1992 due.