Tax Information Bulletin

Volume Four, No. 4 November 1992

Contents

This TIB does not have a separate Appendix

ISSN 0114-7161

Tax Information Bulletin Survey - Results out soon

In TIB Volume Four, No.2, we told you about a survey of readers that a market research firm is running for us.

The market research firm has now finished collating the results, and the changes resulting from the survey will appear from next month's TIB onwards. We will also publish a summary of the changes that readers asked for, and any other relevant comments we received.

Thank you to everyone took part in this survey, or who wrote to us directly about the Tax Information Bulletin.

Taxation of Redundancy Payments

Introduction

All redundancy payments paid on or after 30 November 1992 will be fully taxable as income of the recipient. This change results from the passing of the Income Tax Amendment Act (No 4) 1992 (previously known as the Redundancy Payments (Taxation and Benefits) Bill).

Background

The legislation relating to redundancy payments had been before Parliament since May of this year. It proposed an alteration of the treatment of redundancy payments for both taxation and Social Welfare benefit purposes.

Now that the Bill has passed, it has created separate amendment Acts to both the Income Tax and Social Security Acts. The Social Security Amendment Act (No 4) 1992 makes changes to the stand down period imposed on applicants for unemployment benefits who have received redundancy payments.

Key Issues

Section 68

The concession in section 68 of the Income Tax Act that applied to redundancy payments has been repealed with effect from 30 November 1992. All redundancy payments paid on or after that date will be taxed in full as income. Such payments are extra emoluments so they will be liable for PAYE deductions of 28 cents in the dollar. There is no longer any need to calculate a “specified sum”, nor to ensure that a redundancy payment is made in a single lump sum.

Fringe Benefit Tax

Redundancy payments have been removed from the definition of fringe benefit in the Income Tax Act. Employers will not have to pay Fringe Benefit Tax on any part of a redundancy payment paid after 30 November 1992.

Earner Premium

Accident Compensation Earner Premium does not have to be deducted from redundancy payments. This applies from 1 July 1992.

Impact on Social Assistance

Taxpayers should be aware that any redundancy payment they receive will be included in their assessable income for the year. An increase in assessable income will have a direct effect on eligibility for some forms of social assistance during that year. This may particularly affect recipients of Family Support and National Superannuation who receive a redundancy payment. These taxpayers should contact Inland Revenue to discuss the effect of the redundancy payment on their entitlement to any benefits and, if necessary, apply for a special tax code. Other people who may be affected are those who are receiving student allowances, repaying student loans, or paying Child Support.

Payments before 30 November 1992

Redundancy amounts paid to employees before 30 November 1992 will be eligible for the concessionary tax treatment provided for in section 68 of the Income Tax Act. However, note that the requirements of section 68 are strict and must be complied with before the concession will be allowed. In particular, the following rules must be observed :

- there must be a true redundancy which falls within the scope of the definition of “redundancy” in section 68;
- the payment must be in a single lump sum;
- the payment must be made on the occasion of the termination of the employment. The Courts have

held that this is a timing requirement and payments made prior to or after the date of ceasing work will be ineligible for the concession;

- the employee cannot cease employment and then recommence in the same position or substantially the same employment as that from which s/he received a redundancy payment;
- payments to which the redundant employee is entitled but which are independent of the redundancy (e.g. holiday or sick pay, long service leave) are fully assessable as income and cannot be included in the redundancy lump sum.

Retiring Allowances

The Income Tax Amendment Act (No 4) does not affect the taxation of lump sum retiring allowances, bonuses and gratuities, which are still covered by Section 68 of the Income Tax Act. These payments continue to be taxed in full as fringe benefits and do not form part of the recipient's assessable income. However, the Government has recently announced that it will shortly introduce legislation which will make these retirement payments fully taxable as income in the same way as redundancy payments. The change to taxation of lump sum retirement payments is proposed to take effect on 1 April 1993.

There may be some confusion about the difference between a retirement and a redundancy. Retirement is not defined in the Income Tax Act but redundancy retains the definition contained in section 68. After 30 November any payment that falls within the definition of a redundancy payment in section 68 (i.e. the position becomes superfluous to the requirements of the employer) can only be taxed as income of the recipient.

South Island Snow Relief Scheme

Introduction

This item clarifies the tax treatment of payments made under the South Island Snow Relief Scheme. Payments made under this scheme are not taxable in the hands of the recipients.

Discussion

The New Zealand Income Support Service (NZISS) makes payments under this scheme pursuant to section 124(1)(d) of the Social Security Act 1964. That section provides for the payment of money out of the Consolidated Account for:

> *"the purpose of [granting special assistance under] ... any welfare programme approved by the [Minister of Social Welfare]:"*

The scheme is intended to assist South Island farming families who were significantly affected by snowfalls in July and/or August 1992, and who cannot now meet the costs of essential family living expenses. Applicants must also meet NZISS criteria, including the location of the farm.

The payments are designed to feed and clothe family members, and are not intended to provide money for farm working expenses.

The maximum amounts payable per week under the scheme are $100 for a single farmer, $145 for a farming couple or a solo farmer with one child, $180 per week for a farming couple with one child, and a further $10 per week for each additional child.

Tax status of payments

To be treated as income, a payment must either fall within the broad definition of income or, failing that, within the specific provisions of section 65 of the Income Tax Act 1976.

Section 65 sets out specific receipts that are to be included as assessable income for tax purposes. Section 65(2)(d) provides that "income tested benefits" are assessable income. Section 2 of the Income Tax Act defines an income tested benefit as a benefit payable under Part 1 of the Social Security Act.

However, payments under the South Island Snow Relief Scheme are paid under Part 3 of the Social Security Act, not Part 1. This means that they are not assessable income under section 65(2)(d) of the Income Tax Act.

Therefore, these payments must be considered under the normal meaning of the term "income" if they are to be taxable. The term "income" is not defined in the Act, but the Courts have considered it on a number of occasions.

Generally speaking, income is a gain in money or money's worth that a person derives as a reward for services rendered, from the profits of a business, from a profit-making undertaking, or from property. In addition, there must be an element of recurrence or regularity in the payments.

Inland Revenue does not consider that these payments are income. The recipients are not receiving the payments as a reward for services rendered, nor are they a return from an investment or undertaking entered into for the purpose of making a profit. Although the same could be said for the unemployment benefit, that payment is specifically included in section 65 since it is an income-tested benefit.

Consequently, NZISS special assistance payments from the South Island Snow Relief Scheme are not taxable.

Reference: HO.10.F.1.1.

Summary of Qualifying Company Regime

The Qualifying Company regime comes into effect from the 1992-93 income year. It is designed so closely-held companies and their shareholders can be treated, as far as possible, as one entity for income tax purposes. This means that for taxation purposes a Qualifying Company is treated in a similar way to a partnership.

Most companies which have five or fewer shareholders or are "flat owning" companies can elect to become Qualifying Companies. There are special rules for counting the number of shareholders. For example, a husband, wife and their children are counted as one. Where a shareholder is itself a company there are "look through" provisions to determine the number of ultimate shareholders.

The major advantages of electing to become a Qualifying Company are:

- Generally only dividends paid with imputation credits attached are taxable; other dividends are tax free.
- Capital gains, both realised and unrealised, can be distributed tax free without having to wind up the company,
- In most cases, a Qualifying Company may elect to become a Loss Attributing Qualifying Company (LAQC). A LAQC passes company losses it has incurred on to its shareholders to be claimed against their other income or carried forward.

The possible disadvantages of electing to become a Qualifying Company are:

- The company may have to pay a Qualifying Company Election Tax (QCET). Whether QCET is payable depends largely on the company's retained earnings.
- The company must forfeit any losses carried forward from previous years.
- If the company fails to pay its income tax while it is a Qualifying Company, the shareholders who have elected are liable to pay it.

If a company was incorporated before 1 December 1991 and elects to become a Qualifying Company for the 1992-93 income year, the rate of QCET is reduced from 33% to 7.5%, and only 25% of the prior years' losses are cancelled (these cannot be attributed to shareholders). To be eligible for these concessions, Inland Revenue must receive the elections by 31 March 1993.

There is a lot of information to deal with in entering and staying in the regime. The legislation behind it is explained in Tax Information Bulletin Volume Three No 7. There is also a "Qualifying Companies" booklet available from any Inland Revenue office. This explains how the regime works, including the practical requirements of election and how to calculate QCET.

Inland Revenue Audits - Retaining Private Records

Taxpayers who are in business may find it advisable to retain their private financial records, as well as business records. This is because banks and other organisations frequently charge when they search for records which a taxpayer has not retained. This charge is often a source of annoyance to taxpayers, especially when it is for searching for non-business records.

The Income Tax Act does not require business taxpayers to keep private records (such as bank statements, withdrawals, cheques and deposit details). However, when Inland Revenue audits business records, we often check private records at the same time. This may be to ascertain if business receipts have been lodged to private accounts, and/or to consider a taxpayer's private expenditure.

This means that it may pay taxpayers who are in business (either as sole traders, in partnership or through a company) to also retain their private bank account and other records. They will then avoid the expense of obtaining a copy of these records, if they are audited by Inland Revenue.

In addition, if these private records are readily available, the time taken up in an audit will be less.

Tax practitioners may wish to bring this recommendation to the notice of their clients who may be affected.

It *is* our Job to be Fair

Confirmed by Advertising Standards Complaints Board

The Advertising Standards Complaints Board has rejected a complaint that Inland Revenue's slogan “It's our job to be fair” is misleading.

The complaint concerned an IRD advertisement in the New Zealand Herald to remind employers and companies to file their PAYE reconciliations by 31 May 1992. The complainant contended that it was not Inland Revenue's job to be fair, but to collect taxes in accordance with the relevant legislation.

In its decision, the Advertising Standards Complaints Board referred to a Taxation Review Authority judgement that “The slogan must mean that it is the Department's job to apply the law fairly to all taxpayers, and to treat taxpayers in an even-handed manner, so that taxpayers in the same situation are treated in a similar manner.”

The complaint was an isolated case, as research has shown that 84% of taxpayers surveyed agreed that IRD was helping the public by providing reminder advertising.

The purpose of the advertising is to ensure that people do not inadvertently fail to meet their tax obligations through lack of awareness of a due date for paying, or filing a return. This is certainly fair, as there are penalties for people who do not comply.

Unclaimed Money

Inland Revenue has put together a list of thousands of people who may be entitled to unclaimed money. These funds include dividends, old bank accounts, insurance policies, unclaimed wages and the balances in solicitors' trust accounts.

Under the Unclaimed Monies Act 1971, money which is left untouched for six years or more is paid into a consolidated fund. Inland Revenue collects this money, and refunds it to the rightful owners if they can prove their identity.

Anyone who believes they may be owed money from this fund should forward their name, address, IRD number and some proof of identity to:

The District Commissioner
Unclaimed Monies
Inland Revenue Department
P O Box 812
MASTERTON

A copy of a birth certificate, a driver's licence or a passport is acceptable identification.

Liable Parents' Tax Returns needed

Liable parents who haven't already filed their 1992 tax returns should do so as soon as possible, to avoid paying too much child support next year.

The Child Support Agency recently began sending out letters to more than 40,000 liable parents who haven't filed 1992 returns, to ask them to provide their income details for the 1992 year. These letters are the first stage in the annual assessment of Child Support liabilities.

The amount that liable parents have to pay is recalculated in January each year, based on their taxable income of two years previously - in this case, the year ended 31 March 1992. Parents who haven't given Inland Revenue their income details may have their liability assessed at the maximum income of over $55,000. Most liable parents earn less than this amount, so it is to their advantage to provide their income details. They can do this by sending one of the following to Inland Revenue:

- their 1992 tax return
- copies of all their 1992 IR 12s
- a letter from their employer, the NZ Income Support Service or Accident Compensation.

Inland Revenue's Child Support Agency will not contact liable parents who have already filed their 1992 returns. Anyone who has only recently sent in a 1992 return and still receives a child support letter should disregard it.

Any liable parents who want to query the information they receive should ring the Child Support Agency toll-free on 0800 800 363. For people in the Auckland free calling area, the number is 486 2313.

Names of Tax Evaders Published

Inland Revenue made public the names of more than 400 tax evaders recently. The list was published in the New Zealand Gazette, Issue No. 171.

These people deliberately evaded tax totalling almost $2 million dollars. They include a large number of employers who failed to deduct PAYE from their employees' wages, or who failed to pay these deductions to Inland Revenue. More than 70% of tax evaders fell into this category, and one company was charged over $62,000 in penal tax.

Other offences included income tax offences, evasion of Fringe Benefit Tax, and failing to account for GST. The individual amounts evaded ranged from a few hundred dollars up to $150,000.

Voluntary Disclosures

People can contact Inland Revenue to make voluntary disclosures about what is wrong with their tax affairs. If they do this before we discover possible evasion, they will not be prosecuted in Court, and they will be charged penal tax at the lower rate of 25% instead of 150 percent. Further, they will not have their names published as tax evaders.

If you want more information about making a voluntary disclosure, ask for the “Putting your Tax Affairs Right” booklet (IR 282) from any Inland Revenue office.

Error in the Working Copies of the GST Legislation

There is an error in the printing of the Reprinted Statutes and on page 90,851 of the sixth (6th) edition of the CCH GST Legislation.

Section 32(1)(a) is cited as	“.. 11(1)(cb):”
This should be	“.. 11(1)(ab):”
Section 32(1)(aa) is cited as	“.. 11(ic):”
This should be	“.. 11(1C):”

There are no paragraphs (cb) and (ic) in the current legislation. The sections involved provide objection rights for taxpayers in respect of certain decisions made by the Commissioner.

Reference should be made to the GST Amendment Act 1990, number 64. Working copies should be corrected accordingly.

Questions We’ve Been Asked

This section of the Tax Information Bulletin sets out the answers to some day-to-day questions that we've received. We've published these as they may be of general interest to readers.

These items are based on letters we’ve received. A general similarity to items in this package will not necessarily lead to the same tax result. Each case will depend on its own facts.

The Acts referred to in this package are named at the top of each group of items.

Income Tax Act 1976

Donation of Books to Library

Section 56A - Rebate in Respect of Gifts of Money and Payment of School Fees: A taxpayer donated some books to a city library and asked whether this could be treated as a donation for the purposes of the donations rebate. The taxpayer also asked whether a claim could be made in excess of the allowable $500 rebate.

A taxpayer can only claim a rebate under section 56A for a “gift of money”; s/he cannot claim a rebate for donated goods or property.

The Commissioner has no discretion to allow a rebate for a greater amount than the $500 specified in section 56A.

Reference: HO.TPP014

Local Authority Childcare Centre's Income

Section 61 - Incomes Wholly Exempt from Tax: A local authority asked whether the income it derived from an Early Childhood Care Centre was exempt from income tax. The authority set the centre up as a company for the purpose of making a profit.

Section 61(2A) of the Act sets out the types of income on which a local authority is assessable for income tax purposes. A local authority trading enterprise's income, or income that a local authority derives from a local authority trading enterprise, is assessable.

Section 594B of the Local Government Act 1974 defines a local authority trading enterprise as a company in which the local authority holds equity securities or voting rights, or an organisation through which the local authority operates a trading undertaking.

In this case the income from the child care operation was assessable.

Reference: HO.TPA026

Taxation of Legal Aid Payments

Section 65 - Items Included in Assessable Income: The taxpayer, who was employed as a salesperson, was a defendant in a court case and asked whether legal aid payments received should be treated as assessable income.

The word "income" is not defined in the Act. It is necessary to rely on the characteristics that have been identified by the courts over the years. An important feature of income is that it is something which comes in - it is a gain or a profit. The case *Finlay J.* v *IR Commrs.* (1934) 18 TC 12 made it clear that income tax is a tax on what in one form or another goes into a person's pocket.

In the case of recipients of legal aid, there is no doubt that a benefit is received, and that the benefit has an easily established monetary value. However, the legal aid has no value to the recipient other than saving that person from incurring expenditure. The value of the benefit cannot be converted into money by the recipient, as s/he does not physically receive the payment. Consequently, someone who receives legal aid cannot be said to be receiving income.

If the taxpayer was a lawyer for whom payments of legal aid constituted fees earned, then the payments would be assessable income. This is because the lawyer receives the payment directly as income.

Reference: HO.TPP034

Spreading of Accident Compensation Payments

Section 65 - Items Included in Assessable Income: A taxpayer received a lump sum payment of earnings-related compensation from the Accident Rehabilitation and Compensation Insurance Corporation, and asked to have the income spread over the years that the compensation covered.

Payments of earnings related compensation are assessable as income under section 65(2)(c) of the Act. The payments are assessable in the year of receipt. There are no spreading provisions in the Act for this type of payment.

Reference: HO.TPP001

Crop Price included in Sale and Purchase Agreement

Section 65 - Items Included in Assessable Income: An orchardist asked whether a payment for crops on the sale of an orchard was assessable income. The sale and purchase agreement for the orchard included a separate price for crops which had not been harvested at the date of the sale.

Where the crop has a price which is shown separately in the sale and purchase agreement, that price is assessable income to the vendor. The purchaser can claim an equivalent deduction.

If no separate price is assigned in the sale to growing crops, the crop proceeds will be assessable in full to the purchaser when the crop is harvested and sold.

Reference: HO.TPA006

Interest on Investment with Nominee Company in Liquidation

Section 75 - Income Credited in Account or Otherwise Dealt With: A taxpayer invested money with a nominee company. Interest from the investment was compounded and reinvested. The nominee company subsequently went into liquidation with little likelihood of the investment being recovered. The taxpayer asked whether a refund of tax could be claimed on the interest which had been reinvested with the nominee company.

Section 75(1) of the Act sets out the situations under which income is deemed to be derived. It states that where income has been credited in account or reinvested, or accumulated, or dealt with in the interest of that person, it represents assessable income.

As the interest in this case was reinvested, it is deemed to have been derived. The question of whether or not the investment is subsequently recovered does not affect the taxation of the interest already earned. Interest income was derived, was assessable and was taxed accordingly. Any resident withholding tax paid on this interest is credited against the tax liability in the taxpayer's annual return of income.

Reference: HO.TPP021

Childcare Expenditure

Section 105 - Deduction for Expenditure or Loss Incurred in the Production of Income from Employment: The taxpayer wished to claim a deduction for expenditure incurred on childcare. The person had returned to previous employment following parental leave.

Section 105(2) of the Act prevents an employee from claiming a deduction for expenditure or loss incurred in earning income from employment. This means that a claim for childcare expenses is not allowable.

A self-employed person is not able a claim a deduction for childcare expenditure as it is an expense of a private nature and is not allowable under section 106(1)(j) of the Act. However, expenditure on childcare may qualify for the rebate provided by section 54 (housekeeper or child care rebate).

Reference: HO.TPA003

New Zealand Exchange Teachers to United Kingdom

Section 241 - Determination of Place of Residence: A New Zealand teacher was considering a position as an exchange teacher in the United Kingdom. The teacher wanted to know the tax implications of the exchange.

When a New Zealand teacher is on an official exchange to the United Kingdom, the teacher's salary is still paid from New Zealand. New Zealand residents are subject to tax in New Zealand on their worldwide income, unless it has been specifically exempted.

If a teacher is in the United Kingdom, even though that teacher's salary is being paid from New Zealand, it is being earned in the UK. Consequently, it will only be subject to New Zealand tax if the teacher is still resident in New Zealand for tax purposes.

The primary test of whether an individual is a "tax resident" is determined by the existence of a "permanent place of abode" in New Zealand, regardless of whether s/he has a permanent place of abode in any other country. An individual's residency status must be worked out on the basis of individual circumstances.

The teacher may also be liable for tax in the United Kingdom. Under the provisions of The Double Tax Relief (United Kingdom) Order 1984, a New Zealand exchange teacher will be liable to tax in the United Kingdom on teaching income received from New Zealand, if s/he is present in the United Kingdom for more than an aggregate of 183 days in any 12 consecutive months.

To prevent the occurrence of double taxation, the teacher can apply to New Zealand Inland Revenue for a special tax code certificate to reduce the PAYE tax deducted in New Zealand for the period that s/he is subject to tax in both countries.

When the teacher files a New Zealand tax return, providing sufficient documentary evidence is furnished, a credit will be given for any tax s/he has paid in the UK. However, the amount of credit that will be allowed cannot exceed the amount of New Zealand tax payable on that income.

Reference: HO.TPP015

Sports People Playing Overseas

Section 242 - Liability of Income Derived from New Zealand and Abroad: The taxpayer (a self-employed sports person) asked about the tax implications of a contract to play for an overseas club. The contract was for 5 months and the taxpayer returned to New Zealand after this period. The contract included cash payments and the supply of accommodation.

In this case the taxpayer was deemed to be a resident in New Zealand. All income received by a person who is a resident in New Zealand is liable for income tax in New Zealand under section 242 of the Act. This applies to all income received from within or outside New Zealand.

The taxpayer's income from overseas was therefore liable for income tax in New Zealand. The expenditure incurred in earning the income would be allowed as a deduction and a credit for any tax paid overseas would also be allowed. The credit is limited to the lesser of the tax paid overseas or the tax payable in New Zealand on the overseas income.

If the taxpayer had not been a New Zealand resident for tax purposes during the period of absence s/he would be liable for income tax only on income with a New Zealand source. If the income received from New Zealand included interest, dividends or royalties the person would be liable to pay non-resident withholding tax on this income.

Reference: HO.TPA025

Tax Exempt Organisations and Fringe Benefit Tax

Section 336N - Fringe Benefit Tax - Interpretation: A sports club asked whether it was liable to file fringe benefit tax returns. An employee of the club had use of the club's motor vehicle and took it home nightly.

Every employer who provides a fringe benefit to an employee must pay Fringe Benefit Tax on that benefit, even if the employer is exempt from income tax under the Income Tax Act or any other act. The club had to file fringe benefit tax returns and account for fringe benefit tax on the employee's use of its motor vehicle.

Reference: HO.TPA014

Childcare Facilities and Fringe Benefit Tax

Section 336N - Fringe Benefit Tax - Interpretation: An employer asked whether fringe benefit tax would be payable on the value of places in a childcare facility, paid for by the employer, and reserved for employees' children. The childcare facility was not on the employer's premises.

Any benefit that an employee receives or enjoys is a fringe benefit under section 336N of the Act. In this case, a fringe benefit had arisen and the value of the fringe benefit provided would be based on the actual use of the childcare facility by the employees' children. The fringe benefit would not qualify for the exemption provided in paragraph (n) of the definition of "fringe benefit" in section 336N(1) as the childcare facility was not on the employer's premises.

If an employer paid for a place at a childcare centre for the child of a specific employee, or paid the employee's childcare fees, the payment would be monetary remuneration and taxable to the employee.

Reference: HO.TPA008

Guaranteed Minimum Family Income - Self-Employed People

Section 374E - Guaranteed Minimum Family Income Credit of Tax: A self-employed person asked whether s/he was entitled to the Guaranteed Minimum Family Income tax credit in addition to the Family Support Tax Credit. The taxpayer's total family income was less than $10,000.

Section 374E(1) of the Act provides that the Guaranteed Minimum Family Income tax credit is payable only to a person engaged in employment. A self-employed person is not eligible for the tax credit.

Reference: HO.TPA021

Withholding Tax and Foreign Entertainers

Article 17 - Double Tax Agreement - United States of America: An entertainment agency asked what taxes should be deducted from payments to an American entertainer who was leaving New Zealand. The entertainer had worked in New Zealand for the previous four months, and had earned approximately US$4,000.

A person who is not resident in New Zealand is liable for New Zealand tax on income which has a source in New Zealand. The entertainer would therefore be liable for income tax on the income earned here.

Article 17 of the Double Tax Agreement between New Zealand and the United States of America exempts from income tax income of less than US$10,000 per year earned by an entertainer from one country working in the other country. However, the Withholding Payments Regulations do not permit the issue of an exemption certificate to a non-resident entertainer. This certificate would prevent the deduction of withholding tax from the payments. Withholding tax should therefore be deducted at the rate of 20 percent of the gross payments.

In this case, the entertainer (or his/her agent) would need to file a return of income to determine the tax liability on the payments. The return can be filed before the taxpayer leaves New Zealand. Inland Revenue would require an undertaking from the taxpayer that s/he will earn no further income while in New Zealand during the remainder of the year for which the return is being filed.

Reference: HO.TPA033

Goods and Services Tax Act 1985

GST on Goods and Services supplied to Non-Resident

Section 8 - Imposition of Goods and Services Tax on Supply: An overseas business which was not registered for GST sold an aircraft to a client in New Zealand. When the aircraft arrived in New Zealand, inspection showed that the engine required major maintenance, which under the sale agreement was to be at the expense of the overseas business. The overseas business received the invoice, including GST, for the work done in New Zealand. They asked whether GST should have been charged in view of the fact that they were not resident of New Zealand and were not in New Zealand when the work was done.

Goods and services are deemed to be supplied in New Zealand under section 8(2) of the Act where the supplier is resident in New Zealand. In this case as the services were performed in New Zealand by a supplier resident in New Zealand, GST had been correctly charged.

Reference: HO.TPA039

GST on Purchases in New Zealand by Overseas Person

Section 8 - Imposition of Goods and Services Tax on Supply: An overseas resident requested a refund of GST charged on clothing s/he purchased while on holiday in New Zealand. S/he bought the clothes for personal use directly from a clothing retail shop, and took them out of New Zealand with other luggage. The overseas person was not registered for GST purposes.

GST was charged on the sale as the supplier was resident in New Zealand. In this case the overseas person was not entitled to a refund of GST as s/he was not registered for GST, and also the goods had been purchased for his/her own use. If the supplier had exported the goods, or if the purchaser had not taken possession of them until s/he was outside New Zealand, the supply would be zero-rated for GST purposes under section 11(1) of the Act.

The exception to this ruling would be if the non-resident purchased goods through the sealed bag system. This system allows export warehouse licence holders who have been granted a licence to operate a sealed bag system. They can use this system to sell duty-free and GST-free goods to tourists who will be departing New Zealand within five working days of the date of sale.

Reference: HO.TPA028

GST on Assets retained on Cessation of Business

Section 11 - Zero-Rating: An overseas business registered for GST for the purpose of selling its products in New Zealand. The venture was unsuccessful and the business requested cessation of their GST registration. They also asked if they should account for GST on the unsold goods, which were now held overseas. The taxable supplies were less than $30,000, and the business did not expect to make any further sales in New Zealand.

In this case the business was still required to account for GST on the retained assets under section 10(8) of the Act. However, as the goods were located outside New Zealand at the time of retention or supply, the supply would be zero-rated under section 11(1)(b) of the Act.

Reference: HO.TPA038

GST on Services supplied to Overseas Business

Section 11(2) - Zero-Rated Services: An overseas manufacturer commissioned a New Zealand advertising agency to advertise for personnel to work overseas. The agency asked what rate of GST was chargeable on the services provided to the manufacturer.

Where services are supplied for and to a person who is not resident in New Zealand, and who is outside New Zealand at the time the services are performed, the supply is zero-rated under section 11(2)(e) of the Act. In this case GST was chargeable at zero percent because the advertising services were supplied “for and to” the non-resident manufacturer.

Reference: HO.TPA030

Retention of Business Records for GST Purposes

Section 75 - Keeping of Records: An overseas company registered for GST and asked whether it could keep the business records at its head office in Australia.

The company would need to obtain approval from Inland Revenue to hold the records in Australia. Section 75(3) of the Act requires that every registered person who supplies goods and services in New Zealand shall keep in New Zealand copies of sufficient records in English for a period of at least 7 years after the end of the taxable period to which the records relate. The section also provides that the Commissioner may on application approve the retention of the records outside New Zealand. The application to retain records outside New Zealand can be approved at an Inland Revenue District Office.

Reference: HO.TPA037

Due Dates Reminder

December 1992

5 PAYE deductions and IR 66ES for last 15 days of November 1992 due - "large" employers only.

7 First instalment of 1993 Provisional Tax due for taxpayers with August balance dates.

Second instalment of 1993 Provisional Tax due for taxpayers with April balance dates.

Third instalment of 1993 Provisional Tax due for taxpayers with December balance dates.

Annual Income Tax returns due for non-IR 5 taxpayers with balance dates from 1 to 31 August 1992.

7 1992 End-of-year Tax due for taxpayers with January balance dates.

20 RWT on interest deducted during November 1992 due for monthly payers.

RWT on dividends deducted during November 1992 due.

Non-Resident Withholding Tax (or Approved Issuer Levy) deducted during November 1992 due.

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

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

20 Gaming Machine Duty return and payment for month ended 30 November 1992 due.

January 1993

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

7 First instalment of 1993 Provisional Tax due for taxpayers with September balance dates.

Second instalment of 1993 Provisional Tax due for taxpayers with May balance dates.

Third instalment of 1993 Provisional Tax due for taxpayers with January balance dates.

Annual Income Tax returns due for non-IR 5 taxpayers with balance dates from 1 to 30 September 1992.

1992 End-of-year Tax due for taxpayers with February balance dates.

15 GST return and payment for period ended 30 November 1992 due.

20 RWT on interest deducted during December 1992 due for monthly payers.

RWT on dividends deducted during December 1992 due.

Non-Resident Withholding Tax (or Approved Issuer Levy) deducted during December 1992 due.

PAYE deductions and IR 66ES for first 15 days of January 1993 due - "large" employers only.

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

FBT return and payment for quarter ended 31 December 1992 due.

Gaming Machine Duty return and payment for month ended 31 December 1992 due.

29 GST return and payment for period ended 31 December 1992 due.