# Average Market Values of Specified Livestock - 1993

The Governor-General has announced the average market values of specified livestock for the 1992/93 income year, by Order in Council.

The values have been announced later than usual this year due to a review of the way they are worked out. The Government has trialled a "snapshot" valuation method (recommended by the Livestock Valuation Consultative Committee) alongside the existing sales-based system. Government has decided that the "snapshot" valuation of "on-farm" values gives a more accurate value of the livestock on a farmer's property at or near the end of year balance date.

The values listed below apply to animals valued under the herd scheme. Trading stock values are not shown this year as that scheme has been repealed from 1 April 1992.

Animals not valued under the herd scheme must now be valued under one of these new options:

- national standard cost
- self assessed cost
- replacement price or market value.

## High Priced Livestock

The trigger price for high priced livestock purchased in the 1992/93 income year is now the greater of:

- $500, or
- five times the greater of
  (a) the national average market values listed below, or
  (b) the national average market values declared for the 1991/92 income year.

| Type of Livestock | Classes of Livestock | Average Market Value Per Head |
|---|---|---|
| | | $ |
| Sheep | Ewe hoggets | 40.10 |
| | Ram and wether hoggets | 40.60 |
| | Two-tooth ewes | 47.00 |
| | Mixed-age ewes (rising three-year and four-year old ewes) | 41.60 |
| | Rising five-year and older ewes | 35.20 |
| | Mixed-age wethers | 35.10 |
| | Breeding rams | 151.70 |
| Beef cattle | ***Beef breeds and beef crosses:*** | |
| | Rising one-year heifers | 324.00 |
| | Rising two-year heifers | 474.00 |
| | Mixed-age cows | 616.00 |
| | Rising one-year steers and bulls | 427.00 |
| | Rising two-year steers and bulls | 612.00 |
| | Rising three-year and older steers and bulls | 757.00 |
| | Breeding bulls | 1,499.00 |
| Dairy cattle | ***Friesian and related breeds:*** | |
| | Rising one-year heifers | 451.00 |
| | Rising two-year heifers | 799.00 |
| | Mixed-age cows | 917.00 |
| | Rising one-year steers and bulls | 318.00 |
| | Rising two-year steers and bulls | 521.00 |
| | Rising three-year and older steers and bulls | 699.00 |
| | Breeding bulls | 1,030.00 |

*continued on page 2*

| Type of Livestock | Classes of Livestock | Average Market Value Per Head |
|---|---|---|
| | | $ |
| Dairy cattle | ***Jersey and other dairy cattle:*** | |
| | Rising one-year heifers | 393.00 |
| | Rising two-year heifers | 693.00 |
| | Mixed-age cows | 824.00 |
| | Rising one-year steers and bulls | 240.00 |
| | Rising two-year and older steers and bulls | 460.00 |
| | Breeding bulls | 842.00 |
| Deer | ***Red deer:*** | |
| | Rising one-year hinds | 123.00 |
| | Rising two-year hinds | 232.00 |
| | Mixed-age hinds | 277.00 |
| | Rising one-year stags | 188.00 |
| | Rising two-year and older stags (non-breeding) | 310.00 |
| | Breeding stags | 1,999.00 |
| | Wapiti, elk, and related crossbreeds: | |
| | Rising one-year hinds | 156.00 |
| | Rising two-year hinds | 282.00 |
| | Mixed-age hinds | 329.00 |
| | Rising one-year stags | 216.00 |
| | Rising two-year and older stags (non-breeding) | 369.00 |
| | Breeding stags | 2,043.00 |
| | Other breeds: | |
| | Rising one-year hinds | 60.00 |
| | Rising two-year hinds | 98.00 |
| | Mixed-age hinds | 125.00 |
| | Rising one-year stags | 83.00 |
| | Rising two-year and older stags (non-breeding) | 120.00 |
| | Breeding stags | 426.00 |
| Goats | ***Angora and angora crosses (mohair producing):*** | |
| | Rising one-year does | 24.00 |
| | Mixed-age does | 26.00 |
| | Rising one-year bucks (non-breeding / wethers | 14.00 |
| | Bucks (non-breeding) / wethers over one year | 17.00 |
| | Breeding bucks | 124.00 |
| | ***Other fibre and meat producing goats (cashmere or Cashgora producing):*** | |
| | Rising one-year does | 17.00 |
| | Mixed-age does | 20.00 |
| | Rising one-year bucks (non-breeding) / wethers | 13.00 |
| | Bucks (non-breeding) / wethers over one year | 14.00 |
| | Breeding bucks | 77.00 |

| Type of Livestock | Classes of Livestock | Average Market Value Per Head |
|---|---|---|
| | | $ |
| Goats | ***Milking (dairy) goats:*** | |
| | Rising one-year does | 53.00 |
| | Does over one year | 64.00 |
| | Breeding bucks | 152.00 |
| | Other dairy goats | 34.00 |
| Pigs | Breeding sows less than one year of age | 149.00 |
| | Breeding sows over one year of age | 253.00 |
| | Breeding boars | 340.00 |
| | Weaners less than 10 weeks of age (excluding sucklings) | 45.00 |
| | Growing pigs 10 to 17 weeks of age (porkers / baconers) | 124.00 |
| | Growing pigs over 17 weeks of age (baconers) | 178.00 |

# National Standard Cost Values for Livestock - 1993

The National Standard Cost (NSC) scheme for valuing livestock was introduced in the new section 86C of the Income Tax Act 1976 (the Act). The 1992 - 93 income year is the first year it has operated.

Under the authority of section 86C(1) of the Act the Governor-General has declared the national standard costs for the income year commencing on 1 April 1992.

The costs are listed in the table below.

| Type of Livestock | Classes of Livestock | National Standard Cost |
|---|---|---|
| | | $ |
| Sheep | Rising 1 year | 13.00 |
| | Rising 2 year | 7.50 |
| Dairy cattle | Purchased bobby calves | 119.00 |
| | Rising 1 year | 232.00 |
| | Rising 2 year | 58.50 |
| Beef cattle | Rising 1 year | 109.00 |
| | Rising 2 year | 62.70 |
| | Rising 3 year male non-breeding cattle (all breeds) | 62.70 |
| Deer | Rising 1 year | 31.20 |
| | Rising 2 year | 18.10 |
| Meat and Fibre Goats | Rising 1 year | 9.90 |
| | Rising 2 year | 6.00 |
| Dairy Goats | Rising 1 year | 52.70 |
| | Rising 2 year | 9.70 |
| Pigs | Weaners to 10 weeks of age | 74.10 |
| | Growing pigs 10 to 17 weeks of age | 56.10 |

*continued on page 4*

*from page 3*

The previous table on page 3 gives the breeding, rearing and growing (BRG) costs for rising 1 year animals and the rearing and growing (RG) costs for rising 2 year animals - apart from pigs which show the BRG for weaners up to 10 weeks of age and RG costs for growing pigs between 10 and 17 weeks of age.

Under the national standard cost scheme, a farmer applies a national standard cost value to homebred stock, and values purchased stock at their purchase price. The farmer then applies the average of these costs to stock on hand at year's end to derive a closing value. This approach is used to determine the value of rising one year and rising two year immature stock (and rising three year male non-breeding cattle). Once livestock reach maturity the cost assigned to a particular animal is held until the animal is sold or dies.

***Example***

In 1993 a farmer home breeds 1,000 lambs and purchases 400 lambs during the year for $25.00 a head. In this example we have used the BRG figure for the 1992-93 year from the table above ($13.00)

**Calculation**

| | | |
|---|---|---|
| 1,000 | homebred lambs at $13/head | $13,000 |
| 400 | purchased lambs at $25/head | $10,000 |
| 1,400 | | $23,000 |

*(continued at top of next column)*

Average cost per lamb = $\frac{\$23,000}{1,400}$

= $16.42/head

In the following income year (1993-94) the opening value of hoggets on hand will be $16.42/head. The farmer will add to this the RG cost for that year (say $7.50). Providing there are no purchases of sheep in that income year the closing value of two-tooths on hand at year's end will be $23.92.

Any purchases of mature sheep will need to be averaged and added to this cost as follows:

**Calculation**

| | | |
|---|---|---|
| 400 | opening hoggets at $16.42/head | $6,568 |
| | Rearing and growing cost of opening numbers (400 x $7.50) | $3,000 |
| 200 | sheep purchased at $30/head (average) | $6,000 |
| 600 | | $15,568 |

Average cost per mature sheep = $\frac{\$15,568}{600}$

= $25.94/head

For the 1992/93 income year the opening value for the rising two year classes will be the 1991/92 closing value for the rising one year class. This will generally be the trading stock value for that year.

See the previous article in this TIB for the 1993 National Average Market Values (NAMVs) for livestock.

# Late Release of Livestock Values and 1993 Return Filing Requirements

## Introduction

The 1993 National Average Market Values (NAMVs) for specified livestock were released later than usual this year. We have been asked if Inland Revenue intends to make concessions to the 1993 return filing requirements for practitioners who have a large proportion of livestock farming clients. This item explains our views on the matter and what we will take into account for extension of return filing arrangements.

## Background

In TIB Volume Four, No.7 (page 5) we explained the reason for releasing the NAMVs at a later date. We also said that the late release of the values should not unduly affect the income calculations (and therefore the return filing timing) for most farmers. That statement related to farmers who have May or June balance dates.

Recently we were reminded that there is a significant number of farmers with balance dates in March and April. The late announcement of the NAMVs will delay the finalisation of these farmers' tax returns. This in turn will put back the preparation of later balance date returns.

## Comment

There will be difficulties for farmers and their agents for the 1993 income year due to the need to make decisions in moving livestock out of the now repealed trading stock scheme.

The Government has decided that in future years the NAMVs will be based on the snapshot valuation method. The valuation will take place on 30 April each year. This will mean that the Order in Council declaring the values will be released before the end of May.

We believe that in future years the May announcement of the NAMVs will not unduly affect return filing targets for most practitioners, but we accept that some will be disadvantaged.

## Policy

Inland Revenue does not intend to give a general relaxation of the return filing percentages for 1993 or any future year. Practitioners who feel disadvantaged by the change in the announcement timing of NAMVs should discuss the matter with their local Inland Revenue office.

If you wish to discuss this issue with your local Inland Revenue office, please could you gather this information to help with any negotiations:

- The percentage of your clients who are livestock farmers.
- The number of associated returns i.e. partners, beneficiaries etc.
- The number of these clients with 31 May and 30 June balance dates.
- Any other reasons that may affect return filing percentages.
- An amended filing schedule to best meet return percentage targets, particularly at 31 March.

# Employment Status of Couriers

## Summary

Recently the Court of Appeal allowed an appeal by TNT Express Worldwide (NZ) Ltd (*TNT Express Worldwide (NZ) Ltd v Neil Cunningham* C.A. 180/92 5/7/93) against a judgment of the Employment Court ([1992] 3 E.R.N.Z. 1030). The Employment Court had held that a TNT owner/driver courier was an employee. The Court of Appeal's decision reversed that finding.

This item confirms that Inland Revenue will not be altering our policy on determining the employment status of owner drivers for tax purposes as a result of the Court of Appeal decision. Our policy is that a taxpayer's employment status for tax purposes is determined in the same way as it is under general law, and that the same tests will apply.

## Background

In TIB Volume Four, No. 7 (March 1993) we said we would wait until the Court of Appeal issued its judgment before issuing further guidance on the tests to be applied to determine a taxpayer's employment status for tax purposes. However, whatever the outcome, we would not assess couriers for back taxes if we had previously accepted their tax status.

## The Court decision

TNT's appeal was successful. The Court accepted that an owner-driver courier whose contract with TNT:

1) required him to provide his own vehicle, uniform, approved radio telephone, goods service licence under the Transport Act 1962 and insurance;
2) paid him mainly on a per trip basis;
3) made him responsible for employing any relief drivers;
4) referred to the courier as an independent contractor;
5) gave TNT very extensive control over his operations

was an independent contractor - not an employee.

The Court of Appeal said that where the contract is wholly in writing and it is not a sham, then the nature of the relationship intended by the parties is determined from the terms of that contract in the light of all the surrounding circumstances at the time it was made. However, employment relationships do change and the Courts may enquire into the dealings between the parties after that date to see if in fact the relationship has changed from that envisaged by the contract. Judge Hardie Boys emphasised that the control exerted by TNT was only one of several factors relevant to the interpretation of the contract. The Court of Appeal considered this factor had been given too much weight by the Employment Court.

## Policy

Inland Revenue's policy is that a taxpayer's employment status for tax purposes is determined in the same way as under general law. We consider that the Court of Appeal's decision in the *TNT* case affirms our present approach as set out in TIB Volume Four, No.7. We will continue to apply our present policy, both to couriers and to other workers.

## Implications for couriers

Couriers who are employed under similar contracts to the contract in the *TNT* case are independent contractors for tax purposes. They must account to Inland Revenue for income tax, ACC Premiums and GST on this basis, and they may deduct allowable business expenses.

## Correction - Computer Software

In TIB Volume Four, No.10 (May 1993), there was an introduction on page 1 of the main TIB referring to the separate Appendix on computer software. In this introduction, the date shown as 31 July 1993 should in fact be 30 June 1993.

This error does not affect the Appendix itself, it appears only in the introduction in the TIB. We apologise for any inconvenience this may have caused.

# Correction - Stamp Duty on Forest Sales

This item corrects an example in the item on stamp duty and forest sales, which appeared on page 5 of TIB Volume Four, No.8 (April 1993). The example omitted to show that stamp duty was levied on the GST-inclusive value of the transaction. The correct treatment is:

2 SilviCo Ltd purchases the registered forestry right in a block of land planted in four year old eucalyptus botryoides with the intention of milling them for hardwood in twenty five years. The purchase price is $23,000 plus GST (i.e., $25,875.00 including GST).

The annual payment for the forestry right is $3,000 (i.e., $3,375.00 including GST).

Conveyance duty at $1.00 per $100 or part thereof is levied on the GST-inclusive purchase price ($259.00); and

Lease Duty of $0.40 per $100 or part thereof is levied on the GST inclusive maximum annual payment for the forestry right ($13.60).

The total stamp duty payable is $272.60

# Expatriate Home Leave Travel - Fringe Benefit Tax

## Summary

1. Employers are liable for Fringe Benefit Tax (FBT) on any free or subsidised travel they provide to their "expatriate" employees to enable them to travel overseas on recreational leave. This policy applies from 1 August 1993 onwards.

## Background

2. Businesses and other organisations often arrange for their employees to work overseas, whether by being employed by overseas employers (e.g., on a secondment), or remaining with the same employer and just being posted overseas for a period. Sometimes the employer provides free or subsidised return overseas so the employee (sometimes with his/her family) can leave the country of posting or secondment for their holidays. This item sets out the correct tax treatment of these travel benefits and explains why they are subject to FBT.

For the purposes of this policy:

**"Travel Benefits"** are provided, by an employer to an employee for recreational purposes (as part of the employment relationship). They include all forms of free or subsidised overseas travel for the employee (and/or any family members), and are not exchangeable for cash.

**"Expatriate employees"** derive source deduction payments in or from New Zealand and either:

(i) Come to New Zealand from overseas under an arrangement with their overseas employer or its associates, to be employed by a New Zealand taxpayer (for a defined term or otherwise) and receive Travel Benefits from the New Zealand employer; or

(ii) Work outside New Zealand (again on a non-permanent basis) for a New Zealand resident taxpayer who provides them with Travel Benefits.

## Policy

3. Employers who are New Zealand taxpayers are liable for FBT on Travel Benefits they provide to their expatriate employees (and/or associated persons of those employees) to enable them to take recreational leave overseas.

## The relevant law

4. FBT applies to Fringe Benefits that an employer provides (directly or indirectly) to an employee and/or to any associated persons of that employee as part of an employment relationship.

### Is there a "Benefit"?

4.1 Travel Benefits are "benefits" under the definition of "Fringe Benefit" in section 336N(1) since they advantage expatriate employees (both directly and relative to other employees) by enabling them to take leave overseas and removing the need for them to pay for their own holiday travel.

### Is there a "Fringe Benefit"?

4.2 Travel Benefits can be one of two types of Fringe Benefit i.e.:

"Subsidised Transport" (as defined in section 336N(1)), which is travel provided at nil or lower than normal price by an employer who carries on the business of general public carriage or transportation (section 336N(1)(d)); or

Any other kind of benefit received or enjoyed by the employee (section 336N(1)(e)); and

they are for the employee's private use and enjoyment, and the employee receives or enjoys them directly or indirectly because of the employment with the employer.

## Travel Benefits and the Fringe Benefit definition

5.1 Certain benefits are not liable for FBT because they are excluded from the definition of Fringe Benefit. For Travel Benefits, the only exception that could be relevant is section 336N(1)(j)(v). This excludes benefits that replace a need for the employer to reimburse an employee's work related costs of transport between home and work, where those costs are incurred for the employer's benefit or convenience.

5.2 For the exclusion to apply, Inland Revenue must be satisfied that these costs are attributable to one of the factors specified in section 73 (3)(a)-(f). The only ones relevant to expatriate travel benefits are:

(c) Fulfilling an obligation under any Act;

(d) A temporary change in the employee's workplace from the normal place of work, in relation to the same employer;

(e) Any other condition of work of the employee.

### Criteria

6.0 Most Travel Benefits will not meet the criteria for exclusion under section 336N(1)(j)(v) because:

6.1 They do not replace a need to reimburse transport expenditure. They give a gain or benefit to the employee, whereas reimbursement relates only to compensation for expenditure.

6.2 Travel Benefits do not relate to travel between the employee's place of work and "home" because:

(i) Travel Benefits relate to leave and recreation (especially where they are enjoyed by the employee's family as well) and are not "in relation to that employment" as required by the subsection.

(ii) An employee's "home" is the place s/he currently and regularly uses for personal residential occupation in non-working hours (i.e., the base from which s/he habitually travels to work). A home is the place around which, for the present, the normal course of the employee's life revolves. If the expatriate's family is with him/her during the posting, "home" will be where family life takes place during the posting (even if the expatriate keeps a residence in the country of origin, or has no intention of living permanently in the country of posting). [*Geothermal Energy NZ Ltd v IRC* at 341; *Newsom v Robertson* (1952) 2 All ER 728].

### The Commissioner's discretion

7. For the exception to apply, the Commissioner must also be satisfied that any transport costs incurred by the employee are attributable to at least one of the factors specified in section 73(3) (see paragraph 5.2 above).

7.1 Each situation will be assessed on its own facts, but generally Travel Benefits would not relate to any of those factors except:

"(d) Temporary change in workplace from the normal place of work of an employee, in relation to the same employer".

An expatriate's recreational travel from New Zealand back to his/her country of origin is unlikely to relate to travel to another work site of the same [NZ] employer.

A New Zealand employee posted overseas by his/her New Zealand employer could qualify, but is unlikely to satisfy the first part of the exception (see paragraph 6).

"(e) Any other condition of work" - i.e., additional transport costs caused by any condition of work other than any already specified in section 73(3).

The oil rig worker's Travel Benefit (covered in paragraph 8.1 below) would meet this requirement and be exempt FBT.

## Examples

8.1 **The criteria in paragraphs 6 & 7 are met** where an employee works on an oil rig in New Zealand waters for "3 weeks on and 1 week off". The "one week off" is a standard safety requirement in the industry. The employee returns (at the employer's expense) to his apartment in the United States for the one week off. The employee has no residence in New Zealand from which he travels to work, and has not severed any connection with the US place of residence.

The nature of the job is such that the employee would have had to incur the transport costs to get to work if the costs were not paid by the employer. The travel is directly for the purposes of the employment and the employer's convenience.

8.2 **The criteria are not met** where an accountant employed by the London branch of an international accounting firm is seconded to Wellington to work for its New Zealand associates for 2 years. The accountant, her spouse and child rent a house in Wellington and get tenants for their London house. The secondment contract with the New Zealand associate says that after 9 months' service the employee qualifies for 3 weeks' annual leave and free return air travel to Great Britain for her and her family.

This Travel Benefit does not replace a need for the employer to reimburse the accountant for transport costs she would have incurred in travelling between home and work. Her "home" is the Wellington house - not the London property. The travel relates to recreation, not "the purposes of that employment" and costs of holiday travel are not costs she would otherwise be "required to incur for the benefit or the convenience of the employer in relation to that employment".

# Fishing Industry - Employer Premium Rate Changes

Several rates of Employer Premium deductions for the fishing industry have been changed recently by the Accident Rehabilitation and Compensation Insurance (Employment Premiums) Regulations (No.2) 1992 (Amendment No.2). Specifically, the changes are:

- a rate reduction from $4.49 to $2.08 per hundred dollars of income for the businesses of eel farming, fish farming and shellfish processing (These activities have been reclassified into Class No.21)
- a rate increase from $4.49 to $5.46 for the catching sector of the fishing industry. The businesses to which this applies are crayfishing from vessels, fishing from vessels, shipping (fishing from vessels), and collecting and bagging shellfish. These activities remain in Class No.23.

These changes apply from 30 April 1993.

# Tax-Free Allowances

Inland Revenue is studying the implications of cases involving the treatment of tax-free allowances, following recent cases heard by the Taxation Review Authority. In the meantime, we will not change our current practice regarding these allowances.

There have been some queries and speculation about a change in Inland Revenue's policy after these TRA decisions. Any employer with doubts about the tax treatment of allowances they pay should contact Inland Revenue.

Inland Revenue will continue to take a realistic approach when looking at tax-free allowances. We will look at each case on its own merits, and decide whether allowances are fair and reasonable.

# Family Support Increase will be Automatic

Current Family Support recipients will not have to reapply to receive the increased payment rates announced in the Budget.

Inland Revenue pays Family Support fortnightly to low-income working families. We will send new Certificates of Entitlement to these recipients to confirm the increased amounts that they will get. The increased amounts will be credited to their bank accounts from Tuesday 12 October onwards.

People who are on benefits receive their Family Support along with their benefit payments from the Income Support Service. These people will receive the increased Family Support payments with their first or second October benefit payment.

From 1 October the new maximum Family Support rates will be:

| | |
|---|---|
| First or only child | $42 per week |

For each additional child:

| | |
|---|---|
| • aged under 13 | $24 per week |
| • aged 13 or over | $35 per week |

Currently, if a family has two or more dependent children over the age of 16, they are eligible for the “first child” rate of $42 per week for each of these children. This treatment will no longer be available from 1 October 1993, but families who are presently receiving this entitlement will continue to do so until the children are no longer dependent.

# Good Results for IRD's Small Business Service

In June 1992 Inland Revenue set up our Small Business Tax Information Service, to help small business operators deal with their tax obligations. At that time we expected that our 37 Small Business Officers would deal with about 12,000 clients in the first year. However, they exceeded that figure in just nine months.

For the year to 30 June 1993, the service helped 17,703 small business operators, and held 568 seminars which reached an additional 9,031 people. This showed us that we are meeting a real demand in the business community. Small business operators make up a large percentage of our business clients, so it's important that Inland Revenue makes it as easy as possible for them to comply with their tax obligations.

Advise given is mainly on GST and employer taxes such as PAYE and the Employer Premium. Our officers aim to follow up each meeting within six months to check that everything is going smoothly. The benefits of this service for small businesses include reduced compliance costs, better record-keeping and less time spent preparing tax returns.

Small business operators who want help with their tax obligations should contact the Small Business Officer at their local Inland Revenue office.

# 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.

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# Income Tax Act 1976

## Income Derived from Research Funds

**Section 61(24) - Income of Promoter of Scientific or Industrial Research Exempted:** An organisation which held and distributed industrial research funds asked if it had to pay income tax on the interest it earned on the funds while they were in its bank accounts.

Section 61(24) exempts the income derived by any society or organisation established for promoting or encouraging scientific or industrial research. The organisation must meet these conditions to qualify for an income tax exemption under this section:

1. Whether it is incorporated or not, the society or association must be established substantially or primarily for the purpose of promoting or encouraging scientific or industrial research.
2. The society or association must be approved by the Royal Society of New Zealand.
3. No part of the society or association's income or other funds may be used, or be available for use, for the private pecuniary profit of any proprietor, member, or shareholder.

In this case the organisation met the above conditions, so the interest and any other income it may have is exempt from income tax.

## Scholarships and Bursaries

**Section 61(37) - Incomes Wholly Exempt from Tax:** An organisation intended to sponsor a student by way of a scholarship allowance. It wanted to know whether the student would have to pay tax on the allowance.

Section 61(37) does not specify the items of expenditure or levels of payment that qualify for the exemption.

To work out the tax status of a scholarship, the determining factor is the nature of the payment. Inland Revenue will consider this nature principally from the contractual documents, the terms and provisions applicable between the payer and payee, and the surrounding circumstances. As the individual personal circumstances of each recipient will vary, we would need to consider each case on its own merit.

In order to qualify under section 61(37), the recipient of the scholarship needs to be attending an “educational institution”. We would expect that the scholarship was paid to sustain the recipient while s/he was furthering his/her education.

Factors we would look at include:

- Is the money paid out as a scholarship to be repaid at a later date?
- Is the purpose of the scholarship to secure the future services of the recipient?
- Is there any relationship between the type of study to be undertaken and the employment (if any) of the recipient?

In this particular case, the sponsorship was not to secure the future services of the recipient, and the student did not have to pay tax on the allowance.

## United Nations Salary

**Section 61(50) - Income Exempted by Another Act:** A New Zealand resident was employed by the United Nations and stationed overseas. She asked if her United Nations salary was taxable in New Zealand. She was on leave without pay from a New Zealand employer, and she owned a home in Wellington.

Under section 61(50), income expressly exempted by another Act is exempt from income tax. This salary is exempted by clause 14(b) of the Diplomatic Privileges (United Nations) Order 1959 (No 51), which was an Order in Council made under the Diplomatic Privileges and Immunities Act 1968.

## US Non-Taxable Bond Interest Received By New Zealand Resident

**Section 65(2)(jb) - Accrual Income Derived:** A taxpayer was thinking of emigrating from the United States to New Zealand. He asked whether a bond that is not taxed in the United States would be taxable in New Zealand if he became a New Zealand resident.

If he became a New Zealand resident this taxpayer would fall within section 64J(2). This sub-section provides that:

1. a taxpayer is deemed to acquire any financial arrangement at the time at which the taxpayer becomes a New Zealand resident; and
2. the acquisition is deemed to have been made at market value.

Although the bond interest is not taxable in the United States , it is taxable in New Zealand. There is no provision in the New Zealand tax laws or the United States double tax agreement* that exempts income simply because it is exempt in the United States

Bonds are included in the section 64B(1) definition of “financial arrangement”. As such, any interest income from a bond is calculated under the accrual provisions in accordance with sections 64B to 64M, and taxable in New Zealand under section 65(2)(jb). Determination G9A sets out the accrual method to calculate income on foreign currency denominated bonds.

Under section 64M(e)(i), any income that a non-resident earned from a bond before s/he became a resident is not taxable in New Zealand as accrual income.

* Double Taxation Relief (United States of America) Order 1983

## United Kingdom Government Pension

**Section 65(2)(j) - Items Included in Assessable Income:** A New Zealand resident taxpayer asked whether his United Kingdom pension was taxable in New Zealand.

Article 19 of the UK double tax agreement* provides that any United Kingdom pension or similar annuity paid to a New Zealand resident is only taxable in New Zealand. Under section 65(2)(j), the United Kingdom pension is taxable in New Zealand.

* The Double Taxation Relief (United Kingdom) Order 1984

## House Built by a Builder

**Section 67 - Profits or Gains from Land Transactions:** A builder bought a section which he then subdivided. He used part of the section for his building business, and built a house on the remainder, which he intended to sell when completed. He asked if the profit he made on selling the land with the house was assessable for income tax purposes.

Section 65(2)(f) deems all profits or gains derived from land to which section 67 applies to be assessable income. Section 67(4)(c) includes as assessable income all profits or gains a taxpayer makes from selling any land, where s/he was in the business or erecting buildings at the time s/he acquired the land, and where s/he made improvements to the land (not being improvements of a minor nature); and

1. S/he acquired the land for the purpose of the business of erecting buildings; or
2. S/he sold or disposed of the land within 10 years of acquiring it.

As this taxpayer was a builder and the land with the house on it was sold within 10 years of acquisition, the profit on the sale of the land was taxable.

## Expenses Incurred After Failure of a Business

**Section 104 - Expenditure or Loss Incurred in Production of Assessable Income:** A businessman whose business had failed asked whether he could deduct the expenses he incurred after the closure of his business (e.g., interest, rent, etc) from his assessable income.

Under section 104, expenses are only deductible where they are incurred either in the production of assessable income, or in carrying on a business for the purpose of gaining or producing assessable income.

In this case, as the taxpayer incurred the expenses after the business had failed, they are non-deductible, being neither incurred in the production of assessable income, nor in the carrying on of a business for that purpose.

## Share Loss on Compulsory Acquisition

**Section 106 - Certain Deductions Not Permitted:** A taxpayer purchased shares in a public company, with the intention of holding on to them for dividend revenue purposes. Later, he had to sell the shares because of a compulsory acquisition due to a takeover. He asked whether he could deduct the capital loss he sustained on this sale from his assessable income.

Each claim for a deduction for share losses incurred must be considered on the facts of the particular claim. Share losses will be deductible if a taxpayer is in the business of trading in shares, or if at the time s/he bought the shares, the clear and dominant purpose of acquiring them was for resale. However, a deduction is not allowable where the principal purpose for buying the shares was to receive dividends and some capital growth. If the shares had been disposed of at a profit that profit would not have been assessable income.

In this case the taxpayer was not entitled to a deduction as the expenditure is considered to be of a capital nature, and precluded from a deduction under section 106(1)(a).

## New Zealander Trading Overseas

**Section 242 - Liability of Income Derived from New Zealand and Abroad:** A taxpayer was trading as a sole trader overseas in Hong Kong, Tokyo, and the United States. He asked whether he will have any New Zealand tax obligations on the income earned while overseas. The taxpayer is a New Zealand citizen, and will be overseas for seven months.

The permanent place of abode test in section 241(1) is the pre-eminent test for residence. A resident becomes a non-resident for New Zealand tax purposes under section 241 where:

1. s/he is personally absent from New Zealand for a period or periods exceeding in aggregate 325 days in any period of 12 months (section 241(3)); and
2. s/he does not have a permanent place of abode in New Zealand (section 241(1)).

Under section 242(a) all income that a New Zealand resident derives is assessable for income tax in New Zealand, whether it is derived from New Zealand or elsewhere. Therefore, this taxpayer will be liable for New Zealand income tax on all income he earns while overseas, unless he becomes non-resident for New Zealand tax purposes. He will be given a credit in New Zealand for any tax he pays overseas on income that is taxable in New Zealand, to the extent allowable under section 293(2).

## Overpaid Family Support

**Section 374F - Allowance of Credit of Tax in End of Year Assessment:** A taxpayer asked why his overpaid family support was deducted from his income tax refund.

Section 374F generally allows the Commissioner to add any excess tax credits to tax payable. In particular, section 374F(2)(d) requires any overpaid family support amount to be adjusted against the amount of tax payable in that income year.

The tax payable, including the family support overpayment, is reduced by any rebates and tax credits, such as PAYE. The final result is either refunded (where it is a credit) or due for payment on the appropriate due date (if it is a debit).

## Australian Sourced Investment Income

**Double Taxation Relief (Australia) Order 1972:** A New Zealand resident who receives interest and "franked" dividend income from Australia asked how this income was treated for both Australian and New Zealand tax purposes, and the legislative authority for such treatment.

Under Article 9 of the Australian double tax agreement, Australia can only withhold 10% tax from interest that a New Zealand resident earns in Australia. The interest income is then subject to tax in New Zealand, but section 293(2) allows a credit for the tax paid in Australia (limited to the New Zealand tax payable).

The Australian imputation system (franking system) operates in a similar manner to the New Zealand imputation system. Like New Zealand, the Australian system is quarantined, so the franking credit is only available to an Australian tax resident. A taxpayer cannot claim in New Zealand the franking credit attached to a dividend received from Australia. Section 394ZC(4) operates to prohibit the grossing up of the dividend amount of the franking credit.

# Goods and Services Tax Act 1985

## GST on Fire and General Insurance

**Section 5(13) - Receipt of an Indemnity Payment:** An overseas government asked how fire and general insurance was treated for GST purposes in New Zealand.

The activities which relate to life insurance and superannuation are defined as the supply of financial services, and are therefore exempt from GST. All other types of insurance are dealt with by sections 5(13) and 20(3)(d).

There are two rules which apply to claims made under insurances other than life insurance:

1. The insurance company can claim an input tax deduction on any indemnity payment it makes, subject to certain exceptions.
2. The registered person receiving the indemnity payment from the insurance company must account to Inland Revenue for one-ninth of any payment, to the extent that it is received for a loss incurred in the course of making a taxable supply (provided GST is charged at the standard rate on the premiums, and the insurance is not a loss of earnings policy).

***Example:***

A domestic insurance company charges GST when it provides insurance for a building situated in New Zealand. If the insurance company subsequently pays out for damage to the building, it can claim one-ninth of the pay-out as input tax. A registered recipient must return output tax on that amount, to the extent that the building is used in the course of making taxable supplies.

## GST on Services Performed in New Zealand for Overseas Company

**Section 11 - Zero-Rating:** An overseas market research company engaged a New Zealand firm to handle and mail out market research questionnaires in New Zealand. It asked whether it had to pay GST on the fee charged by the New Zealand firm.

Section 11(2)(e) provides for the zero-rating of services 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.

In this case a registered person in New Zealand made supplies to the overseas company. The overseas company did not have a presence in New Zealand, so the supply is zero-rated.

## Sale of Commercial Building to Lessee as Going Concern

**Section 11 - Zero-Rating:** A solicitor acting for the parties to a sale and purchase agreement for a commercial building asked whether the agreement should be treated as the sale of a going concern. The building is to be sold to the existing major tenant, who occupies over 50% of the floor space. Both the vendor and the purchaser are registered for GST.

For a sale of a taxable activity to be considered to be a sale of a going concern, the particular undertaking transferred must be capable of being continued by the

purchaser after the transfer. In this case, on selling to the lessee the leasehold and freehold interest merge. The purchaser cannot continue the undertaking in its original form.

Accordingly, the sale of the commercial building to the lessee will not be the sale of a going concern, but rather the purchase of a capital asset. GST will be payable.

### Bad Debts and GST

**Section 26 - Bad Debts:** A taxpayer wished to know the legal process for handling the writing off of bad debts and the treatment of recoveries, for GST purposes.

Section 26(1) provides that where a registered person has:

- made a taxable supply for consideration in money; and
- furnished a relevant return and properly accounted for output tax on the supply; and
- written off as a bad debt all or part of the consideration not paid to that person,

the registered person may deduct the GST charged on the amount that has been written off. Note that if only a proportion of a supply is written off as a bad debt, the registered person can only claim back the same proportion of the GST on the supply.

The debt must be identifiable as relating to a specific debtor, and all reasonable efforts to collect the debt must have been made. No deduction is allowed for a percentage of debtors as a provision for doubtful debts.

Where a registered person subsequently recovers all of the bad debt, the amount of GST deducted under section 26(1) must be repaid to Inland Revenue. Where only a part of the debt is recovered, there will need to be a pro-rata adjustment.

### Interest on GST Refund

**Section 46 - Interest on Refunds:** A taxpayer experienced a delay in receiving his GST refund, and wanted to know whether Inland Revenue paid interest on it.

Under section 46, Inland Revenue will pay interest where we have received a satisfactory return, but we have not refunded the credit to the registered person within fifteen working days (as defined in the Act) from the day we received the return.

## Child Support Act 1991

### Non-Custodial Parent Living in Australia

**Section 6 - Parents by Whom Child Support Payable:** A custodial parent asked how the Child Support Act applied when her ex-spouse (the non-custodial parent) is living in Australia.

When a liable parent is living in Australia, the Child Support Agency is able to assess child support liability for children living in New Zealand if the absent parent is a New Zealand citizen. The assessment would be based on income earned in New Zealand, with a $10 per week minimum liability applying.

### Liable Parent Providing Items for Children

**Section 29 - Basic Amount of Child Support Payable:** A liable parent asked whether extra items that he provided for his children could be taken into account when determining his child support liability.

Section 29 provides the formula for determining the amount of child support a liable parent must pay. This section does not take into account the fact that liable parents may provide additional items for their children. Therefore, additional items that a liable parent provides are not considered when determining a child support liability.

## Extra Details for Earlier Items

We've received some questions about items we published in an earlier issue of "Questions We've Been Asked" (Volume Four, No.10). We felt that we should publish some the answers to some of those questions.

### Subdivision of an Orchard

The item stated that any profits from the subdivision were assessable under section 67(4)(e) of the Income Tax Act 1976, and that the value of the land at the time of the undertaking or scheme may be used in determining the assessable income.

We have been asked whether the item should refer to value at the beginning of the development, or original cost to the owner. The wording of section 67(4)(e) uses the word cost. However, section 67(9A) allows the Commissioner to determine the cost price of land for the purposes of sections 67(4)(a) to (e), if this is necessary. Therefore in situations where a landowning taxpayer subsequently decides to develop land Inland Revenue can determine that the value of the land is higher than the cost price.

### Tax Treatment of Foreign Teacher's Salary

The teacher in this item was a visiting Japanese school teacher. The item should have mentioned that section 61(38) only applies where:

- the visiting teacher is not a resident of New Zealand; and
- the employer is not resident in New Zealand.

If a visiting teacher is present in New Zealand for more than 183 days s/he will be a New Zealand resident under section 241(2) of the Income Tax Act. In this case, the teacher will not qualify for the income tax exemption in section 61(38).

A non-resident teacher who is employed by a resident employer (such as a New Zealand school) will not qualify for the income tax exemption under section 61(38).

Article XI of the Japanese double tax agreement* provides relief for visiting Japanese teachers who teach at a university or similar institution for up to two years.

* Double Taxation Relief (Japan) Order 1963

### Supply Made to Agent

This item referred to section 11(2)(c)(ii) of the Goods and Services Tax Act 1985. In fact that section was replaced by section 11(2)(ca) from 13 March 1992.

Section 11(2)(ca) requires that the services be supplied to a person who is a non-resident at the time the services are supplied.

The item also referred to section 60 of the GST Act. For that section to apply there must be a clear agency agreement.

# Legal Decisions - Case Notes

This section of the Tax Information Bulletin sets out brief notes of recent tax decisions made by the Taxation Review Authority, the High Court, the Court of Appeal and the Privy Council.

We have given each case a rating as a reader guide to its potential importance.

- ••••• Important Decision
- •••• Interesting Issues Considered
- ••• Application Of Existing Law
- •• Routine
- • Limited Interest

We've given full references to each case, including the citation details where it has already been reported. Details of the relevant Act and section will help you to quickly identify the legislation at issue. Short case summaries and keywords deliver the bare essentials for busy readers. The notes also outline the principal facts and grounds for the decision. Where possible, we have indicated if an appeal will be forthcoming.

These case reviews do not set out Inland Revenue policy, nor do they represent our attitude to the decision. These are purely brief factual reviews of decisions for the general interest of our readers.

## Contents

## Tax Status of Reimbursing Allowance paid by Real Estate Principal

**Rating:** • •

**Case:** TRA 92 / 149

**Act:** Income Tax Act 1976, section 73

**Keywords:** *"Real estate agents", "reimbursing allowance"*

**Summary:** A reimbursing allowance cannot be tax free unless it has been exempted under section 73.

**Facts:** Before 5 January 1990 the payments a real estate agent received from the Real Estate Licensee for whom he worked were entirely commission. Until that time the agent and his principal had assumed that their relationship was one of independent contractor and client. The Court of Appeal's decision in *Challenge Realty v CIR* [1990] 3 NZLR 58 (given on 19 December 1989) reversed that assumption. It held that real estate agents were employees, not independent contractors.

The agent and the licensee then entered a written agreement which provided that part of the payments to the agent were reimbursements for expenses and the remainder were commission. The agreement probably took effect from 5 January 1990.

**Decision:** The so-called "reimbursing allowances" could not be tax free to the agent because section 73(5) a reimbursing payment cannot be tax-exempt until the Commissioner has approved it. Inland Revenue acted correctly in assessing tax on the income that the agent received in the 1990 year for vehicle, stationery and other miscellaneous work expenses. These payments were assessable income, not tax free reimbursing allowances.

**Comment:** The taxpayer has lodged appeal against this decision.

## Penal Tax charged for Failure to Account for PAYE

**Rating:** •

**Case:** TRA 92 / 108 and 92 / 109

**Act:** Income Tax Act 1976, Sections 369 and 423

**Keywords:** *"Penal tax"*

**Summary:** The taxpayers objected to the imposition of penal tax of 150%.

**Facts:** A husband and wife partnership that employed staff failed repeatedly over a number of years to account to Inland Revenue for PAYE deductions. Penal tax of $9,300 was imposed (150%).

**Decision:** The right to impose penal tax was upheld. The penal tax reduced to 22% of the deficient tax.

**Comment:** Inland Revenue is not appealing this case.

## Input Tax cannot be claimed on Barrister's Fee

**Rating:** • •

**Case:** TRA 92/131

**Act:** Goods and Services Tax Act 1985, sections 2, 6, 8 and 20(3)

**Keywords:** *"Input tax", "taxable activity"*

**Summary:** The objector was not entitled to an input tax credit on its barrister's fee for defending the objector against a prosecution for offences under the GST Act. The inputs were not incurred for the principal purpose of making taxable supplies.

**Facts:** The objector was a property developer who was placed in liquidation by a debenture holder in 1989. The receiver discovered that the only prospect of any recovery for the debenture holder was a disputed GST refund. The objector was prosecuted and convicted for offences under the GST Act. The issue was whether the objector acquired the barrister's services for the principal purpose of making its taxable supplies.

Inland Revenue argued that the barrister's fee was incurred defending the objector against prosecution for false declarations in a GST return, and that the objector was engaged in criminal activities which could not be said to be its taxable activities.

**Decision:** Judge Barber held that the barrister's fee was not incurred to make taxable supplies. The fee could not be related back to some activity which was prior to the service provided by the barrister.

**Comment:** The taxpayer has not appealed this decision.

## Supply of On-Site Accommodation not a Fringe Benefit

**Rating:** •

**Case:** TRA 93/24

**Act:** Income Tax Act 1976, sections 336N(1), 336N(1)(e) and 340(2)

**Keywords:** *"Benefit", "fringe benefit tax"*

**Summary:** This case concerns whether a caravan provided by an employer is a fringe benefit which is subject to FBT. The TRA concluded that the caravan was not a benefit but a burden, and that no fringe benefit tax was payable.

**Facts:** The objector has a contract with a local authority to run a motor camp. The authority employs a manager who is responsible for the day to day running of the camp. The manager needs to be on call 24 hours a day. The objector requires the manager to live at the camp in a caravan which is situated alongside the motor camp's office. The wages paid to the manager would remain the same whether she stayed in the caravan or in some other dwelling near the site.

**Decision:** Judge Willy found that the provision of the caravan to the employee was not a benefit. The Judge considered the requirement to stay on the camping site to be a burden that the employee must assume if she wished to obtain employment with the local authority. The objector received no fringe benefit within the provisions of the Income Tax Act 1976, so no FBT was payable.

**Comment:** Inland Revenue is not appealing this decision.

## Which Document is an "Invoice" for Imported Goods

**Rating:** ••

**Case:** Shell NZ Holding Company Ltd v. CIR, AP 259/90

**Act:** Goods and Services Tax Act 1985, sections 12 and 20

**Keywords:** *"Invoice", "tax invoice", "import entry", "deferred duty statement"*

**Summary:** A deferred duty statement constitutes an "invoice" under the section 2 definition for importing purposes. An import entry notice does not constitute an "invoice".

**Facts:** This case was an appeal from Judge Keane's decision in TRA 88/92 (reported as L83 1989 11 NZTC 1477). The objector company accounted for GST on the invoice basis. For customs purposes and for the importation of goods, the objector operated under the deferred payment scheme. It used the import entry notice as the instrument to trigger off the claim for input tax credits under section 20(3)(a)(ii). Inland Revenue contended that the import entry notice was not an invoice because it was not "a document notifying an obligation to make payment" - rather it was the deferred payment statement which served notice on the importer to make payment that was the "invoice".

**Decision:** The High Court upheld the TRA's decision, concluding that the deferred duty statement was the invoice. Judge Heron said that a realistic implementation of the GST law was to be preferred and that the true function of the deferred duty statement was to crystallise the importer's GST obligations. The import entry notice merely confirmed importation and indicated the levels of duty and GST applicable. It did not crystallise the GST liability.

**Comment:** The taxpayer has appealed this decision to the Court of Appeal.

## Supply for GST purposes between Parent and Subsidiary Companies

**Rating:** •••••

**Case:** Case Q34 (1993) 15 NZTC 5,159, TRA No. 93/11

**Act:** Goods and Services Tax Act 1985, section 5

**Keyword:** *"Supply"*

**Summary:** This case concerned whether the objector had made supplies to subsidiaries. The Taxation Review Authority found that the objector could not discharge the burden of proof and decided the case in the Commissioner's favour. The Taxation Review Authority concluded that Income Tax cases on the same facts were not decisive for GST cases.

**Facts:** This case concerns complex intercompany transactions between a parent company and its subsidiaries. The facts of this case are identical with those in TRA Cases M104 and M109. In these cases, the TRA concluded that the payments between the companies were in the form of dividends.

The objector is a parent company of many subsidiary companies. The shareholders of the objector hold the shares on trust for Mr. and Mrs. M. The objector purchased shares in a subsidiary company QP Ltd with funds borrowed from Mr. and Mrs. M.

The objector has a management contract with CM partnership to supply management services to QP Ltd. The objector pays 5% of its income for these management services. The objector pays the remainder of the income to the unpaid vendors of QP Ltd and to its shareholders, who ultimately pass the funds on to Mr. and Mrs. M.

The objector submitted that they had never supplied goods or services to their subsidiary companies, but merely arranged for the CM Partnership to supply those services. The objector sought to rely upon the findings in Cases M104 and M109 that the payments were dividends.

**Decision:** Judge Willy held that the objector could not discharge the burden of proof to establish that the objector had made no supply of goods or services to QP Ltd. This was due to the inconsistency between the documents presented to the TRA, the witness' evidence in the present hearing and the witness' evidence in the Income Tax cases. Judge Willy concluded that even if the CM partnership had been the agent of the objector, section 60 of the GST Act would deem the objector to have made the supplies.

The Taxation Review Authority's earlier Income Tax decisions were not decisive for this case and the payments made by the subsidiary companies were not in the nature of dividends.

**Comment:** The taxpayer is appealing this decision.

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## Deductibility of Interest, and Value for Depreciation Purposes

**Case:** TRA 92/9 and 93/23

**Rating:** • •

**Act:** Income Tax Act 1976, sections 104, 106(1)(h)(i), 108 and 111.

**Keywords:** *"deductibility of interest" , "direct use of capital", "cost price"*

**Summary:** The decision in this case confirms that the deductibility of interest relates to the use to which the borrowed capital is put. Further, that depreciation is calculated on the cost price of an asset rather than the market value at the time the asset was first used for producing assessable income.

**Facts:** On moving from Wellington to Auckland the taxpayer and spouse decided to let their Wellington home. They purchased an apartment in Auckland using borrowings secured over the Wellington property. Later they purchased a second home in Auckland and let the apartment. The capital used to purchase the second home was partly secured over the apartment. Some of the money raised at that time was used to purchases shares in a property owning company and to deposit funds in an interest free current account in the same company. The objector claimed interest on most of the money borrowed including that used to purchase private residences. The taxpayer also claimed depreciation on the properties based on the market value at the time of first letting.

**Decision:** The Authority confirmed the deductibility rules relating to interest. "... the deductibility of interest flows from the use of the capital on which the interest is being paid, *Pacific Rendezvous Ltd. v CIR* (1986) 8 NZTC 5,146: interest incurred on capital put to private use is not deductible; interest incurred on capital used to acquire rental property is deductible.

This meant the interest on the money used to purchase company shares from which dividends would flow was allowed as a deduction, but that relating to the interest free deposit was denied. The TRA also confirmed that depreciation must be based on the cost price of the rented properties, not the market value at the time of first letting.

**Comment:** Inland Revenue is not appealing this decision.

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## Finance Company's Gains on Government Stock - Business Gain or Windfall Income?

**Rating:** •

**Case:** AA Finance Ltd v Commissioner of Inland Revenue

**Act:** Income Tax Act 1976, sections 33, 65(2)

**Keywords:** *"Gains derived from business", "windfall gains"*

**Summary:** This issue in this case is whether gains were capital or revenue in nature. The taxpayer was required by law to hold Government Stock and considered that the gains did not arise from its business. Inland Revenue considered that the gains arose from the taxpayer's business.

**Facts:** AA Finance Ltd (AAF) operates as a finance company borrowing from the public and lending primarily to fund purchases of motor vehicles.

As a finance company, AAF is required by law to hold Government Stock. The amount of Government Stock it had to hold varied, but was always stated in terms of face value. This is a condition of its entitlement to carry on business as a finance company.

Often the Government Stock was bought at a discount. On maturity or sale stock bought at a discount was realised at a gain. The taxpayer treated the gains made from selling stock as windfall capital gains. In the income years 1984 to 1987 AAF sold considerable stock at a gain.

Inland Revenue argued that the gains arose from AAF's business as a finance company and were assessable under section 65(2)(a) as business profits. It was argued that as the taxpayer carried on the business of borrowing and lending money, the Government Stock was effectively trading stock. This would mean any gains or losses arising from the disposition of the stock were revenue in nature.

The taxpayer's argument was that the gains were windfall. AAF held the stock only to comply with regulatory requirements so that it could conduct its business, and not as part of that business. The gains were merely incidental to its business activities.

**Decision:** The High Court decided that the gains were income derived from business.

**Comments:** The situation in this case would now be covered by the accrual rules (sections 64B - 64M). Those rules render any gains from holding financial arrangements assessable under section 65(2)(jb).

We do not know whether the taxpayer will appeal the decision.

# Correction - Releasing Official Information about Taxpayers

On page 1 of TIB Volume Four, No.11 (June 1993), there was an article dealing with releasing Official Information about taxpayers.

In this article we said that *"We have consulted with the Ombudsman, and between us we've agreed that it is vital that Inland Revenue does not release information we receive in confidence,..."*

The Chief Ombudsman has pointed out that this statement reflects the general approach to release of informants' identities, but the rationale is not because the information is received in confidence. The reason is that releasing such information could well prejudice Inland Revenue's ability to detect revenue offences.

Where such factors are not involved in a particular case, the Ombudsman might form the opinion that the information ought not to be withheld and might recommend that it be released.

However, the sections in the previous article about confidentiality, defamation, illegal activities and safety still stand. Inland Revenue will not release any information if doing so would contravene any of these factors.

# Due Dates Reminder

## August

5 PAYE deductions and deduction schedules for last 16 days of July 1993 due - "large" employers only.

7 First instalment of 1994 Provisional Tax due for taxpayers with April balance dates.

Second instalment of 1994 Provisional Tax due for taxpayers with December balance dates.

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

First instalment of 1994 student loan interim repayment due for taxpayers with April balance dates.

Second instalment of 1994 student loan interim repayment due for taxpayers with December balance dates.

20 PAYE deductions and deduction schedules for first 15 days of August 1993 due - "large" employers

PAYE deductions and deduction schedules for July 1993 due - "small" employers.

Gaming Machine Duty return and payment for month ended 31 July 1993 due.

RWT on Interest deducted during July 1993 due for monthly payers.

RWT on Dividends deducted during July 1993 due.

Non-Resident Withholding Tax (or Approved Issuer Levy) deducted during July 1993 due.

31 GST return and payment for period ended 31 July 1993 due.

## September

5 PAYE deductions and deduction schedules for last 16 days of August 1993 due - "large" employers only.

7 First instalment of 1994 Provisional Tax due for taxpayers with May balance dates.

Second instalment of 1994 Provisional Tax due for taxpayers with January balance dates.

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

1993 End-of-Year Tax due for taxpayers with October balance dates.

Annual income tax return due for non-IR 5 taxpayers with balance dates from 8-31 May 1993 (Remember to attach SL 9 form for student loan borrowers).

First instalment of 1994 student loan interim repayment due for taxpayers with May balance dates.

Second instalment of 1994 student loan interim repayment due for taxpayers with January balance dates.

20 PAYE deductions and deduction schedules for first 15 days of September 1993 due - "large" employers

PAYE deductions and deduction schedules for August 1993 due - "small" employers.

Gaming Machine Duty return and payment for month ended 31 August 1993 due.

RWT on Interest deducted during August 1993 due for monthly payers.

RWT on Dividends deducted during August 1993 due.

Non-Resident Withholding Tax (or Approved Issuer Levy) deducted during August 1993 due.

30 GST return and payment for period ended 31 August 1993 due.

Second instalment of 1994 student loan non-resident assessment due.

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*This TIB has no appendix*