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## Energy Company Shares - First Sale not Taxable

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People who sell shares that they received recently from local energy companies will not have to pay tax on the sale.

There has been some speculation about the tax status of these shares. Inland Revenue has looked into the issue, and we can confirm that proceeds from the first sale of these shares are not taxable. The law is very clear in this

area; sale profits are only taxable if the shares were acquired for the purpose of resale. Inland Revenue accepts that people who were allocated shares by energy companies did not acquire the shares for resale.

However, if a person buys further shares with the purpose of resale then any profit on the sale of those shares will be taxable.

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## Overdue Tax Returns - Late Filers Reminded

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Inland Revenue reminded more than 300,000 people to file their overdue tax returns recently. This is the first step in Inland Revenue's "chase-up" process.

Approximately 130,000 salary and wage earners and 190,000 self-employed people, companies and partnerships received reminders. If people don't respond to these reminders Inland Revenue will estimate the amount of tax they owe and send them a bill. People are legally required to pay such bills unless they file their returns.

Anyone who has received a reminder should respond to it straight away, as Inland Revenue will chase up people who don't play fair.

More than 1.8 million individual taxpayers have already filed their tax returns. These people have made sure they are on time, and that their tax affairs are in order, but there is a hard core who think they are above the system.

Inland Revenue is not sending reminders to people who have their returns prepared by tax practitioners.

People who aren't certain if they should file returns should contact their local Inland Revenue office. Our staff will be happy to help.

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## GST - Funding from Regional Health Authorities to Rest Homes and Private Hospitals

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### Summary

From 1 July 1993 rest homes and private hospitals have been receiving funding from Regional Health Authorities (RHAs). We've been asked to confirm the rate at which they should account for GST output tax on this funding.

Rest homes and private hospitals which operate as residential establishments should continue to account for output tax at the current rates (10.25% and 10.75% respectively) on payments they receive from RHAs for supplying rest home and hospital care.

### Background

From 1 July 1993, Area Health Boards have been replaced by four RHAs and the Crown Health Enterprises (CHEs). The RHAs are now responsible for buying health services for the populations in their respective regions. This responsibility includes providing funding for rest homes and hospitals.

There is a special rule in section 10(6) of the GST Act for determining the value of domestic goods and services supplied in commercial dwellings, including rest homes and hospitals which operate as residential

establishments. GST is only charged on 60% of the value of the supply of domestic goods and services covered by section 10(6).

Before 1 July 1993, rest homes and private hospitals usually accounted for GST at the effective rates of 10.25% and 10.75% respectively. These rates are based on a standard apportionment between the supply of domestic goods and services (covered by section 10(6) of the GST Act), and other goods and services supplied by the rest home/hospital. Alternatively, the home or hospital may choose to make this apportionment on a factual basis.

### GST Treatment

The change in the contractual arrangements under which rest homes and private hospitals receive their funding does not change the rate at which they should account for GST output tax. They should continue to apply the lower effective rates determined according to section 10(6) and the apportionment formula accepted by Inland Revenue. These lower effective rates will apply regardless of whether a resident partly or totally pays the rest home/hospital fees, or whether the RHA pays them.

# Distributions of Trading Stock at "Under Value" to Shareholders

## Summary

This item explains how "under value" distributions of trading stock to shareholders or shareholder-employees will be valued. The provisions in sections 91 and 197 of the Income Tax Act 1976 ("the Act") will apply unless the distribution is a fringe benefit to a shareholder-employee. In this case the valuation provisions of the fringe benefit tax regime (section 336O(4) & (6)) will be used.

"Under value" distributions to shareholders will be non-cash dividends to them under section 4. A company will be liable for fringe benefit tax on any "under value" distributions it makes to shareholder-employees.

## Legislation that applies

The Act has two sets of valuation provisions that could apply if trading stock is distributed to shareholders or shareholder-employees for less than full consideration:

- sections 91 and 197 (distributions of trading stock)
- sections 336O(4) and 336O(6) (the provision of fringe benefits).

## Distribution of trading stock to shareholders

For the purposes of sections 91 and 197, trading stock includes these items:

- anything produced or manufactured
- anything acquired or purchased for purposes of manufacture, sale, or exchange
- livestock
- timber within the meaning of section 74 of this Act
- any right to take timber within the meaning of section 74 of this Act
- any other real or personal property, if the person who sells or disposes of it
  - is in the business of dealing in such property, or
  - acquired the property for the purpose of sale or other disposal
- any land (within the meaning of section 67 of the Act), if any profit or gain from selling or disposing of it would be subject to section 67
- anything on which expenditure is incurred after 31 July 1986 and which - if possession of that thing were taken - would be trading stock.

Trading stock does not include any financial arrangement (as defined in section 64B of the Act) to which sections 64B to 64M of the Act apply.

Under sections 91 and 197, if trading stock is disposed of for less than its true value it is deemed to be disposed of at market price (or at a price determined by Inland

Revenue, if no market price can be ascertained). These sections will apply when trading stock is disposed of either for no consideration, or for consideration less than its true value.

Section 91 applies generally when trading stock is distributed "under value" to any person. Section 197 applies specifically to "under value" distributions of trading stock by a company to its shareholders. Such a distribution will be a dividend for tax purposes. A non-cash dividend is defined in section 4(3); it includes distributions of property to shareholders if the market value is more than the consideration paid. This covers "under value" distributions of trading stock.

## Fringe benefits to shareholder-employees

If trading stock is distributed "under value" to a shareholder in the context of his/her employment, it will be a fringe benefit. Section 336N(3B) states that a benefit to a shareholder-employee (including ex-employees) by an employer is deemed to be provided to that shareholder-employee in the course of employment (subject to section 336N(3C)).

Section 336N(3C) deals with non-cash dividends provided to non-executive director/secretary-shareholders. It provides that such transactions will be subject to the dividend rules.

Sections 336O(4) and (6) outline four methods for valuing goods provided as fringe benefits (subject to the "special goods" exemption provided by section 336N(5) and 336N(6)):

1. If the employer produced or processed the goods - the lowest price at which the employer normally sells the goods on the open market (at the time the employee receives the goods).
2. If the employer acquired the goods at arm's length - the cost to the employer.
3. If Inland Revenue believes the value determined by either of those two methods is higher than the retail price at which the goods would be offered to the public - an amount equal to the retail amount.
4. If the value cannot be determined as set out above, an amount determined by Inland Revenue, based upon the amount which we determine a member of the general public would normally pay on the open market.

## Which section will apply

Part XB of the Act (FBT) applies to every employer who provides fringe benefits to employees, including shareholder-employees. It makes these benefits taxable as if they were supplied in the context of an employment relationship.

On the other hand sections 91 and 197 are general; they are independent of any employment relationship and cover most sales or distributions of trading stock for less than true or market value.

Inland Revenue's approach as to which valuation provisions apply to a situation is based on the general rule of statutory interpretation: if more than one provision could apply to the same situation, a specific provision has precedence over any more general provisions.

## Policy

If trading stock is distributed "under value" to a shareholder and no shareholder-employee relationship exists, the distribution will be treated as a dividend and valued under section 197.

If trading stock is distributed "under value" to a shareholder-employee and a shareholder-employee relationship does exist, the distribution will be treated as a fringe benefit and valued under the fringe benefit regime.

If the shareholder's only connection with the company is as a non-executive director or secretary, any "under value" distribution will be treated as a dividend and valued under section 197.

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## Determination E9: Persons not Required to Comply with Section 104A of the Income Tax Act 1976

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### Summary

This determination sets out circumstances under which persons do not have to make accrual adjustments to deductible expenditure, as required by section 104A.

### Background

Expenditure that is deductible under section 104 must be adjusted for accruals that exist at the end of the income year. This determination specifies the type of expenditure, amount, and the maximum period from balance date where accrual adjustments are not re-

quired. The only difference from Determination E8 is that this determination applies to the income year commencing 1 April 1993.

The determination was made under section 104A(5) of the Act. The Commissioner signed it on 19 October 1993. The full determination is printed in the appendix to this Tax Information Bulletin.

### Application date

The determination applies to the income year commencing 1 April 1993.

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## Upcoming TIB Articles

In the next few months we'll be releasing policy statements on these topics in the Tax Information Bulletin:

- Repairs and maintenance policy resulting from the new depreciation regime
- When Inland Revenue can grant relief from payment of tax in cases of financial hardship
- Tax implications of the benefits from belonging to a frequent flyer scheme
- Various qualifying company statements

We'll publish these statements as soon as we've finished consulting with external commentators.

## 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

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## Taxation of Pay Received in Addition to Normal Pay

**Section 2 - "Extra Emolument" defined:** A company asked what rate it should deduct tax at when it allowed employees to work through one week's holiday as permitted by their award. The company pays the extra pay separately from the holiday pay.

Section 2 defines an "extra emolument" as a lump sum payment made as part of a person's employment, which is not overtime and which is not regularly paid and included in the wages or salary for a period.

The employees working this extra week would receive normal pay for working as well as holiday pay. Therefore, the extra pay they receive is an extra emolument. It will be taxed at the extra emolument rate of 28 percent. The earner premium will take this to a rate of 28.8 percent.

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## Qualifying Tax in Dispute - Interest Payable by Inland Revenue

**Section 34A - Interest on Tax in Dispute where Objection Lodged:** A taxpayer asked whether Inland Revenue pays interest when we concede an objection.

Under section 34A(2) the Commissioner must pay interest on the qualifying tax in dispute that the taxpayer paid before a final decision was made. Qualifying tax in dispute is the amount of tax that is the subject of a competent objection. Section 34A (3) provides a formula for calculating interest. The prescribed rate of interest is 10%, and the interest will be assessable to the recipient.

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## Charitable Status for a Non-Resident Organisation

**Section 61(25) - Income Derived by a Charity:** An overseas organisation had charitable status in England. It asked if Inland Revenue can refund the non-resident withholding tax that was deducted from dividends it received from New Zealand. The organisation also asked if it could be exempted in the future.

If a body is established exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual, its income is exempt from income tax under section 61(25). Section 310(2) provides that non-resident withholding tax does not apply to income that is exempt from income tax.

The charity should apply to Inland Revenue for approval of its charitable status. It must send in a copy of its constituting documents such as the trust deed or the memorandum and articles of association with the application.

Once Inland Revenue has approved the body's charitable status, non-resident withholding tax will not have to be deducted. The charity can apply for a refund of the non-resident withholding tax under section 326A if it can show that it was a charity for tax purposes when the New Zealand company deducted non-resident withholding tax.

The charity in this case was not carrying on a business so the restrictions in section 61(27) as to charitable purposes within New Zealand did not apply.

## Sale of Debt - Base Price Adjustment not Required by Unaffected Party

### **Section 64F - Income and Expenditure where Financial Arrangement**

**Redeemed or Disposed of:** A company ("the issuer") owed a debt to a finance company. The finance company ("the holder") sold the debt to a merchant bank. The issuer asked whether it had to make a base price adjustment when the finance company sold the debt to the merchant bank.

Under section 64F(2) a person must calculate a base price adjustment when a financial arrangement matures, is remitted, sold, or otherwise transferred by that person in any income year. Where a holder sells a financial arrangement, that holder must make a base price adjustment.

Where the financial arrangement remains the same for the party that has not sold its rights under the financial arrangement (the issuer this case), section 64F(2) does not require a base price adjustment.

However, a new financial arrangement will exist where the terms have been renegotiated at the time of the sale of the financial arrangement. All the parties must then make a base price adjustment.

In this case the holder merely sold the financial arrangement in its existing form to another party at a discounted rate. The terms and conditions of the financial arrangement remain the same for the issuer so no base price adjustment will be necessary for the issuer.

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## Non-Resident Withholding Tax and Approved Issuer Levy

**Section 311B - Approval of Person as Approved Issuer:** A partnership asked about payment of the two per cent approved issuer levy as an alternative to deducting non-resident withholding tax on interest paid to a non-resident.

"Approved issuer levy" can only apply where the lender and borrower are not associated persons. To qualify for the levy instead of non-resident withholding tax the borrower must obtain Inland Revenue's approval that:

- the interest is paid in respect of a "registered security", and
- an approved issuer pays the interest.

Section 86 of the Stamp and Cheque Duties Act 1971 defines a "registered security" as:

"...any transaction involving money lent to an approved issuer that is -

- (a) Registered by the Commissioner under section 86H of this Act on the application of the approved issuer; or
- (b) One of a class of transactions so registered".

To obtain approved issuer status under sections 311A and 311B of the Income Tax Act, a person must apply in writing to Inland Revenue. Inland Revenue will grant approval if the applicants have shown no serious default or neglect in complying with their tax obligations under any of the Inland Revenue Acts during the specified period in section 311B.

The specified period begins on 1 August 1991 or the date two years before the date of application (whichever is later), and ends with the date of application.

In this situation the partnership had a two year compliance problem with furnishing GST returns. Because of this Inland Revenue declined the application for the approved issuer status.

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## Keeping Resident Withholding Tax Deduction Certificates

**Section 327H - Resident Withholding Tax Deduction Certificates:** A taxpayer asked how long he should keep his withholding tax deduction certificates.

Section 327H (8) requires the recipient of a resident withholding tax deduction certificate to retain it for three years after the end of the year to which it relates, unless Inland Revenue permits otherwise.

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## Private Domestic Workers and PAYE

**Section 355 - Employee to pay deductions to Commissioner:** A taxpayer who was employed as a private domestic worker asked about his responsibilities regarding payment of his PAYE.

The general rule in any employment situation is that employers are responsible for deducting PAYE from their employees' earnings and paying it to Inland Revenue. There is an exception to this rule for payments made to private domestic workers.

Section 355 requires private domestic workers to pay their own tax deductions to Inland Revenue, even though they are technically employees. Inland Revenue refers to these types of taxpayers as IR 56 taxpayers. IR 56 taxpayers must pay tax deductions on a monthly basis by the 20th day of the month following the month in which they receive the earnings.

A private domestic worker is defined in section 2 of the Act as a person employed by any other person, where the employer is an occupier of premises used exclusively for residential purposes and the employment is for work about the premises, garden, or grounds. The employment cannot be part of any business of the employer, nor can the employment be regular full-time employment.

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## Goods and Services Tax Act 1985

### Layby Sales and Retailers

**Section 5(5) - Supply of Services:** A retailer registered for GST asked about the treatment of layby sales and why the laybys are not treated like normal sales for GST purposes.

The general rule is that the time of supply is the earlier of-

- the time the supplier issues an invoice to the recipient; or
- the time the supplier receives any payment.

There are certain circumstances where it is not appropriate to use the general rule and so the legislation provides rules for specific situations.

Section 5(5) provides that the time of supply takes place for a layby sale when the goods are delivered and when title passes to the buyer. This is usually when the buyer makes the last payment and takes possession.

A supply is also made if the buyer cancels the layby sale and the seller retains or recovers any amount under the Layby Sales Act 1971.

The GST treatment of layby sales is consistent with the established rules in the Layby Sales Act 1971. This results in less confusion as both Acts give comparable treatment to layby sales.

## GST on Rental of Farm Cottages

**Section 6 - Meaning of Term “Taxable Activity”:** A farmer was renting out farm cottages on his property on a long term basis. He wanted to know whether this formed part of his taxable activity.

Section 6 defines the term “taxable activity” and excludes from the definition “any activity to the extent to which the activity involves the making of exempt supplies”.

Section 14 defines exempt supplies and this includes the supply of accommodation in any dwelling by way of hire, a service occupancy agreement, or a licence to occupy.

The renting of the cottages does not form part of the taxable activity for GST purposes. This is because the making of exempt supplies does not form part of a taxable activity.

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## GST When Materials Bought Before GST Introduced

**Section 8 - Goods and Services Tax Act 1985:** A builder purchased a section on which he intended to build four units. He built one unit on the section but the market became depressed. Instead of building the other three units he chose to build a house on the remainder of the section.

The builder built the house over a period of two years. He had bought the materials and built the house before GST came into force in 1986. By the time he sold the house in 1987 he had registered for GST. He asked why he had to pay GST on the sale, and why he could not claim GST on the materials purchased.

Because the builder bought the materials before the introduction of GST he could not claim a GST input credit as no GST had been charged on the purchases.

Although the builder could not claim GST on the purchases this did not mean that GST was not payable on the sale of the property. Where a registered person sells goods in the course of a taxable activity, that person must account for GST on the sale.

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## Sale of Land was Part of Taxable Activity

**Section 8 - Imposition of Goods and Services Tax on Supply:** A company owned a piece of land that was zoned residential. It decided that because of the zoning it could not use the land in the main taxable activity for which it had registered for GST. It sold the land and asked if it should account for GST on the sale.

Under section 51 of the Act it is the company that registers for GST, not the activity that it is conducting. Where a registered person supplies goods or services in New Zealand in the course or furtherance of a taxable activity carried on by that person, section 8 requires the registered person to charge GST.

In this case, although the ownership of the land and subsequent sale were not part of the company's main activity, they were part of its taxable activity. The supply is in the course and furtherance of the company's taxable activity. Further, the zoning of the land is irrelevant for GST purposes.

Accordingly, the company must account for GST on the sale of the land.



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## GST on Withholding Payments

**Section 10 - Value of Supply of Goods and Services:** A company that engages labour only contractors asked whether it could calculate the GST on the gross income less the withholding payment for ease of accounting. The company was in a buyer-created invoice situation for GST.

GST is calculated on the value of the supply. This must be the gross amount before any tax is deducted from the withholding payments. The Income Tax (Withholding Payments) Regulations 1979 define “withholding payments” and the tax deductions required. Withholding payments are usually casual payments where the relationship of the parties is not that of employer-employee.

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## Services to Non-Residents

**Section 11(2)(e) - Services Zero-Rated:** A GST-registered company that produces a music publication in New Zealand asked whether it should charge GST to overseas agents who pay for advertising space.

Section 11(2)(e) provides that 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 are zero-rated. The advertisements will be zero-rated if:

- the advertisement is placed by a non-resident of New Zealand,
- the person is not in New Zealand at the time the service is performed, and
- the advertisement does not relate to land (or any building) or moveable personal property in New Zealand.

In this situation, the supply meets all the criteria. The supply of advertising space to the non-resident will be zero-rated.

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## Overseas-Resident Company Registering for GST

**Section 51 - Persons Making Supplies in Course of Taxable Activity to be Registered:** A company that is not resident for income tax purposes asked whether it could still be resident for GST purposes. The company is a non-resident importer making supplies in New Zealand. It operates a warehouse in New Zealand for the purpose of distributing its product to New Zealand retailers.

Under section 51(1) a taxpayer must register for GST if the total value of supplies it made in New Zealand in that month and the previous 11 months has exceeded \$30,000, or if supplies it makes in that month and the next 11 months are likely to exceed \$30,000. For a non-resident supplier the key issue must be whether the goods or services are supplied in New Zealand.

Section 8 of the Act deems, among other things, that goods and services are supplied in New Zealand if the supplier is resident in New Zealand. Goods and services shall be deemed to be supplied outside New Zealand if the supplier is not resident in New Zealand.

It is important to know whether a person is resident in New Zealand for GST purposes when applying these tests. The GST definition of a resident is the same as for income tax, with one additional proviso. The proviso deems a person to be resident in New Zealand to the extent that the person carries on any taxable activity or any other activity in New Zealand, while having any fixed or permanent place in New Zealand relating to that taxable or other activity.

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The company has the warehouse in New Zealand. This is a fixed or permanent place in New Zealand relating to the taxable activity, so the company is resident in New Zealand for GST purposes. The Act deems the supplies to be made in New Zealand. These taxable supplies exceed \$30,000 per annum, so the company must register for GST. This may be to the company's advantage as it will be able to claim input tax credits.

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## Gaming Duties Act 1971

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### Remission of Interest on Gaming Machine Duty

**Section 12F - Interest on Unpaid Gaming Machine Duty:** A club that operates gaming machines asked whether Inland Revenue could remit the interest charged on overdue gaming duty on the grounds that the club had suffered additional administrative pressures because it had relocated.

Inland Revenue has no discretion under the Gaming Duties Act to remit or cancel interest on unpaid gaming machine duty. If Inland Revenue does not receive payment on or before the 20th of the month following the return period, interest will be charged on the duty outstanding at the rate of 5% for every month or part month. Section 12FA of the Act does provide that where duty remaining unpaid at its due date is \$5 or less then no interest is payable.

The duty remaining unpaid by the club at its due date was more than \$5. Accordingly, Inland Revenue had correctly imposed interest on the overdue gaming machine duty and could not remit it.

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## Student Loan Scheme Act 1992

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### Student Loan Repayment where Borrower goes Overseas

**Section 32 - Repayment to be Made by Instalments:** A student who went to live overseas permanently in February 1993 asked whether he had to repay his student loan balance of \$3,000 in the 1994 income year.

Under section 32(a), in any income year where a student has a loan balance of less than \$15,000, the borrower's loan repayment obligation will be the smaller of:

- the current loan balance; or
- \$1,000

plus any estimated interest chargeable on the loan balance for that income year.

Section 34 provides that a non-resident borrower's repayment obligation calculated under section 32 is payable in four equal instalments in the income year, due on the last days of June, September, December and March.

In this case the legislation requires the student to pay \$250 plus the loan balance interest on each instalment date during the 1994 income year.

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## Stamp and Cheque Duties Act 1971

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### Printing of Cheque Forms

**Sections 82 and 83 - Cheque duty payable by Licensed Printers** An overseas printing company had clients who wished to pay their quarterly dividends with cheques drawn on New Zealand banks and prepaid with cheque duty. The company wanted to know the procedure for obtaining a licence to print these cheques.

Most cheque printing is done by the relatively few printers that have been licensed under section 82 to pay commuted duty monthly instead of having to get individual special licences before printing. The granting of licences under section 82 is confined to printing firms engaged extensively in the printing of cheques, who would otherwise have to make numerous applications for licences, and the subsequent authority to print. It is intended to license only those firms dealing with a large number of cheques per month.

Apart from these licensed printers, in some cases other persons and firms may pay the duty before the cheque forms are printed and put into use. The duty sections of Inland Revenue's Palmerston North, Christchurch and Auckland offices may issue licences for cheque forms and send authorities to print at the same time to the printer of the forms. Inland Revenue issues these licences under the provisions of section 83.

Before we will consider an application under section 83 we need this information:

- where the cheques will be produced
- the expected volume of cheques and numbers of printing orders
- the approximate number of cheques to be produced per month
- the number, if any, of "special licences" or extensions of licences in the previous 12 months
- the number of cheques involved in such licences

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## Child Support Act 1991

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### Custodial Parent Residing in Australia

**Section 5 - Children Who Qualify for Child Support:** A liable parent asked whether he was liable to pay child support while his former wife (the custodial parent) was living in Australia.

Section 5 sets out the circumstances in which a child qualifies for child support. Children may be qualifying children if they are New Zealand citizens or ordinarily resident in New Zealand. Sections 8(1) and (2) provide the criteria used in determining an eligible custodian. Provided that the custodian seeks payment for a qualifying child, and meets the conditions in section 8(2), his/her country of residence will not affect child support eligibility.

In this case the liable parent must continue paying child support while the custodial parent and his children are in Australia as the children are New Zealand citizens.

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### Breach of Separation Agreement

**Section 6 - Parents by Whom Child Support Payable:** A liable parent asked whether he was still liable to pay child support even though his former wife had breached their separation agreement.

Section 6 of the Act sets out the circumstances in which child support may be sought from a person. This section does not take into account any breach of a separation agreement that may have occurred. The Act requires that the two matters be considered separately. The liable person must continue to pay child support while disputes of this nature are resolved.

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## **Estimate of Current Year's Income Where Income Amount Order in Force**

**Section 40 - Election Where Taxable Income for Child Support Purposes is Estimated to Have Fallen at Least 15 Per Cent:** A liable parent asked if he could re-estimate his current year's income as his income had recently dropped more than 15%. He was paying child support based on an income amount order applied for earlier in the income year.

Section 40 allows a liable parent whose income has dropped by at least 15% from the last income year to elect to pay reduced child support, based on the lower income amount. Section 40(3)(b) states that a liable parent cannot make an election where an income amount order is in force for any month for which the election is to apply.

An income amount order is an order made by a court to vary the liable parent's child support income amount or to change the calculation of that amount.

In this case there was such an income amount order in force following a judgment of the Family Court. Therefore, the liable parent was not able to re-estimate his income in this income year.

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## 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.

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### Assessability of Subdivision Profits after a Change in Tax Law

**Rating:** ••

**Case:** Louis James Prouse v. CIR, HC M.53/87

**Act:** Land and Income Tax Act 1954 - Section 88AA

**Keywords:** *Land subdivision, undertaking or scheme, sale or other disposition.*

**Summary:** This case dealt with the sale of sections in a subdivision following a change in the law. Profits on sections sold after the change were subject to income tax despite a ruling given before the law change that the subdivision profits would not be taxable.

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**Facts:** Before he subdivided land in 1973, the objector sought an Inland Revenue ruling as to whether profits for the land would be subject to income tax. On the basis of the law existing at that time the taxpayer was informed that the profits would not be taxable.

After the introduction of section 88AA (1)(e), which dealt with profits and gains from the subdivision of land, Inland Revenue assessed the profits arising from the sale of any sections after 10 August 1973 - the date of the public announcement of the intended legislation.

**Decision:** The objector argued that the legislation should only apply to undertakings or schemes started after the date of the public announcement. Judge Cullen did not agree, citing the decision in *Aubrey v Commissioner of Inland Revenue* (1984) 6 NZTC 61,765. The amendment applied to profits and gains from the sale of sections after the application date of the new legislation. The fact that Inland Revenue had previously confirmed that the subdivisional proposal was not taxable does not affect the situation. Inland Revenue's assessments of the profits were confirmed.

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

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## Whether Trees are Included in the Definition of Land

**Rating:** ••

**Case:** Windermere Forests Ltd v Commissioner of Inland Revenue M No 4/93

**Act:** Stamp and Cheque Duties Act 1971, sections 2, 10, 15, 40, 41, 42

**Keywords:** *Land, improvements, trees.*

**Summary:** The Authority found that "land" as defined in the Stamp and Cheque Duties Act 1971 includes trees. Inland Revenue is satisfied that this decision recognises the common law position stated in *Kauri Timber (1840-1932) NZPCC 636*; that trees are part of the land and this remains applicable today. The value of the land is the property conveyed and it includes trees.

**Facts:** The objector purchased land for \$195,000. The price was to be apportioned as to the value of the trees on the land being \$150,000 and the value of the land at \$45,000. Inland Revenue assessed stamp duty on the value of the land and trees together. The objector claimed that the value of stamp (conveyance) duty should be computed on the value of the bare land.

**Decision:** The definition of "land" includes the value of trees on the property conveyed. Inland Revenue's assessment which included the value of the trees was correct. Judge Greig also held that "improvements" include all trees and timber.

**Comment:** We do not know whether the taxpayer will be appealing this decision.

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## Resident Status when NZ Home Rented out on Long Term Basis

**Case:** TRA No 93/35

**Rating:** ••

**Act:** Income Tax Act 1976, section 241

**Keywords:** *Residency, permanent place of abode.*

**Summary:** The enduring relationship a taxpayer has with New Zealand determines whether that person has a permanent place of abode in this country for the purposes of determining residency.

- Facts:** The taxpayer was continuously absent from New Zealand for 368 days. During his absence he let out his house on a long term basis. He sought relief from paying tax in New Zealand on his New Zealand-sourced salary and other overseas income.
- Decision:** The main issue was whether a house let on a long term basis can be a person's permanent place of abode. Under section 241(1), the taxpayer's home does not have to be readily available to him during his period of absence overseas. The house was available to him when he returned to New Zealand. He had and continued to have an enduring relationship with New Zealand in many areas. Judge Barber decided that during the taxpayer's absence overseas his permanent place of abode continued to be in New Zealand. The taxpayer was a New Zealand resident under the Act.
- Comments:** We do not know whether the taxpayer will appeal this decision.

### Application to have Proceedings Struck Out Denied

- Rating:** •
- Case:** Canterbury Frozen Meat Company Ltd v. CIR
- Act:** Judicature Amendment Act 1972 and Income Tax Act 1976
- Keywords:** *Judicial Review, reassessment, protective assessment*
- Summary:** Inland Revenue applied to the High Court to strike out judicial review proceedings brought by Canterbury. The Court rejected Inland Revenue's application. Judge Gallen determined that it was inappropriate for the proceedings to be struck out as Canterbury had an arguable case.
- Facts:** Due to subsequent developments in the related *Thomas Borthwick and Sons* case ([1992] 14 NZTC 9101), Inland Revenue issued a "protective" amended assessment to Canterbury some years after the original return and assessment had been accepted. The taxpayer sought judicial review of the amended assessment. They sought a declaration that Inland Revenue had acted "ultra vires" (beyond its powers) in issuing the amended assessment and that both the decision to issue the assessment and the assessment itself were invalid. Inland Revenue applied to have the proceedings struck out, arguing that the Court had no jurisdiction to hear the proceedings. We submitted that objections to assessments are dealt with by Part III of the Income Tax Act.
- Decision:** Judge Gallen dismissed Inland Revenue's application. He said that as Canterbury had an arguable case, it was not appropriate for the proceedings to be struck out.
- Comments:** Inland Revenue is appealing this decision.

### GST Registration not to be Cancelled before Date of Farm Sale

- Rating:** •
- Case:** TRA No 90/68
- Act:** Goods and Services Tax Act 1985, sections 11(1)(c) and 52
- Keywords:** *Going Concern, inclusive of GST*
- Summary:** The vendors of a farm were liable for GST. They requested that Inland Revenue cancel their registration from a date before they sold the property, as they had purportedly relied on advice from Inland Revenue that the sale was zero rated. Inland Revenue declined their request and a case was stated to the Taxation

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Review Authority. Judge Barber issued an interim decision in favour of Inland Revenue.

**Facts:** The objectors sold their farm on 11 October 1986 for \$287,500 “inclusive of GST”.

At the time of the sale the vendors and the purchasers believed that the sale of the farm was that of a going concern. They allegedly based this belief upon verbal advice from the local branch of Inland Revenue. The purchasers later claimed an input tax credit for the purchase of the farm. Consequently, Inland Revenue assessed the vendors for GST on the sale of the farm.

All parties now agree that the sale of the farm was not a sale of a going concern.

The vendors objected to the assessment in the belief that they had been unjustly treated. They had requested Inland Revenue exercise its discretionary powers under section 52 to cancel their registration from the date that they had been registered for GST. Inland Revenue declined to exercise this discretionary power to cancel the registration.

**Decision:** Judge Barber found that the vendors were liable for GST on the sale of the farm.

He assumed that Inland Revenue had refused to exercise its discretion on the basis that the objector had never been liable to be registered and that the objector had carried on the taxable activity of farming up to the time of supply. He also assumed that Inland Revenue had considered that it was inappropriate in this case to provide relief to the objector.

Judge Barber granted leave to either party to complete the hearing or develop it further. Any application had to be made within 28 days or the decision would become final.

**Comments:** We are unaware of any decision to make further submissions on the issues raised by Judge Barber, or whether the taxpayer is appealing the decision.

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## Trader Assessed on Profit from Share Sales

**Rating:** •••

**Case:** TRA No. 91/128

**Act:** Income Tax Act 1976, sections 65(2)(a) and 65(2)(e)

**Keywords:** *Purpose, investment.*

**Summary:** Profit from the purchase and sale of shares was held to be assessable income.

**Facts:** The objector, a sharemarket trader, purchased shares as an “investment”. Sharebrokers who dealt with the taxpayer's employer offered the shares to the taxpayer at a reduced rate as a goodwill gesture. The offer was on the understanding that the taxpayer would retain the shares as an investment, rather than selling them within a short time of acquisition.

The objector's subsequent actions show that the shares were purchased with the intention of disposing of them at a profit as soon as it was appropriate to do so. It was found that the shares were not purchased as a long term investment. The share transaction was found to be part of the objector's trading activity.

**Decision:** The Authority's decision was that the profit from the sale of the shares was assessable income under section 65(2)(a) and (e) of the Income Tax Act 1976.

**Comment:** We do not know whether the taxpayer is appealing this decision

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## Due Dates Reminder

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### November

- 5 PAYE deductions and deduction schedules for last 16 days of October 1993 due - "large" employers only.
- 7 First instalment of 1994 Provisional Tax due for taxpayers with July balance dates.
- Second instalment of 1994 Provisional Tax due for taxpayers with March balance dates.
- Third instalment of 1994 Provisional Tax due for taxpayers with November balance dates.
- 1993 End-of-Year Tax due for taxpayers with December balance dates.
- Annual income tax return due for non-IR 5 taxpayers with balance dates from 1-31 July 1993. (Remember to attach SL 9 form for student loan borrowers.)
- First instalment of 1994 student loan interim repayment due for taxpayers with July balance dates.
- Second instalment of 1994 student loan interim repayment due for taxpayers with March balance dates.
- Third instalment of 1994 student loan interim repayment due for taxpayers with November balance dates.
- 20 PAYE deductions and deduction schedules for first 15 days of November 1993 due - "large" employers.
- PAYE deductions and deduction schedules for October 1993 due - "small" employers.
- Gaming Machine Duty return and payment for month ended 31 October 1993 due.
- RWT on Interest deducted during October 1993 due for monthly payers.
- RWT on Dividends deducted during October 1993 due.
- Non-Resident Withholding Tax (or Approved Issuer Levy) deducted during October 1993 due.
- 30 GST return and payment for period ended 31 October 1993 due.

### December

- 5 PAYE deductions and deduction schedules for last 15 days of November 1993 due - "large" employers only.
- 7 First instalment of 1994 Provisional Tax due for taxpayers with August balance dates.
- Second instalment of 1994 Provisional Tax due for taxpayers with April balance dates.
- Third instalment of 1994 Provisional Tax due for taxpayers with December balance dates.
- 1993 End-of-Year Tax due for taxpayers with January balance dates.
- Annual income tax return due for non-IR 5 taxpayers with balance dates from 1-31 August 1993. (Remember to attach SL 9 form for student loan borrowers.)
- First instalment of 1994 student loan interim repayment due for taxpayers with August balance dates.
- Second instalment of 1994 student loan interim repayment due for taxpayers with April balance dates.
- Third 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 December 1993 due - "large" employers.
- PAYE deductions and deduction schedules for November 1993 due - "small" employers.
- Gaming Machine Duty return and payment for month ended 30 November 1993 due.
- RWT on Interest deducted during November 1993 due for monthly payers.
- RWT on Dividends deducted during November 1993 due.
- Non-Resident Withholding Tax (or Approved Issuer Levy) deducted during November 1993 due.
- 31 Third instalment of 1994 Student Loan non-resident assessment due.

## List of Inland Revenue Booklets

This list shows all of Inland Revenue's information booklets as at the date of this Tax Information Bulletin. There is also a brief explanation of what each booklet is about.

Some books could fall into more than one category, so you may wish to skim through the entire list and pick out the booklets that you need. You can get these booklets from your nearest Inland Revenue office.

For production reasons, the TIB is always printed in a multiple of eight pages. We will include an update of this list at the back of the TIB whenever we have enough pages left over.

### For People in Business

**A Guide to Inland Revenue Audits** (IR 297)  
August 1992

*For business people and investors. It explains what is involved if you are audited by Inland Revenue; who is likely to be audited; your rights during and after the audit, and what happens once an audit is completed.*

**ACC Premiums** 1993/94  
*Explains the ACC Employer Premium, and gives the premium rates payable by employers and self-employed people. ACC publish this book.*

**Approved Issuer Levy** (IR 291A) August 1991  
*For taxpayers who pay interest to overseas lenders. Explains how you can pay interest to overseas lenders without having to deduct NRWT.*

**Consolidation** (IR 4E) March 1993  
*An explanation of the consolidation regime, which allows a group of companies to be treated as a single entity for tax purposes.*

**Employers' Guide** (IR 184) 1993  
*Explains the tax obligations of anyone who is employing staff, and explains how to meet these obligations. Anyone who registers as an employer with Inland Revenue will receive a copy of this booklet.*

**Entertainment Expenses** (IR 268)  
April 1993  
*Covers the tax treatment of business entertainment expenses, under the rules applying from 1 April 1993.*

**Fringe Benefit Tax Guide** (IR 409)  
June 1992

*Explains fringe benefit tax obligations of anyone who is employing staff, or companies that have shareholder-employees. Anyone who registers as an employer with Inland Revenue will receive a copy of this booklet.*

**GST - Do You Need to Register?** (GST 605) September 1992  
*A basic introduction to Goods and Services Tax, which will also tell you if you have to register for GST.*

**GST Guide** (GST 600) September 1991  
*An in-depth guide which covers almost every aspect of GST. Everyone who registers for GST gets a copy of this book. It is quite expensive for us to get printed, so we ask that if you are only considering GST registration, you get the previous book on this list instead.*

**Imputation** (IR 274) February 1990  
*A guide to dividend imputation for New Zealand companies.*

**Inland Revenue Employers' Tax Calendar** (IR 24E) 1993  
*A list of all the more common tax due dates that employers have to remember. If you have a balance date other than 31 March, you may find the full tax calendar (IR 24) more useful.*

**Inland Revenue Tax Calendar** (IR 24)  
May 1993  
*A complete list of all the tax due dates. It covers everything from filing tax returns to the due dates for non-resident Student Loan repayments.*

**PAYE Deduction Tables**

- Four-Weekly and Monthly (IR 184Y)1993  
- Weekly and Fortnightly (IR 184X) 1993  
*Tables that tell employers the correct amount of PAYE to deduct from their employees' wages.*

**Qualifying Companies** (IR 4PB)  
October 1992  
*An explanation of the Qualifying Company regime, under which a small company with few shareholders can have special tax treatment of dividends, losses and capital gains.*

**Resident Withholding Tax on Interest** (IR 283) March 1993  
*A guide to RWT for people and institutions who pay interest.*

**Running a Small Business?** (IR 257)  
May 1992  
*An introduction to the tax obligations involved in running your own business.*

**Student Loans - A Guide for Employers** (SL 4) February 1993  
*Tells employers what they'll have to do if any of their employees are repaying a student loan.*

**Surcharge Deduction Tables** (IR 184NS)  
1993  
*PAYE deduction tables for employers whose employees are having National Super surcharge deducted from their wages.*

**Tax Help for Sprouting Young Businesses** (IR 257C)  
*A promotional pamphlet for Inland Revenue's Small Business Tax Information Service.*

### For Non-Profit Groups

**Charitable Organisations** (IR 255) May 1993  
*Explains what tax exemptions are available to approved charities and donee organisations, and the criteria that an organisation must meet to get an exemption.*

**Clubs and Societies** (IR 254) July 1992  
*Explains the tax obligations that a club, society or other non-profit group must meet.*

**Education Centres** (IR 253) April 1993  
*Explains the tax obligations of schools and other education centres. Covers everything from kindergartens and kohanga reo to universities and polytechnics.*

**Gaming Machine Duty** (IR 680A)  
February 1992  
*An explanation of the duty that must be paid by groups that operate gaming machines.*

**GST for Non-Profit Bodies** (GST 605A)  
September 1992  
*Tells non-profit groups whether they'll need to register for GST, and on what activities they must account for GST.*

## For Individual Taxpayers

**Dealing with Inland Revenue** (IR 256)  
April 1993

*Introduction to Inland Revenue, written mainly for individual taxpayers. It sets out who to ask for in some common situations, and lists taxpayers' basic rights and obligations when dealing with Inland Revenue.*

**Estate and Gift Duties** (IR 634)  
November 1991

*An explanation of Estate and Gift Duties, written for individual people rather than solicitors or legal firms. Estate Duty has been repealed since this book was written.*

**Interest Earnings and Your IRD Number** (IR 283L) September 1991

*Explains the requirement for giving to your IRD number to your bank or anyone else who pays you interest.*

**International Tax Guide** (IR 275)  
June 1989

*Deals with Controlled Foreign Companies, Foreign Investment Funds, and people who have interests in them.*

**IR 56 Taxpayer Handbook** (IR 56B)  
April 1993

*A booklet for part-time private domestic workers, embassy staff, nannies, overseas company reps and deep freeze base workers who make their own PAYE payments.*

**Koha** (IR 278) August 1991

*A guide to payments in the Maori community - income tax and GST consequences.*

**National Superannuitant Surcharge** (IR 259) March 1993

*A guide to the surcharge for National Superannuitants who also have other income.*

**New Zealand Tax Residence** (IR 292)  
April 1991

*An explanation of who is a New Zealand Resident for tax purposes.*

**Objection Procedures** (IR 266) April 1993

*Explains how to make a formal objection to a tax assessment, and what further options are available if you disagree with Inland Revenue.*

**Provisional Tax** (IR 289) April 1993

*People whose end-of-year tax bill is over \$2,500 must generally pay provisional tax for the following year. This booklet explains what provisional tax is, and how and when it must be paid.*

**Putting Your Tax Affairs Right** (IR 282)  
March 1990

*Explains the advantages of telling Inland Revenue if your tax affairs are not in order, before we find out in some other way. This book also sets out what will happen if someone does knowingly evade tax, and gets caught.*

**Resident Withholding Tax on Investments** (IR 279) April 1993

*An explanation of RWT for people who receive interest or dividends.*

**Retiring Allowances and Redundancy Payments** (IR 277) April 1993

*An explanation of the tax treatment of these types of payments.*

**Self-Employed or an Employee?** (IR 186)  
April 1993

*Sets out Inland Revenue's tests for determining whether a person is a self-employed contractor or an employee. This determines what expenses the person can claim, and whether s/he must pay some ACC premiums.*

**Special Tax Codes** (IR 23G) January 1993

*Information about getting a special "flat rate" of tax deducted from your income, if the regular deduction rates don't suit your particular circumstances.*

**Stamp Duties** (IR 665) June 1992

*Explains what duty is payable on transfers of real estate and some other transactions. Written for individual people rather than solicitors and legal firms.*

**Student Loans and Inland Revenue** (SL 1)

*A guide to your tax obligations if you've taken out a Student Loan.*

**Student Loan Repayments - everything you need to know** (SL 2)

*A more in-depth guide to making student loan repayments.*

**Tax Facts for Income Tested Beneficiaries** (IR 40C) September 1992

*Vital information for anyone who receives an income-tested benefit and also has some other income.*

**Tax Problems? - Problem Resolution Service** (IR 287) 1989

*An introduction to Inland Revenue's Problem Resolution Service. You can use this service if you've already used Inland Revenue's normal channels to sort out a problem, without success.*

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## Child Support Booklets

**Child Support - A Guide For Tax Practitioners** (CS 4) March 1992

*A summary (mainly for accountants) of how Child Support works, and the rates for calculating payments.*

**Child Support - A Guide For Bankers** (CS 66) August 1992

*An explanation of the obligations that banks may have to deal with for Child Support.*

**Child Support - A Parent's Guide** (CS 1) March 1992

*An in-depth explanation of Child Support, both for custodial parents and parents who don't have custody of their children.*

**Child Support - An Introduction** (CS 3) March 1992

*A brief introduction to Child Support.*

**Child Support - How To Approach The Family Court** (CS 51) June 1992

*Explains what steps people need to take if they want to go to the Family Court about their Child Support.*

**Child Support - Does It Affect You?** (CS 50)

*A brief introduction to Child Support in Maori, Cook Island Maori, Samoan, Tongan and Chinese.*

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### Questions we've been asked

Answers to enquiries we've received at Inland Revenue, which could have a wider application. See page 4 for a list of topics covered in this bulletin.

### Legal Decisions - Case Notes

Notes on recent cases heard by the Taxation Review Authority, the High Court, the Court of Appeal and the Privy Council. See page 13 for a list of cases covered in this bulletin.

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