New Zealand superannuitants receiving overseas government pensions

Introduction

This item states the Commissioner's current policy on the treatment of overseas government pensions received by NZ superannuitants (formerly national superannuitants) or paid direct to NZ Income Support Services on behalf of NZ superannuitants.

We have been asked to clarify this policy on these issues:

- whether an overseas government pension is subject to income tax or NZ superannuitant surcharge in New Zealand
- whether an increase in the pension affects any tax or surcharge liability.

Background

Some pensions received from overseas governments are "specified foreign social security pensions". Broadly speaking, these are pensions, benefits, or periodical allowances paid by the government of another country which are of a similar type to NZ superannuation. If the recipient of such a pension is also a NZ superannuitant, the New Zealand Income Support Service (NZISS) will pay an amount to "top up" the foreign pension to the level of NZ superannuation.

This means that if the amount of overseas pension received by a superannuitant increases, the superannuitant does not necessarily benefit from that increase. If the overseas pension does not exceed the person's entitlement to NZ superannuation, the person will not receive a greater amount as a result of the increase in the overseas pension.

If the overseas pension exceeds the person's entitlement to NZ superannuation, the superannuitant will receive a greater amount. The amount of the top up paid by NZISS will be nil, and the superannuitant will receive the full foreign social security pension. The person will not be a NZ superannuitant.

Policy

Income tax

Any overseas pension received by a New Zealand resident is subject to income tax in New Zealand, even if it was not taxable in the country of origin. If a pension is paid from a country with which New Zealand has a reciprocal tax agreement, it will be paid tax free from that country.

When the overseas pension derived by a NZ superannuitant is a specified foreign social security pension, it is paid to NZISS, which tops it up to the level of NZ superannuation and pays the full amount to the superannuitant as assessable income.

If the specified foreign social security pension exceeds the entitlement to NZ superannuation, the superannuitant will receive the full amount of the foreign pension, and it will all be assessable income. In this situation, NZISS will not pay any top-up amount, and any increase in the amount of the overseas pension will be passed on to the NZ superannuitant, and the additional income will be assessable.

NZ superannuitant surcharge

The NZ superannuitant surcharge is levied on the amount of "other income" a superannuitant receives above a specified exemption. The calculation of other income excludes an overseas government pension if that pension reduces the amount of NZ superannuation received. (Note: overseas pensions that are not specified foreign social security pensions are subject to surcharge.) If an increase or decrease in a NZ superannuitant's overseas pension is offset by an adjustment to the top-up amount paid by NZISS, the increase or decrease will not generally affect the calculation of the surcharge. Examples 1 and 2 illustrate this point.

"Other income" is calculated using this formula:

$$a - b - c$$

In this formula:

a is the amount of the taxpayer's taxable income plus one half of any non-taxable pension or annuity (these are payments from New Zealand registered superannuation funds or certain annuities paid by insurance companies)

b is the gross amount of NZ superannuation received

c is the amount of any specified foreign social security received. This amount is the amount of any overseas pension that reduces the amount of NZ superannuation paid by NZISS. Therefore, this amount does not include the portion of any overseas pension that exceeds the person's entitlement to NZ superannuation.

The amount of surcharge payable will be affected if the surcharge exceeds a threshold amount called net NZ superannuation (illustrated in Example 3). Net NZ superannuation is calculated using this formula:

$$a - (b - c)$$

In this formula:

a is the amount of NZ superannuation received

b is the amount of income tax that would have been payable if an assessment had been made on the superannuitant's taxable income

c is the amount of income tax that would have been payable if an assessment had been made on the sum of these two amounts:

continued on page 2

from page 1

1. the superannuitant's "other income", excluding one half of non-taxable pensions otherwise included in the calculation of "other income"
2. the amount of any specified foreign social security pension.

If the overseas pension increases so that it exceeds a person's entitlement to NZ superannuation, the person will not receive any NZ superannuation and will not be subject to the surcharge.

Example 1

Mrs Clark is under 70, widowed, and entitled to an exemption of $4,160. This year she received a British pension totalling $5,000. Her NZ superannuation entitlement is $12,000, less the overseas pension, leaving an amount of $7,000. She also received investment income of $8,000. The rate of surcharge is 25%.

The surcharge is calculated as:

25% x (other income - $4,160)

In this example, "other income" is:

($5,000 + $7,000 + $8,000) - $7,000 - $5,000 = **$8,000**

The surcharge is:

25% x ($8,000 - $4,160) = **$960**

Example 2

Mrs Wilson is under 70, widowed, and entitled to an exemption of $4,160. This year she received a British pension totalling $7,000. Her NZ superannuation entitlement is $12,000, less the overseas pension, leaving an amount of $5,000. She also received investment income of $8,000. The rate of surcharge is 25%.

"Other income" is:

($7,000 + $5,000 + $8,000) - $5,000 - $7,000 = **$8,000**

The surcharge is:

25% x ($8,000 - $4,160) = **$960**

Note that although Mrs Wilson received a larger overseas pension than Mrs Clark, the amount of surcharge each pays is the same.

Example 3

Mr Ward is under 70, lives alone, and entitled to an exemption of $4,160. This year he received a British pension totalling $11,000. His NZ superannuation entitlement is $12,000, less the overseas pension, leaving an amount of $1,000. He also received investment income of $8,000. The rate of surcharge is 25%.

"Other income" is:

($11,000 + $1,000 + $8,000) - $1,000 - $11,000 = **$8,000**

The surcharge is:

25% x ($8,000 - $4,160) = **$960**

Net NZ superannuation is:

a - (b - c)

"a"	= $1,000
b = 24% x ($11,000 + $1,000 + $8,000), less low income rebate	= $4,325
c = 24% x ($11,000 + $8,000), less low income rebate	= $4,125
Net NZ superannuation	= **$800**

In this example the surcharge exceeds the net NZ superannuation. The maximum surcharge payable is the amount of the net NZ superannuation - $800.

$200 limit for writing off assets - correction

On pages 4-5 of TIB Volume Five, No.11 (April 1994) there was an item which discussed whether the $200 limit for writing off assets included or excluded GST. There is a typographical error in the first paragraph on page 5.

The paragraph deals with the situation when a registered person acquires an asset with a principal purpose other than making taxable supplies, but the person still uses the asset to gain or produce assessable income or in a business for that purpose. The paragraph says that the registered person can claim a deduction for the cost of the asset if the GST exclusive cost of the asset was $200 or less.

This is incorrect. The sentence should read that the registered person can claim a deduction if the GST *inclusive* cost was $200 or less. The position is correctly stated in the summary paragraph.

Tax in dispute interest rate, and application to GST Act

As from 1 April 1994, the specified rate of interest payable on qualifying tax in dispute under section 34A of the Income Tax Act 1976 has changed from 10% to 7%.

This new rate also applies to the Goods and Services Tax Act 1985, for qualifying tax in dispute (section 38(7)), and interest on refunds (section 46(9)).

Income tax exemption for war and forces pensions

Introduction

This item states the Commissioner's current policy on the assessability of war pensions and any other pensions resulting from disability or disablement attributed to service in any naval, military, air, or police forces.

Background

Section 61(10) of the Income Tax Act 1976 provides an exemption from income tax for income derived from either of these sources:

- any pension or allowance under the War Pensions Act 1954 other than a veteran's pension
- any pension or allowance granted in respect of any war or in respect of any disability or disablement attributable to or aggravated by service in any naval, military, air, or police forces.

Policy

The income tax exemption does not apply to ordinary long service (veteran's) pensions or to superannuation. However, where a long service military pension has been increased because of a pensioner's war services, the amount of the increase is treated as a pension granted in respect of war service and is exempt from income tax.

Death is regarded as a "disablement" for this purpose. Accordingly, where a pension specifically awarded to a dependant because the death of a relative is attributable to his or her service in the naval, military, air, or police forces, the pension is exempt from income tax under section 61(10).

Where the pension is payable regardless of whether the death or disability is attributable to service in one of the specified forces, and is in the nature of a normal service pension, it remains assessable under section 65(2)(j).

Example

A pension derived by a widow is composed of two parts:

1. One part of the widow's pension is paid as a result of her husband's death as a serving officer of the Royal Air Force. This part is exempt from income tax under section 61(10).
2. The other part of the pension is paid because of her husband's service in the Royal Air Force. This part is assessable income under section 65(2)(j).

GST and cheque clearance fees

Introduction

This item addresses the continuing confusion over the GST treatment of cheque clearance fees. This was previously discussed on page 9 of TIB Volume Three, No.5.

Background

Fees charged for handling cheques may or may not be exempt from GST, depending on whether or not a financial service is involved.

Policy

Under section 14 of the Goods and Services Act 1985 the supply of financial services is exempt from GST. Section 3 defines the term financial services. Financial services include the issue, payment, collection, or transfer of ownership of a cheque. These are legal terms that apply to the receipt of a cheque by a bank, its presentation as agent for the customer to the bank upon which the customer draws the cheque (collection), and the clearing of the cheque by the second bank (payment).

Banks

Banks that charge fees for the handling of cheques are providing a financial service. Cheque clearance fees charged by banks to their customers are charges for financial services, therefore these fees are exempt from GST.

Other taxpayers

Other taxpayers charge cheque clearance fees to cover their costs in accepting a cheque as a form of payment. They are not supplying financial services when they charge cheque clearance fees to their customers. The charge does not come within the definition of financial services in section 3, so it does not qualify for the exemption in section 14.

For example, when a retailer such as a supermarket charges a fee to customers who pay by cheque, the fee is not a charge for financial services. Rather the supermarket is recovering the bank charges. Therefore it must account for GST on these fees.

National average market values of specified livestock - 1994

Under section 86G of the Income Tax Act 1976 (the Act) the Governor-General has announced by Order in Council the national average market values of specified livestock for the 1993/94 income year.

The values listed below apply to animals valued under the herd scheme.

High-priced livestock

The trigger price for high-priced livestock purchased in the 1993/94 income is the greater of these two amounts:

1. $500
2. five times the greater of:

(a) the national average market values listed below, or

(b) the national average market values declared for the 1992/93 income year.

The trigger price for animals purchased during the 1993/94 income year is shown in the right hand column below.

High-priced livestock cannot be valued under the herd scheme but must be capitalised and written off at an assigned percentage. The assigned percentages for the 1993/94 income year remain the same as for the 1992/93 year. They are shown in the table at the end of this item.

Type of livestock	Classes of livestock	Average market value per head	High-priced trigger price
		$	$
Sheep	Ewe hoggets	39	500
	Ram and wether hoggets	35	500
	Two-tooth ewes	53	500
	Mixed-age ewes (rising 3-year and 4-year old) ewes	45	500
	Rising 5-year and older ewes	37	500
	Mixed-age wethers	33	500
	Breeding rams	138	758
Beef cattle	***Beef breeds and beef crosses:***		
	Rising 1-year heifers	333	1,665
	Rising 2-year heifers	490	2,450
	Mixed-age cows	637	3,185
	Rising 1-year steers and bulls	426	2,135
	Rising 2-year steers and bulls	605	3,060
	Rising 3-year and older steer and bulls	749	3,785
	Breeding bulls	1,551	7,755
Dairy cattle	***Friesian and related breeds:***		
	Rising 1-year heifers	481	2,405
	Rising 2-year heifers	840	4,200
	Mixed-age cows	1,008	5,040
	Rising 1-year steers and bulls	364	1,820
	Rising 2-year steers and bulls	552	2,760
	Rising 3-year and older steer and bulls	723	3,615
	Breeding bulls	1,384	6,920
	Jersey and other dairy cattle:		
	Rising 1-year heifers	413	2,065
	Rising 2-year heifers	747	3,735
	Mixed-age cows	926	4,630
	Rising 1-year steers and bulls	254	1,270
	Rising 2-year and older steers and bulls	436	2,300
	Breeding bulls	1,219	6,095

Type of livestock	Classes of livestock	Average market value per Head	High-priced trigger price
		$	$
Deer	***Red deer:***		
	Rising 1-year hinds	111	615
	Rising 2-year hinds	204	1,160
	Mixed-age hinds	254	1,645
	Rising 1-year stags	144	940
	Rising 2-year and older stags (non-breeding)	254	1,550
	Breeding stags	1,729	9,995
	Wapiti, elk, and related crossbreeds:		
	Rising 1-year hinds	147	780
	Rising 2-year hinds	266	1,410
	Mixed-age hinds	317	1,645
	Rising 1-year stags	191	1,080
	Rising 2-year and older stags (non-breeding)	333	1,845
	Breeding stags	1,898	10,215
	Other breeds:		
	Rising 1-year hinds	65	500
	Rising 2-year hinds	88	500
	Mixed-age hinds	101	625
	Rising 1-year stags	65	500
	Rising 2-year and older stags (non-breeding)	98	600
	Breeding stags	324	2,130
Goats	***Angora and angora crosses (mohair producing):***		
	Rising 1-year does	19	500
	Mixed-age does	20	500
	Rising 1-year bucks (non-breeding)/wethers	12	500
	Bucks (non-breeding)/wethers over 1 year	14	500
	Breeding bucks	104	620
	Other fibre and meat producing goats (cashmere or Cashgora producing):		
	Rising 1-year does	16	500
	Mixed-age does	20	500
	Rising 1-year bucks (non-breeding)/ wethers	13	500
	Bucks (non-breeding)/wethers over 1 year	16	500
	Breeding bucks	65	500
	Milking (dairy) goats:		
	Rising 1-year does	83	500
	Does over 1 year	96	500
	Breeding bucks	148	500
	Other dairy goats	45	500
Pigs	Breeding sows less than 1 year of age	188	940
	Breeding sows over 1 year of age	282	1,410
	Breeding boars	325	1,700
	Weaners less than 10 weeks of age (excluding sucklings)	44	500
	Growing pigs 10 to 17 weeks of age (porkers/baconers)	92	620
	Growing pigs over 17 weeks of age (baconers)	149	890

article continued on page 6

from page 5

Assigned percentages of high-priced livestock

Under the current livestock valuation regime owners of high-priced livestock have the choice of using straight line rates or diminishing value rates as the assigned percentage write down.

The rates for the 1993/94 income year are unchanged from last year. They are shown in the table opposite.

Livestock Category	Straight line rate	Equivalent diminishing rate
Sheep	25%	33%
Cattle	20%	26%
Stags	20%	26%
Other Deer	15%	22%
Goats	20%	26%
Pigs	33%	40%

A taxpayer who wishes to apply the diminishing value rate to an animal must clearly use the diminishing value rate in the financial statements that support the tax return. Once a taxpayer makes this election it is irrevocable. If there is no such clear use of the diminishing value rate, the straight line rate will apply.

Cost of trading stock - are transport costs included?

Introduction

This item states the Commissioner's current policy on the treatment of transport costs in relation to the cost of trading stock.

Background

If a taxpayer values stock at cost price (rather than market selling price or replacement price), this value should include inwards freight, customs duty, and insurance, in addition to the actual purchase price. Items that taxpayers should include in the cost of manufactured goods are outlined in Public Information Bulletin 82 of December 1974. These items are:

(a) Direct costs:

- direct materials - including inwards freight, insurance, and customs duty on all materials used in the manufacture of the goods and incorporated in the finished product
- direct labour - that is, the cost of employees directly involved in manufacturing the goods on hand
- direct expenses - including any expenses directly related to the production of the goods on hand, such as royalty payments.

(b) Variable manufacturing overheads, including:

- indirect materials
- factory services such as heat, light, power, and water
- indirect labour such as holiday pay, wages for plant maintenance, timekeepers, warehouse staff, factory clerks, supervisors, and managers
- repairs and maintenance of factory plant
- depreciation of factory plant and rent of leased factory plant.

The costs under (a) and (b) represent the minimum costs that taxpayers should include.

Policy

Any transport costs incurred in getting trading stock into its current condition and location are part of the cost of trading stock. For the purposes of section 85 of the Income Tax Act 1976, taxpayers should treat this kind of transport cost as a component of the cost of trading stock.

Example

Company X Ltd makes widgets in its Hamilton manufacturing plant. These are transported to its centres in Auckland, Whangarei, Levin, Christchurch, and Dunedin, where they are distributed to retailers. The cost of transporting the widgets to these centres should be included in the cost price of the stock for valuation purposes.

Gift duty exemption for small gifts - application

Introduction

This item states the Commissioner's current policy on how the gift duty exemption applies to small gifts.

Background

Section 71 of the Estate and Gift Duties Act 1968 exempts certain gifts of less than $2,000. This section states:

> *"Where the Commissioner is satisfied that a gift, together with all other gifts made by the same donor to the same donee in the same calendar year, does not exceed in total $2,000 in value, and is made in good faith as part of the normal expenditure of the donor, the gift shall not constitute a dutiable gift."*

This $2,000 exemption is separate from the $27,000 threshold for payment of gift duty. The Third Schedule to the Act sets out the rates of gift duty. If the dutiable gift, together with any other dutiable gifts made at the same time or within 12 months subsequently or previously by the same donor (to the same or any other donee), does not exceed $27,000, the rate of gift duty is nil.

Policy

What constitutes "normal expenditure" will depend on the person's circumstances. However, the Commissioner will accept that "normal expenditure" is that which could reasonably be incurred by any person of similar social or religious background. It need not be "normal" in the more restricted sense of being recurring, habitual, or regular.

The Commissioner considers that a gift is made "in good faith" if there is no intention to avoid payment of any New Zealand tax or duty by means of that gift. With the abolition of estate duty, the Commissioner no longer considers gifts made shortly before death to have an avoidance motive.

Small gifts, such as $10 or $100 amounts which a settlor uses to create a trust, are considered "normal expenditure". However, the Commissioner does not regard continually making small gifts to an already established trust as being in good faith in terms of section 71.

Example

Percy Flower decides to set up a trust. The beneficiaries are Percy, his wife Petunia (a successful dentist), his forty year old son Harold Flower (a wealthy accountant) and Harold's children, Rose and Lily.

Percy initially settles $100 on the trust. He then sells property to the trust. The trustees enter into a loan agreement with Percy for the sale price of the property. Percy gives $27,000 to the trust in the first year, and sends a gift statement to Inland Revenue for this gift. The trustees use this gift to repay some of loan owed to Percy.

On Harold's advice Percy then gifts a further $2,000 to the trust. Percy follows the same procedure in the next year because he wants to speed up his gifting programme. Percy also gives Petunia, Harold, Rose, and Lily birthday and Christmas presents.

Here is how Inland Revenue views each of these gifts:

- $100 to settle trust - exempt under section 71
- $27,000 annual gifts to trust - subject to gift duty at nil rate
- birthday and Christmas presents - exempt under section 71 as normal expenditure
- additional $2,000 gifts to trust - not exempt under section 71, and therefore subject to gift duty. (Inland Revenue also considers that section 72 does not apply to these gifts in these circumstances.)

Conclusion

Gifts made by the same donor to the same donee in the same calendar year which do not exceed $2,000 in total value, and are made in good faith as part of the normal expenditure of the donor, are not subject to gift duty.

Prescription amounts owing to chemists by Health Benefits Centre

The amount that chemists must bring into account for income tax purposes, for prescriptions outstanding from the Health Benefits Centre for the year starting on 1 April 1993 (or equivalent balance date) is $29.49. This figure includes GST.

Cancellation of International Tax Disclosure Exemption ITR5

Introduction

The international tax disclosure exemption made on 13 May 1994 had one technically incorrect aspect. For completeness, a new disclosure exemption has been made. It is reproduced in the following item.

Notice of cancellation

Pursuant to section 245W(3) of the Income Tax Act 1976, International Tax Disclosure Exemption ITR5 made by me on 13 May 1994 is cancelled.

This cancellation is made by me acting under delegated authority from the Commissioner of Inland Revenue pursuant to section 11 of the Inland Revenue Department Act 1974.

This cancellation is signed by me on the 21st day of June 1994.

Tony Bouzaid
Director, Taxpayer Audit

1994 international tax disclosure exemption ITR5A

Introduction

Under section 245W(1) of the Income Tax Act 1976 (the Act), a person who has a control or income interest in a foreign company or an interest in a foreign investment fund (FIF) at any time during the income year must disclose the interest held. However, section 245W(2) allows the Commissioner of Inland Revenue to exempt any person or class of persons from this requirement if disclosure is not necessary for the administration of Part IVA (Attributed Foreign Income) of the Act.

"International Tax Disclosure Exemption ITR5" (published in TIB Volume Five, No.12, of May 1994) which applied to the income year ended 31 March 1994 has been cancelled by the Commissioner under section 245W(3) of the Act (see the above item). That disclosure exemption had the unintended effect of exempting an interest held in a foreign investment fund if that interest was also an interest of less than 10 percent in a foreign company.

Under section 245W(2), the Commissioner has issued a new international tax disclosure exemption which applies for the income year ended 31 March 1994. This new exemption may be cited as "International Tax Disclosure Exemption ITR5A", and the full text appears at the end of this item.

Scope of exemption

The scope of the 1994 disclosure exemption is not as extensive as in previous income years. In particular, disclosure is required for these interests:

- an interest held in a FIF. The new FIF rules generally apply from 1 April 1993, so disclosure was not necessary in previous income years (however, transitional provisions required disclosure for the 1993 income year if a FIF interest was acquired or re-acquired in the period from 8 pm on 2 July 1992 to 31 March 1993, or if a person elected to utilise a 1993 loss in the 1993 income year).
- an "income interest of 10 percent or greater" held in a foreign company. The disclosure obligation applies to all foreign companies regardless of the country of residence.

An "income interest of 10 percent or greater" is defined in section 245A(1). For the purposes of determining exemption from disclosure it includes these interests:

1. an income interest held directly in a foreign company
2. an income interest held indirectly through any interposed foreign company
3. an income interest held by an associated person (which is not a controlled foreign company) as defined by section 245B.

Example

If a husband and wife each hold an income interest of five percent in a Cayman Islands company, the interests would not be exempt from disclosure because the husband and wife are associated persons under section 245B(d). Under the associated persons test they are each deemed to hold the other's interests, so they each hold an "income interest of 10 percent or greater" which requires disclosure.

They are not required to account for attributed foreign income or loss under the controlled foreign company rules. However, they would have to account for FIF income or loss under the FIF rules.

In this example the husband and wife must disclose their interests as interests in a foreign company and as interests in a FIF under section 245W(l). However, only the FIF interests should be disclosed on an IR 4H series form (see "Overlap of interests" on page 9).

Foreign company interests

A person who holds a control or income interest in a foreign company must disclose that interest, regardless of the company's country of residence. The 1994 international tax disclosure exemption also makes no distinction about residence, and any interest in a foreign company which is an "income interest of 10 percent or greater" must be disclosed. Disclosure is to be made on form IR 4G "Interest in a Foreign Company Disclosure Schedule".

The disclosure exemption makes no distinction on the residence of a foreign company for these reasons:

- application of attributed (non-dividend) repatriations made on or after 2 July 1992. The rules apply to an "income interest of 10 percent or greater" in a CFC regardless of the CFC's country of residence.
- to identify tax preferences applied by the taxpayer (whether or not specified in Part A of the Sixteenth Schedule) in respect of an interest held in a foreign company which is resident in a Fifteenth Schedule jurisdiction .
- the requirement for a CFC which is resident in a non-list country to attribute foreign income or loss from 1 April 1993.

Foreign investment fund interests

An interest in a foreign entity must be disclosed if it constitutes an "interest in a foreign investment fund" specified within section 245RA(1). These types of interest must be disclosed:

- rights in a foreign company or anything deemed to be a company for the purposes of the Act (e.g., a unit trust)
- an entitlement to benefit from a foreign superannuation scheme
- an entitlement to benefit from a foreign life insurance policy
- an interest in an entity specified in Part B of the Sixteenth Schedule to the Act (no entities were listed when this TIB went to press).

However, any interest that does not fall within the above types or which is specifically excluded as an interest in a FIF under section 245RA(2) does not have to be disclosed. The following are listed in section 245RA(2) as exemptions from what constitutes an interest in a FIF:

- an "income interest of 10 percent or greater" in a controlled foreign company (CFC)
- an interest in a foreign entity that is resident and liable to income tax in a country or territory specified in the Fifteenth Schedule to the Act
- an interest in an employment-related foreign superannuation scheme
- interests in foreign entities held by a natural person, if the aggregate cost or expenditure incurred in acquiring the interests does not exceed $20,000 at any time during the income year
- an interest held by a natural person in a foreign entity located in a country where exchange controls prevent the person deriving any profit or gain or disposing of the interest for New Zealand currency or consideration readily convertible to New Zealand currency
- an interest in a foreign life insurance policy or foreign superannuation scheme acquired by a natural person before he or she became a New Zealand resident for the first time, for a period of up to four years.

There is more information on exemptions from the FIF rules in TIB Volume Four, No.9 (May 1993), and in Inland Revenue's "Foreign Investment Funds" booklet (IR 275B).

A person who holds an interest in a FIF at any time during the 1994 income year must disclose the interest and calculate FIF income or loss on the form "Interest in Foreign Investment Fund Disclosure Schedule and Worksheet". The FIF rules allow a person four options to calculate FIF income or loss (accounting profits method, branch equivalent method, comparative value method and deemed rate of return method), so the Commissioner will prescribe four forms under the IR 4H series to disclose and calculate FIF income or loss from an interest in a FIF using one of the methods.

Taxpayers had to disclose FIF interests for the 1993 income year if they acquired or reacquired the interest in the period from 8 pm on 2 July 1992 to 31 March 1993. However, section 245Y(10) deems FIF income or loss from the 1993 and prior income years to be derived or incurred in the 1994 income year. Accordingly, FIF income or loss from an interest in a FIF acquired or reacquired during the period specified above must be calculated and declared in a taxpayer's 1994 tax return.

An interest in a FIF held or acquired on or after 1 April 1993 must be disclosed in a taxpayer's 1994 tax return, regardless of the taxpayer's balance date. The FIF income or loss is ordinarily derived or incurred in the 1994 income year for standard and early balance date taxpayers, and deemed to be derived or incurred in the 1994 income year for taxpayers with late 1993 balance dates.

Overlap of interests

A situation may arise where a person is required to furnish a disclosure for an interest in a foreign company which is also an interest in a FIF. For example, a person with an "income interest of 10 percent or greater" in a foreign company which is not a CFC is strictly required to disclose both an interest held in a foreign company and an interest held in a FIF.

However, in this situation a double disclosure is not necessary. To meet the disclosure obligations, only one disclosure return (either form IR 4G or the appropriate IR 4H series form) is required for each interest a person holds in a foreign entity.

Here are the general rules for determining which disclosure return to file:

1. Use the appropriate IR 4H series form to disclose all FIF interests, and in particular:
    - an interest in a foreign company which is not resident in a Fifteenth Schedule country and is not a CFC (regardless of the level of interest held)

continued on page 10

from page 9

- an income interest of less than 10 percent in a CFC which is not resident in a Fifteenth Schedule country
- an interest in a foreign life insurance policy or foreign superannuation scheme, regardless of the country or territory in which the entity was resident.

2. Use IR 4G form to disclose:
   - an "income interest of 10 percent or greater" in a foreign company (regardless of the country of residence) that is not being disclosed on the appropriate IR 4H series form.

Disclosure is not required on either forms IR 4G or IR 4H for an income interest of less than 10 percent in a foreign company (whether a CFC or not) which is also not a FIF interest. An example is an interest which is excluded under the Fifteenth Schedule exemption.

Summary

The 1994 international tax disclosure exemption excludes the requirement to disclose an interest held in a foreign company (if the interest is not also an interest in a FIF) that does not constitute an "income interest of 10 percent or greater" (i.e., less than 10 percent). The disclosure exemption is not affected by the foreign company's country of residence. Further, an interest in a FIF held or acquired on or after 1 April 1993 must be disclosed.

Persons not required to comply with section 245W of the Income Tax Act 1976

This exemption may be cited as "International Tax Disclosure Exemption ITR5A"

1. Reference

This exemption is made pursuant to section 245W(2) of the Income Tax Act 1976. It details interests in foreign companies in relation to which any person is not required to comply with the requirement in section 245W of the Income Tax Act 1976 to make disclosure of their interests, for the income year ending 31 March 1994. This exemption does not apply to interests in foreign companies which are interests in foreign investment funds.

2. Interpretation

In this exemption, unless the context otherwise requires, expressions used have the same meaning as in section 2 or Part IVA of the Income Tax Act 1976.

3. Exemption

Any person who has an income interest or a control interest in a foreign company (not being an interest in a foreign investment fund), in the income year ending 31 March 1994, shall not be required to comply with section 245W(1) of the Income Tax Act 1976 in respect of that income interest or control interest in that foreign company and that income year, except where:

- the interest held by that person during any accounting period of the foreign company (the last day of which falls within that income year of the person), would constitute an "income interest of 10 percent or greater", as defined by section 245A of the Income Tax Act 1976, as if the foreign company was a controlled foreign company.

This exemption is made by me acting under delegated authority from the Commissioner of Inland Revenue pursuant to section 11 of the Inland Revenue Department Act 1974.

This exemption is signed on the 21st day of June 1994

Tony Bouzaid
Director, Taxpayer Audit

Inland Revenue's new phone system

At most Inland Revenue offices you can now direct dial an officer for specific enquiries.

Most Inland Revenue offices now have several direct dial numbers customised for your needs. For example, we now have a direct dial number just for employers' enquiries, and another for GST registered people.

The new phone service will allow callers to be put in touch immediately with one of our staff, without having to use our automated telephone system.

You can find a list of our direct dial numbers in your local telephone book under "Inland Revenue".

We plan to extend this service to all of our offices in the future.

Questions we've been asked

This section of the Tax Information Bulletin sets out the answers to some day-to-day questions that people have asked. We have 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.

Income Tax Act 1976

Receiving exempt interest from overseas 11

An estate as a cash basis holder under the accrual rules 12

No deduction for penal tax or expenses 12

Foreign dividend withholding payments 12

Goods and Services Tax Act 1985

Gold and other fine metal - secondhand goods credit 13

Goods reimported into New Zealand - GST liability 14

Private use of business cars - GST adjustment 15

Estate and Gift Duties Act 1968

Gift to dependants of former employee 15

Correction to earlier item

Statute barred assessments 16

Income Tax Act 1976

Receiving exempt interest from overseas

Section 61(47) - Foreign exempt income: A former Canadian resident took up permanent residence in New Zealand. Shortly after arriving she received a payment of interest from the United States of America. The interest was exempt from income tax in the United States. The taxpayer asked if she must pay New Zealand tax on the interest.

Foreign interest income that is exempt from tax in the country of source may also be exempt from New Zealand income tax. Such interest will be exempt under section 61(47) if it meets both of these conditions:

1. it is payable for a period when the taxpayer was not a New Zealand resident
2. it is exempt from income tax in the country of source (being tax which is substantially of the same nature as income tax imposed under Part IV of the Income Tax Act 1976).

The country of source need not be the country in which the taxpayer formerly resided.

United States income tax on interest is substantially of the same nature as income tax imposed under Part IV of the Income Tax Act. Consequently, this taxpayer would not have to pay New Zealand tax on the interest if it was paid for a period before she became a New Zealand resident.

An estate as a cash basis holder under the accrual rules

Section 64D - Cash basis holder: The trustee of an estate asked if the estate could account for tax as a cash basis holder. The deceased person was a cash basis holder during her lifetime.

Generally, only natural persons who meet the qualifying criteria may be cash basis holders. Companies, estates and trusts were originally excluded from the cash basis holder provisions.

However, the law changed from 1 April 1991 for estates that would otherwise qualify as cash basis holders. Now under section 64D(7A), if a person was a cash basis holder at the time of his or her death, the trustee can account for tax on the deceased person's estate as a cash basis holder. This provision applies for the income year in which the person died, and the four immediately succeeding income years.

No deduction for penal tax or expenses

Section 165(4) - Exceptions: Inland Revenue charged a taxpayer penal tax for omitting income from his tax return. The taxpayer spent a large amount of money on contesting the penal tax assessment. The penal tax was reduced by a small percentage as a result of the objection. The taxpayer has asked if he can claim the legal expenses as a deduction from income.

Section 165 of the Act allows certain deductions for expenditure incurred in calculating the assessable income derived in any year. This includes the preparation, institution, or presentation of an objection to or an appeal against or in consequence of any determination or assessment made by the Commissioner. The section applies to those who earn income from salary and wages as well as those in business.

However, section 165(4) of the Act does not allow a deduction for expenditure incurred in connection with any assessment of penal tax under the Act, unless the assessment is subsequently cancelled. If the result is only the reduction of penal tax, the expenses incurred in contesting the assessment are not deductible.

Nor is there any deduction available under section 104 if the taxpayer is in business. Inland Revenue considers that expenses taxpayers incur in connection with any assessment of penal tax are not incurred in gaining or producing assessable income or necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income in any income year.

The penal tax itself is not deductible. Section 106(1)(f) states that, in calculating assessable income, no deduction for income tax shall be made except as expressly provided in the Act. Section 106(2) defines "income tax" for the purposes of section 106(1)(f) as including penal tax.

Foreign dividend withholding payments

Section 394ZL - Liability to make deduction in respect of foreign withholding payment dividend: A New Zealand resident company asked a number of questions about foreign dividend withholding payments (FDWP):

1. What dividends must have dividend withholding payments deducted?
2. How is the deduction calculated?
3. How are the deductions usually paid to Inland Revenue?

1. Dividends subject to FDWP

The following dividends are subject to FDWP when received by a New Zealand resident company:

(a) Dividends paid by a foreign company, if the dividend is exempt from tax under section 63 of the Income Tax Act 1976

(b) Dividends paid by a New Zealand resident company which is deemed not to be resident (because of an applicable double tax treaty), if the dividend is exempt from tax under section 63

(c) Dividends paid by a New Zealand resident company, if all of these conditions are met:

- (i) The company was previously not resident in New Zealand
- (ii) The dividend is paid out of retained earnings which existed before the company became a New Zealand tax resident
- (iii) The dividend is exempt from tax under section 63.

2. Calculating the FDWP deduction

The Income Tax Amendment Act (No.3) 1993 inserted a new formula in section 394ZM for calculating the FDWP deduction, effective from 28 September 1993. The formula is:

$((a + b + c) \times d) - b - c$

In this formula:

a is the amount of the dividend less any foreign withholding tax paid

b is the amount of any foreign withholding tax paid

c is the amount of underlying foreign tax credit calculated under section 394ZMB

d is the rate of resident companies tax (as a percentage).

Note: The underlying foreign tax credit regime is in sections 394ZMA to 394ZMH of the Act. Generally, companies in ”grey list” countries (Australia, Japan, Germany, Canada, the UK, the USA) are presumed to have paid foreign tax equal to the amount of New Zealand income tax payable on the grossed-up dividend. This sum will be the tax credit in New Zealand. For companies in non-”grey list” countries the tax credit will be a proportion of the foreign tax actually paid by the company in relation to distributions.

3. Payment to Inland Revenue

Under section 394ZN, the FDWP deducted must be paid to Inland Revenue within 20 days of the end of the quarter in which the dividends were received.

Taxpayers who have losses to carry forward, or who anticipate such losses, may elect to reduce these losses, rather than paying FDWP.

Goods and Services Tax Act 1985

Gold and other fine metal - secondhand goods credit

Section 2(1) - Definition of secondhand goods: An industrial engraver asked if he could claim an input tax credit on purchases of gold. He buys secondhand jewellery from non-registered persons, and uses the gold in conducting his taxable activity.

continued on page 14

from page 13

These items are excluded from being secondhand goods in section 2(1):

- "Secondhand goods consisting of any fine metal
- Secondhand goods which are, or to the extent to which they are, manufactured or made from gold, silver, platinum, or any other substance which, if it were of the required fineness, would be fine metal..."

Under section 20(3)(a)(ia), a registered person can claim an input tax deduction if he or she acquires secondhand goods by means of a sale that is not a taxable supply. The deduction is limited to the tax fraction of the amount that has been paid for the supply during the taxable period covered by the return.

No deduction may be made for "fine metal" that meets any of these specifications:

- gold (minimum 99.5% fineness)
- silver (minimum 99.9% fineness)
- platinum (minimum 99.0% fineness)
- any metal that the Governor-General declares to be fine metal.

Gold of 24 carats is fine metal. If the industrial engraver bought from a non-registered person an item of jewellery that consisted of 24 carat gold and a precious stone, he would be able to claim one-ninth of the value of the stone.

If the item of jewellery consisted of 18 carat gold and a precious stone, and the industrial engraver acquired it from a non-registered person, he would be able to claim one-ninth of the value of any alloy not appearing on the fine metal list (e.g. copper), and one-ninth of the value of the stone. This is because the definition of secondhand goods excludes not only gold, silver, or platinum of the fineness of fine metal, but those substances (currently in a non-fine metal form) if they were of the required fineness.

If paragraph (b) of the secondhand goods definition did not exist, the industrial engraver could acquire carat gold jewellery, melt down the metal, extract gold of a fine metal quality, and sell this as a GST exempt supply under section 14(e).

Goods reimported into New Zealand - GST liability

Section 12(4) - Application of Customs Act provisions: A taxpayer asked if goods she was reimporting would be subject to GST. She had exported the goods to Australia six months previously, but the Australian purchaser had been unable to sell them. The New Zealand exporter agreed to take the goods back with the intention of selling them in New Zealand.

Section 12(4)(aa) of the Act provides that section 164 of the Customs Act 1966 (which concerns the power to exempt reimported goods from duty) shall apply. However, section 12(4)(aa) only applies when the person who reimports the goods is the same person who originally exported them, and when the goods did not meet either of these conditions when they were exported:

- they were not zero-rated under section 11
- they were a supply made before 1 October 1986, and they would have been zero-rated under section 11 if they had been supplied on that date.

In this particular case, the goods were zero-rated when they were exported. Therefore, the goods will be subject to GST at the rate of 12.5% when they are reimported into New Zealand.

Private use of business cars - GST adjustment

Section - 21 Adjustments: A GST registered person is the sole proprietor of her own business. The business owns a car which cost $16,250 in May 1992. It is used mainly for business use, but is used privately at weekends, some evenings, and for incidental trips during work days. The registered person asked whether she has to make an adjustment for the private use of the car.

Under section 21(1) of the Goods and Services Tax Act 1985, if a registered person acquires an asset for the principal purpose of making taxable supplies (i.e. a business asset) and later uses it for private use, the person must make an output tax adjustment to the extent of that private use.

Section 21(1) (excluding the second proviso which relates to capital assets under $10,000) does not specify a method to be used.

A registered person can use any method to apportion the use of the car between taxable use and private use. The person is responsible for showing that the method used is reasonable.

There are two methods shown in the 1994 GST Guide:

1. Revenue or expense adjustment and the capital asset adjustment

When business use is the principal use, an adjustment must be made for the private portion of expenses incurred in each taxable period (e.g. expenses of running a car), and there must be a separate adjustment for the private portion of the capital cost. This method is shown on pages 44 to 46 of the 1994 GST Guide.

2. 24% method

This method uses one adjustment to calculate the private portion of running *and* owning a business car or station wagon in each taxable period. The total cost of running and owning a car for the year is calculated by using 24% of the GST inclusive cost. This method is shown on page 47 of the 1994 GST Guide.

Capital assets costing $10,000 or less

A registered person can make a one-off adjustment if a car, or other capital asset, has a cost of less then $10,000. The adjustment is made in the taxable period when the business asset is acquired or produced (see page 50 of the 1994 GST Guide).

Estate and Gift Duties Act 1968

Gift to dependants of former employee

Section 75 - Exemption for certain payments by employers: An employer wished to make a lump sum payment to the widow and small children of a former employee. He asked if there are gift duty implications to consider.

Under section 75(1)(c), payments made by an employer to the widow or infant children of a deceased employee do not constitute a dutiable gift, providing the employer meets any one of these conditions:

- It is a body corporate other than an incorporated company
- It is an incorporated company, and the Commissioner is satisfied that the recipients of the payment (and their relatives within the second degree) cannot exercise control over the company

continued on page 16

from page 15

- It is an unincorporated firm or individual, and the Commissioner is satisfied that the deceased former employee and spouse are not within the second degree of relationship of the employer.

Persons within the second degree of relationship are grandparents, grandchildren, brothers or sisters.

Correction to earlier item

Statute barred assessments

On page 17 of TIB Volume Five, No.11 (April 1994) there was an item that discussed statute barred assessments and the Commissioner's rights under section 25(2) of the Income Tax Act 1976. The final paragraph stated that a taxpayer who wishes to dispute the opinion can apply for a Judicial Review through the Courts. This paragraph is incorrect.

The paragraph should read that a taxpayer wishing to dispute the opinion can use the objection procedure set out in Part III of the Income Tax Act.

Upcoming TIB articles

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

- When Inland Revenue can grant relief from payment of tax in cases of financial hardship
- GST and temporary imports
- Tax treatment of salaries and emoluments received by NZ residents employed by the International Monetary Fund, World Bank and similar entities
- Cessation of GST registration
- Dividend withholding payment accounts as they relate to consolidated groups of companies
- Losses of individual NZ resident insurance underwriters
- Treatment of dividend imputation credits and dividend withholding payment credits in the hands of trustees and beneficiaries
- GST and secondhand goods
- GST treatment of goods donated to a non-profit body, when the goods undergo change
- Deduction for wages paid to a spouse who cooks for permanent employees.

We'll publish these statements as soon as we've finished consulting with commentators outside Inland Revenue.

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

Dow Chemicals Overseas v CIR	• • •	Timing of assessability of "equalisation" payments to non-resident employees	17
Suzy Speed v CIR Lone Oak Farms v CIR	• • •	Whether shareholders and liquidator can proceed with an objection on behalf of dissolved company	18
Shell NZ Holding Co Ltd v CIR	• • • • •	Whether Customs import entry form constitutes a GST invoice	19
CIR v Canterbury Frozen Meat Co Ltd	• • •	Refusal to strike out judicial proceedings as to whether an income tax assessment was valid	20

Timing of assessability of "equalisation" payments to non-resident employees

Rating: • • •

Case: Dow Chemical Overseas Management Company Ltd v Commissioner of Inland Revenue. HC Wellington AP 148/92

Act: Income Tax Act 1976, sections 75, 243(2)(c) and (r), 338, 355

Keywords: *Non-resident employees, "net of tax" payments*

Summary: The employer agreed to pay non-resident employees working in New Zealand a net income equivalent to the net income that they would have received had they been working in the United States. Dow paid the difference between the projected US tax and the NZ tax on that income. The High Court held that the employees did not derive the difference between the two sums until after the end of the income year in which the employer paid the estimated tax. The final amount of the tax could not be ascertained until that time.

Facts: Dow paid non-resident employees the equivalent to the net salary that they would have received if they were working in the US and paying US Federal tax there. The employment contracts provided that no employee was to receive a tax

continued on page 18

from page 17

shortfall or windfall due to a foreign assignment. Therefore, Dow agreed that if the NZ tax liability on the gross of the net wages was greater than the US tax liability, it would pay the difference. Dow treated this equalisation payment as a loan to the employee.

The employee's US tax liability could not be determined until after the year in which the employee earned the income, as this was when the annual average exchange rates and US tax rates were known. When the US tax liability was determined the employer could calculate the exact difference between the US and NZ tax liabilities. At that time the total tax equalisation "loan" of NZ tax was ascertained and was forgiven by the employer. The amount forgiven constituted assessable income of the employee.

The case turned on when the employee derived the tax equalisation payment. Dow treated it as being derived in the subsequent income year, when the loan was forgiven. Inland Revenue argued that the employee derived the tax equalisation payments monthly when the net income and the NZ tax were paid by the employer.

Decision: Justice Ellis held that, although the employee was contractually entitled to have the equalisation "loan" forgiven, the forgiven loan was not in a realisable form until the amount of the loan was ascertained in the next income year. Therefore, the employee did not derive the equalisation payment until the amount of the payment was ascertained in the subsequent year.

Credits to the employee's account which occurred after the employee left NZ were assessable income derived in NZ under section 243(2)(c).

Comment: Inland Revenue has not yet decided whether to appeal this decision.

Whether shareholders and liquidator can proceed with an objection on behalf of dissolved company

Rating: • • •

Case: Suzy Speed Holdings Limited v Commissioner of Inland Revenue AP 273/91
Lone Oak Farms Limited v Commissioner of Inland Revenue AP 274/91 (1994) 16 NZTC, 11,108 (1994) 18 TRNZ, 615

Act: Income Tax Act 1976, section 33

Keywords: *Objection procedures, dissolution*

Summary: The High Court concluded that on dissolution of a company neither the shareholders nor the liquidator have any entitlement to continue an objection by way of case stated.

Facts: The High Court was considering two applications. The liquidator of the company in one case and the shareholders in another case applied to be substituted for the company in case stated proceedings under the Income Tax Act 1976. The two matters were similar so for convenience, the Court dealt with the Lone Oak Farms Ltd case.

On 26 June 1989 the shareholders resolved to voluntarily wind up the company. They appointed a liquidator. The company's assets were distributed on or about 30 September 1989. The Commissioner made an assessment of tax on 7 September 1990, and the company objected to the assessment. The Commissioner disallowed the objection.

On 11 March 1991 the company requested a case stated. A short time later the tax was paid on the Commissioner's demand. On 12 September 1991 the liquidator filed a final statement of accounts with the Companies Office. The company was dissolved three months later on 12 December 1991. There had been no application for the restoration of the company to the Register.

Decision: Justice Greig considered the intervention of the company's dissolution as fundamental to his decision. The liquidator (and the shareholders in the other case) had no entitlement to continue the objection by way of case stated. They were not entitled to be substituted for the company. The status of the liquidator and the rights in respect of the proceedings ended on the dissolution of the company. Once dissolved, a company no longer exists.

Comment: We do not know whether the taxpayer will appeal this decision.

Whether Customs import entry form constitutes a GST invoice

Rating: • • • • •

Case: Shell New Zealand Holding Company Limited v Commissioner of Inland Revenue CA 118/93

Act: Goods and Services Tax Act 1985

Keywords: *invoice, notifying an obligation to make payment*

Summary: The Court of Appeal held that a Customs import entry form constituted an invoice for the purposes of the Goods and Services Tax Act as it notified the recipient of an obligation to pay Customs duty and GST levied by the Crown.

Facts: The Customs Department issues an import entry form each time goods are imported into New Zealand. An importer cannot unload those goods until the import entry form has been accepted by the Customs Department. The import entry form contains details of the goods' description, quantity and value. It also specifies the amount of duty and GST that the importer must pay on those goods.

The deferred duty statement is a periodic statement of all the import entry forms for a specific accounting period. It lists the total GST and other duties payable on each import entry form and the date that the total must be paid. The Customs Department generates the deferred duty statement from the import entry forms it enters into its computer system.

The Customs Department issues the deferred duty statement for a duty accounting period and the statement is sent out about a week to 10 days after the end of each period.

Shell New Zealand Holding Company is a representative for the Shell New Zealand Group of Companies. It carries on the taxable activities of the other group members. In the course of its taxable activities, the Company imported goods into New Zealand and sought to deduct input tax for the GST amounts specified in the import entries in the taxable periods to which the import entries related.

The Commissioner disagreed with this approach and argued that input tax credits only become available in the taxable period in which the taxpayer receives a deferred duty statement from the Customs Department.

Decision: The Court of Appeal overruled the previous High Court and Taxation Review Authority decisions. It held that the import entry form fell within the statutory definition of "invoice".

continued on page 20

from page 19

The Court of Appeal considered that an import entry form notified the recipient that there was an obligation to pay and therefore it was an "invoice" for GST purposes. The fact that the import entry form did not state the time for payment nor was a product of a two party commercial transaction, was immaterial. This meant that the taxpayer could deduct input tax during the taxable period in which it received the customs import entry form rather than during the taxable period the deferred duty statement was received.

Comment: Inland Revenue is not appealing this decision to the Privy Council.

Refusal to strike out judicial review proceedings as to whether an income tax assessment was valid

Rating: • • •

Case: Commissioner of Inland Revenue v Canterbury Frozen Meat Company Ltd. CA 231/93

Act: Income Tax Act 1976 - sections 19(1), 23, 25(1), 26, 27

Keywords: *Assessment, judicial review, striking out*

Summary: This was an appeal to the Court of Appeal from the decision of Justice Gallen in *Canterbury Frozen Meat Company Limited v CIR* (1993) 15 NZTC 10,275, who refused the Commissioner's application to strike out judicial review proceedings commenced by Canterbury Frozen Meat Ltd. The Court of Appeal dismissed the Commissioner's appeal.

Facts: Canterbury Frozen Meat Ltd ("Canterbury") paid Thomas Borthwick & Sons (Australasia) Ltd ("Borthwicks") $2.25 million as consideration for the variation and partial surrender by Borthwicks of its rights under a long term supply contract. Canterbury treated the $2.25 million as a deductible expense and was assessed accordingly. The Commissioner assessed Borthwicks treating the $2.25 million as income in its hands. Borthwicks objected and requested a case stated. Because of the passage of time, the time bar under section 25 of the Income Tax Act might have precluded an amended assessment against Canterbury in respect of the payment if in the end the Commissioner lost the Borthwick case.

The Commissioner issued an amended assessment to Canterbury disallowing the deduction of the amount paid to Borthwicks and stated that this was "in the nature of a protective assessment". The Court of Appeal decided in favour of the taxpayer in the Borthwick case. Canterbury instituted judicial review proceedings seeking various declarations and orders including that the amended "assessment" was invalid. The grounds relied on were that the "assessment" was not definitive in character and that the Commissioner had acted invalidly without statutory or other authority for the improper purpose of circumventing the time limit on assessments unfairly and in abuse of his statutory powers.

The Commissioner applied to have the proceedings struck out on the grounds that they disclosed no reasonable cause of action, were likely to cause delay in the proceedings, were frivolous or vexatious and were an abuse of the process of the Court.

Decision: To constitute an assessment for income tax purposes, the decision of the Commissioner must be definitive and final as to the liability of the taxpayer at the time it is made, subject only to challenge through the objection process. The Court of Appeal held that Canterbury had established an arguable case that the decision of the Commissioner was provisional or conditional and did not have the character of an assessment within the meaning of that term in the Income Tax Act.

Comment: Inland Revenue will not be appealing this decision.

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 booklets 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 any 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 free pages.

For people in business

A guide to Inland Revenue audits (IR 297) March 1994

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 (published by ARCI Corporation) 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) May 1994

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) 1994

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) May 1994

A basic introduction to goods and services tax, which will also tell you if you have to register for GST.

GST guide (GST 600) 1994 Edition

An in-depth guide which covers almost every aspect of GST. Everyone who registers for GST gets a copy of this booklet. It is quite expensive for us to print, so we ask that if you are only considering GST registration, you get the previous booklet 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) 1994

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) 1994

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) 1994
- Weekly and fortnightly (IR 184X) 1994

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) Jan 1994

An introduction to the tax obligations involved in running your own business.

Surcharge deduction tables (IR 184NS) 1994

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.

Taxpayer Audit (IR 298)

An outline of Inland Revenue's Taxpayer Audit programme. It explains the units that make up this programme, and what type of work each of these units does.

list continued on page 22

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) June 1993

Explains the tax obligations that a club, society or other non-profit group must meet.

Education centres (IR 253) June 1994

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 1994

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.

New Zealand tax residence (IR 292) April 1994

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

Objection procedures (IR 266) March 1994

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) March 1994

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) May 1994

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 knowingly evades 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) June 1994

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 1994

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) January 1994

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

Superannuitants and surcharge (IR 259) January 1994

A guide to the surcharge for national superannuitants who also have other income.

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.

Problem Resolution Service (IR 287) November 1993

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

Child Support booklets

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 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 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 - does it affect you? (CS 50)
A brief introduction to Child Support in Maori, Cook Island Maori, Samoan, Tongan and Chinese.

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 - the basics - a guide for students
A basic explanation of how Child Support works, written for mainly for students.

Due dates reminder

July

5 Large employers: PAYE deductions and deduction schedules for period ended 30 June 1994 due.

7 Provisional tax and/or Student Loan interim repayments: first 1995 instalment due for taxpayers with March balance dates.
Second 1995 instalment due for taxpayers with November balance dates.
Third 1994 instalment due for taxpayers with July balance dates.

Non-IR 5 taxpayers: annual income tax returns due for taxpayers with balance dates from 1 October 1993 to 31 March 1994 (SL 9 to be attached for Student Loan borrowers).

20 Large employers: PAYE deductions and deduction schedules for period ended 15 July 1994 due.

Small employers: PAYE deductions and deduction schedules for period ended 30 June 1994 due.

FBT: return and payment for quarter ended 30 June 1994 due.

Gaming machine duty return and payment for month ended 30 June 1994 due.

RWT on interest deducted during June 1994 due for monthly payers.

RWT on dividends deducted during June 1994 due.

Non-resident withholding tax (or approved issuer levy) deducted during June 1994 due.

30 GST return and payment for period ended 30 June 1994 due.

August

5 Large employers: PAYE deductions and deduction schedules for period ended 31 July 1994 due.

7 Provisional tax and/or Student Loan interim repayments: first 1995 instalment due for taxpayers with April balance dates.
Second 1995 instalment due for taxpayers with December balance dates.
Third 1994 instalment due for taxpayers with August balance dates.
(We will accept payments received on Monday 8 August as on time.)

Non-IR 5 taxpayers: annual income tax returns due for taxpayers with April balance dates (SL 9 to be attached for Student Loan borrowers).

20 Large employers: PAYE deductions and deduction schedules for period ended 15 August 1994 due.

Small employers: PAYE deductions and deduction schedules for period ended 31 July 1994 due.

Gaming machine duty return and payment for month ended 31 July 1994 due.

RWT on interest deducted during July 1994 due for monthly payers.

RWT on dividends deducted during July 1994 due.

Non-resident withholding tax (or approved issuer levy) deducted during July 1994 due.

(We will accept payments received on Monday 22 August as on time for 20 August.)

31 GST return and payment for period ended 31 July 1994 due.

Contents continued - questions and legal case notes

Questions we've been asked (pages 11-16)

Income Tax Act 1976

Receiving exempt interest from overseas 11

An estate as a cash basis holder under the accrual rules 12

No deduction for penal tax or expenses 12

Foreign dividend withholding payments 12

Goods and Services Tax Act 1985

Gold and other fine metal - secondhand goods credit 13

Goods reimported into New Zealand - GST liability 14

Private use of business cars - GST adjustment 15

Estate and Gift Duties Act 1968

Gift to dependants of former employee 15

Correction to earlier item

Statute barred assessments 16

Legal decisions - case notes (pages 17-20)

Dow Chemicals Overseas v CIR	• • •	Timing of assessability of "equalisation" payments to non-resident employees 17
Suzy Speed v CIR Lone Oak Farms v CIR	• • •	Whether shareholders and liquidator can proceed with an objection on behalf of dissolved company 18
Shell NZ Holding Co Ltd v CIR	• • • • •	Whether Customs import entry form constitutes a GST invoice 19
CIR v Canterbury Frozen Meat Co Ltd	• • •	Refusal to strike out judicial proceedings as to whether an income tax assessment was valid 20

Volume Five, No.13 June 1994

Contents

Policy statements

New Zealand superannuitants receiving overseas government pensions 1
$200 limit for writing off assets - correction 2
Income tax exemption for war and forces pensions 3
GST and cheque clearance fees 3
Cost of trading stock - are transport costs included? 6
Gift duty exemption for small gifts - application 7

Legislation and determinations

Tax in dispute interest rate, and application to GST Act 2
National average market values of specified livestock - 1994 4
Prescription amounts owing to chemists by Health Benefits Centre 7
Cancellation of International Tax Disclosure Exemption ITR5 8
1994 international tax disclosure exemption 8

Questions we've been asked

Answers to enquiries we've received at Inland Revenue, which could have a wider application.
See page 11 or the inside front cover 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 17 or the inside front cover for a list of cases covered in this bulletin.

General interest items

Inland Revenue's new phone system 10
Upcoming TIB articles 16
List of Inland Revenue booklets 21
Due dates reminder 23

This TIB has no appendix