TAX INFORMATION BULLETIN

Volume Six, No.3 September 1994

Contents

This TIB has no appendix

Contents continued - questions and legal case notes

Questions we've been asked (pages 15-17)

Legal decisions - case notes (pages 18-24)

Conveyance duty on property conveyed on behalf of a company yet to be incorporated

Introduction

This item states the Commissioner's current policy on the application of conveyance duty when an agent acts on behalf of a company which is yet to be incorporated.

All legislative references in this item are to the Stamp and Gift Duties Act 1971 unless otherwise stated.

Background

An unincorporated company is unable to form an agreement to purchase property as it is legally unable to contract or perform any other act. An agent may form an agreement to purchase property for and on behalf of an unincorporated company. Upon incorporation, the company may ratify the contract and adopt the agent's contractual rights and obligations.

Ratification was not possible at common law. On incorporation the company had to take over the contract by executing an adopting agreement. This adopting agreement was subject to conveyance duty, as was the original agreement. This would mean conveyance duty was paid twice on what was in reality one transaction. Section 25 exempted the adopting agreement from conveyance duty.

Section 42A of the Companies Act 1955 (effective 6 December 1983) changed the law to allow companies to ratify pre-incorporation contracts. (Sections 182 to 185 of the Companies Act 1993 substantially re-enact section 42A.)

Legislation

Section 25 states:

> If the Commissioner is satisfied that an instrument of agreement to convey any property, duly stamped with conveyance duty as an instrument of conveyance, has been made for and on behalf of a company about to be incorporated at the date of executing the agreement, the company when incorporated shall, for the purposes of computing the conveyance duty payable on the instrument of conveyance of the property to the company to the extent that the conveyance is pursuant to the agreement, be deemed to be the party entitled to the conveyance under the agreement.

Policy

An agreement to purchase formed by an agent on behalf of an unincorporated company is liable to conveyance duty unless it falls within an exemption in the Act. An adopting agreement will also be liable to conveyance duty as a transfer by direction under section 16, unless there is a relevant exemption in the Act. If a company can ratify the original agreement there is no further duty liability because there is no new instrument.

Pre-1983: Before 6 December 1983 a company had no power to ratify pre-incorporation contracts formed on its behalf by an agent. An adopting agreement was required. Contractually the adopting agreement was a new and substituted contract between the vendor and the company. The adopting agreement was liable to further conveyance duty as a transfer by direction under section 16.

Section 25 exempted the adopting agreement from conveyance duty. It did this by deeming the newly incorporated company to be the party entitled to the transfer under the agreement to purchase. Therefore, there was only one conveyance subject to conveyance duty.

Post-1983: Section 42A of the Companies Act 1955 and sections 182 to 185 of the Companies Act 1993 allow companies to ratify pre-incorporation contracts without the need for an adopting agreement. A directors' resolution is the most common way to ratify the contract. However, ratification may also be oral or inferred from conduct. In all cases ratification does not create another instrument liable to conveyance duty. Instead it effectively makes the new company a party to the original agreement. The company can sue and can be sued on the original agreement. Consequently, section 25 is irrelevant as there is no need to deem the company to be a party to the original agreement.

Conveyance duty when there is no pre-incorporation contract

Sometimes a purchaser under an agreement to purchase executes the agreement as the principal, and then decides to incorporate a company to take over the contract. In such a case both the agreement to purchase and the transfer to the company will be liable for full conveyance duty as a transfer by direction under section 16. Section 25 will not apply to exempt the transfer because the instrument of transfer to the company was not "made for and on behalf of a company about to be incorporated at the date of executing the agreement...".

Government seeks submissions on compliance and penalty proposals

Late last month the Government released a discussion document seeking submissions on proposals for a reformed compliance and penalties regime for the taxation system.

The discussion document, *Taxpayer compliance, standards and penalties*, proposes clear standards of behaviour for taxpayers, and a comprehensive set of penalties for failure to comply with the law.

It proposes that two standards based on *reasonableness* be introduced into tax law:

- Taxpayers must take *reasonable care* in meeting their obligations; failure to do so will lead to a penalty.
- Where the tax at stake is over $10,000, taxpayers will also need to have a *reasonably arguable* position in support of the way they have applied the law.

The proposed standards would be reinforced by a consistent system of civil and criminal penalties that include:

- a new penalty for abusive tax avoidance of 125% of the shortfall, aimed at those who use avoidance schemes designed to frustrate the scheme and purpose of the law;
- new civil penalties for negligence, lack of a reasonably arguable position, gross negligence, and evasion;
- a late payment penalty of 5% (reduced from 10%) of the unpaid tax plus an additional 2% per month to apply to GST and income tax;
- introduction of a maximum term of five years' imprisonment for tax evasion;
- an increase in maximum fines imposed by the courts from $15,000 to $25,000 for first offences, and from $25,000 to $50,000 for second and subsequent offences;
- a new $50 penalty for late filing of annual returns.

The discussion document also proposes a comprehensive, two-way interest regime for overpayments and underpayments of tax. Taxpayers would be paid interest on overpayments, to compensate them for loss of the use of their funds. They would be charged interest for late payment or underpayment.

Taxpayer compliance, standards and penalties is available from Bennetts Government Bookshops. Submissions should be made by 14 October.

GST - zero-rating and temporary imports such as yachts

Introduction

This item clarifies the Commissioner's policy on the zero-rating of goods and services supplied to owners of yachts and other vessels that are in New Zealand on a temporary basis. It describes a supplier's obligations when the supplier supplies goods and services to a non-resident in respect of a temporary import.

All legislative references in this item are to the Goods and Services Tax Act 1985 unless otherwise stated. Any direct quotations from this Act are printed in smaller type.

Background

A number of foreign yachts visit New Zealand every year. The Act provides for zero-rating for goods and services supplied in relation to items that are temporarily imported. Suppliers often ask Inland Revenue and NZ Customs how they should treat such supplies, for the purposes of the Act.

Legislation

Services

Section 11(2)(ca) of the Act provides for the zero-rating of a supply of services when the services -

(i) Are supplied directly in connection with goods referred to in either section 47(2) or section 181 of the Customs Act 1966, notwithstanding that the goods are in New Zealand; and

(ii) Are supplied to a person who is not resident in New Zealand at the time the services are performed;

Section 11(2)(ca)(i)

Section 47(2) of the Customs Act 1966 deems goods that enter New Zealand but have a destination outside the territorial limits of New Zealand not to have been imported. This definition includes yachts, aircraft and other goods. They are not subject to customs duty.

Section 11(2)(ca)(ii)

Section 11(2)(ca)(ii) of the Act restricts zero-rating to supplies of services made to people who are not residents of New Zealand when the services are performed. When services are performed in respect of a temporary import but are provided to a resident, the supply is subject to GST at 12.5%.

Section 2 of the Act provides that the term "resident" means a resident as defined in section 241 of the Income Tax Act 1976. This means that any person who is resident for income tax purposes will be resident for GST purposes. However, for GST purposes the residence rules are extended to include as a resident any person who carries on a taxable activity or any other activity in New Zealand while having a fixed or permanent place in New Zealand relating to that activity. In the case of an unincorporated body such as a partnership, that body will be resident in New Zealand if the centre of its administrative management is in New Zealand.

Goods

Section 11(1)(ba) of the Act provides for the zero-rating of a supply of goods when -

(ba) The goods have been supplied in the course of repairing, renovating, modifying, or treating any goods to which subsection (2)(ca) of this section applies and the goods supplied-

(i) Are wrought into, affixed to, attached to, or otherwise form part of those other goods; or

(ii) Being consumable goods, become unusable or worthless as a direct result of being used in that repair, renovation, modification, or treatment process;

Section 11(1)(d) does not allow zero-rating of any goods for which the registered person (or an associated person) has claimed a secondhand goods input tax credit. GST must be charged on the sale of these goods in all cases. This situation is of particular importance to secondhand dealers.

Policy

For goods to qualify for zero-rating under section 11(1)(ba), the supplier must take steps to ensure that the goods become part of a temporary import. There is no requirement that the supplier personally incorporate those goods into the temporary import in order for the goods to be zero-rated. However, it will not be acceptable to zero-rate the supply of goods merely because the purchaser is a non-resident. The supplier must be able to show that requirements for zero-rating under section 11(1)(ba) are satisfied.

Evidential requirements

As the supplier is seeking to zero-rate a supply of goods and services, he or she must be able to show that the supply met all of these conditions:

- it was made to a non-resident
- it was in respect of a temporary import
- in the case of goods, that the goods were wrought into, affixed to, or attached to or form part of the temporary import, or that they were consumable items that became unusable or worthless as a direct result of being used in the repair, renovation, modification or treatment process.

Examples of the type of evidence that Inland Revenue would accept for zero-rating to apply are:

- copy of passport
- copy of NZ Customs temporary import entry permit
- details of the goods supplied and evidence to show that those goods became part of the temporary import.

Example

NZ Customs gives temporary import status to a yacht that enters NZ waters. Repairs are undertaken on the vessel. The yachtsperson, a non-resident, buys a new engine and instals it in the vessel.

GST treatment

(a) The charge made to the visiting yachtsperson for services, e.g. repairs made to the yacht, can be zero-rated.

(b) If the supplier has used consumable items such as motor oil in the course of the repairs, the charge to the visiting yachtsperson for these items can be zero-rated provided that the items involved became unusable or worthless as a result of being used in the repairs.

(c) If the visiting yachtsperson buys the engine and instals it in the vessel, and the supplier of the engine has kept a copy of the temporary import entry permit, a copy of the passport and documents (e.g. photograph or other evidence) that show that the goods have become part of the temporary import, the supplier can zero-rate that supply.

(d) If a registered supplier sells the engine to the yachtsperson, and the yachtsperson engages another registered person to instal the engine into the vessel, this will be treated as two separate supplies. The sale of the engine can be zero-rated only if the supplier maintains records as indicated in (c) above. The charge for the installation can be zero-rated in terms of section 11(2)(ca), because it is a service supplied directly in connection with the temporary import. Adequate records to show that the services are supplied to a non-resident in respect of a temporary import must be kept.

If the engine is secondhand, and the supplier claims a secondhand goods input tax credit for it, the sale of the engine to the visiting yachtsperson must include GST at the standard rate (12.5%). This is because section 11(1)(d) provides that zero-rating does not apply when the supplier has deducted the input tax in respect of secondhand goods.

Qualifying company election tax formula - meaning when factor "b" is negative

Summary

This item states the Commissioner's interpretation of the formula for calculating qualifying company election tax (QCET) in cases when factor "b" in that formula is a negative amount. When "b" is negative, unrealised revenue losses are added back when calculating the amount on which QCET is charged when a company becomes a qualifying company.

All legislative references in this item are to the Income Tax Act 1976. Any direct quotations from this Act are printed in smaller type.

Background

As far as is possible, the qualifying company regime is designed to treat closely held companies and their shareholders as one entity for tax purposes. This is similar to the way in which partnerships are treated. Dividends paid by qualifying companies are either fully imputed or tax exempt. The rules were not intended to apply retrospectively to such distributions, so an entry tax on revenue reserves which existed at the time a company became a qualifying company was introduced. This is qualifying company election tax.

A tax practitioner asked if, when factor "b" in the QCET formula was a negative it should be added (subtraction of a negative giving a positive), or a nil amount entered.

Analysis

QCET is defined by the formula in section 393K(2) as:

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

In this formula:

a is the amount that would be a dividend on winding up (except for a different treatment of 10 year bonus issues which are specifically excluded)

b is an amount of assessable income as discussed below

c is the aggregate of these amounts:

- the balances in the imputation credit and dividend withholding payment accounts
- tax payable less refunds due
- dividend withholding payments payable less refunds due.

d is the company tax rate expressed as a decimal.

[Note: These factors are defined in section 393K(2). The above paragraphs use a simplified interpretation of the defined factor to demonstrate the essential features of the qualifying company regime.]

Factor "b"

"b" is defined in section 393K(2) as:

> "the aggregate of the assessable income which would be derived by the company at the relevant time from taking the actions described in paragraphs (i) and (ii) of item "a" of this formula, after deduction of all amounts of expenditure or loss incurred in taking such actions that would be deductible under this Act in calculating such assessable income:"

The actions referred to are:

> "(i) the company had disposed of all its tangible and intangible property (other than cash) to an unrelated person at the relevant time for amounts of cash equal to the market value of such property at the relevant time; and
>
> "(ii) the company had repaid or otherwise met all of its liabilities at the relevant time (not being income tax payable as a result of the disposition of property or meeting of liabilities) for amounts of cash equal to the market value of such liabilities to a purchaser of such liabilities at the relevant time:"

Note that paragraph (iii) of the definition of factor "a" is omitted from the definition of factor "b". Paragraph (iii) reads: " (iii) The company had thereupon been wound up and any amounts of cash remaining...distributed to its shareholders... ."

Factor "b" is thus an amount which is assessable income *to the company* if it cashed up but did not wind up. This amount identifies previously unrealised revenue reserves, and previously unrealised revenue losses. It does not include unrealised *capital* gains, since such gains would not be assessable income of the company. It will include whatever unrealised *revenue* gains are in the company.

This means that the value of factor "b" can be a positive or a negative amount. Positive amounts of assessable income will include items such as any amount of notional depreciation clawback and any increase in the value of trading stock. Negative amounts will include bad debts, decreases in the value of trading stock, and losses with respect to adjusted tax value on the notional sale of depreciable property.

The QCET formula can now be understood as follows:

$(a + c - b - c/d)\, d$ equals:

$(a + c - b)\, d - c$ which represents (simplified):

$$\left[\left(\begin{matrix}\text{would-be dividend}\\ \text{on notional winding up}\end{matrix} + \begin{matrix}\text{tax}\\ \text{paid}\end{matrix} - \begin{matrix}\text{unrealised revenue}\\ \text{gains or losses}\end{matrix}\right) \times \begin{matrix}\text{tax}\\ \text{rate}\end{matrix}\right] - \begin{matrix}\text{tax}\\ \text{paid}\end{matrix}$$

or further simplified:

$$\left[\left(\begin{matrix}\text{grossed-up}\\ \text{dividend}\end{matrix} - \begin{matrix}\text{unrealised}\\ \text{gains or losses}\end{matrix}\right) \times \begin{matrix}\text{tax}\\ \text{rate}\end{matrix}\right] - \begin{matrix}\text{tax}\\ \text{paid}\end{matrix}$$

QCET is thus a tax on the amount (excluding unrealised gains or losses) which would be a dividend taxable in terms of sections 4 and 4A on winding up. This is an amount that can be distributed tax free once the company becomes a qualifying company. Whether QCET is payable depends mainly on a company's retained earnings from before it became a qualifying company.

Policy

There is nothing in section 393K to prohibit a literal application of the formula. The simple arithmetical answer to the question raised is that two negatives give a positive and the ordinary rules of arithmetic should be assumed in dealing with calculations required under the Act.

The result is that when "b" is negative, unrealised revenue losses are added back in calculating the amount on which QCET is charged when a company becomes a qualifying company. This is consistent with the treatment of unrealised gains (when "b" is positive) which are deducted from the amount on which the tax is charged.

It is necessary to exclude the amount represented by "b" because it is included in "a" in the formula. If the unrealised gains and losses were not specifically excluded, a company becoming a qualifying company would be taxed on unrealised revenue gains which would later be taxed again when realised, and it would have the benefit of a deduction for unrealised losses which would also be deducted again later when realised, or which might never be realised.

Example

Company A Ltd.

Assets

Cash		100
Trading stock		50
Plant: cost	200	
less depn.	100	100
		250

Liabilities

Creditors	100
Shareholders' funds	100
Revenue reserves	50
	250

Other information

Suppose plant has a market value of $110. Other assets and liabilities are recorded at market value.

Imputation credit and dividend withholding credit accounts have nil balances.

Calculation

Would-be dividend on notional winding up:

Assets

plant at market value	110	
cash	100	
trading stock	50	260
less liabilities		100
less capital		100
factor "a" =		60

Assessable income to the company on notional disposal of assets and payment of liabilities:

Plant

Market value	110
Book value	100
Gain (factor "b")	10

Factor "c" = 0

QCET = (a + c -b - c/d) x d
= (60 + 0 - 10 - 0) x .33
= (50) x .33
= 16.5

Supposing that plant had a market value of only $90, then:

Assets

plant at market value	90	
cash	100	
trading stock	50	240
less liabilities		100
less capital		100
factor "a" =		40

Plant

Market value	90
Book value	100
loss (factor "b")	(10)

Factor "c" = 0

QCET = (a + c -b - c/d) x d
= (40 + 0 - (- 10) - 0) x .33
= (40 +10) x .33
= (50) x .33
= 16.5

The exclusion of unrealised gains or losses by factor "b" ensures the same amount of QCET is payable.

Rental losses and Family Support

Introduction

This article explains the correct treatment of rental losses when calculating income for Family Support purposes.

Comment

Part XIA of the Income Tax Act 1976 deals with Family Support. Section 374B(1) requires a number of adjustments to be made to a taxpayer's assessable income in order to calculate the income to be used to determine Family Support entitlement.

Under section 374B(1)(f), when a taxpayer conducts a business which incurs a loss, the amount of that loss is not to be taken into account. The effect is that the taxpayer's income (for Family Support purposes) increases, and thus less Family Support is payable.

The 1992 FS2B form (Adjustments to Income for Family Support) states on page 2:

> "[if] you have a business or rental loss, you cannot deduct it for Family Support purposes - it is treated as nil when working out your family income."

In certain circumstances this may not be correct. As detailed above, the legislation requires "business" losses to be added back, but not necessarily "rental" losses.

For income tax purposes, rental losses are deductible in full. However, a person cannot be said to be in the "business of renting" unless there is an intention of making a profit from the rental activities. Often, the mere holding of property to derive rental income does not constitute a business.

Factors to be considered in determining whether a taxpayer is "in the business of renting", or if the rental activity is of a non-business nature include:

- the scale of the operation and the volume of transactions. A taxpayer who owns several rental properties is more likely to be "in the business of renting" than a person with only one property.
- the commitment of time, money and effort. Comparing these with operations normally involved with an operation that has been determined as a "rental business".
- the pattern of activity and the financial results. A profit is not likely to be as important to a person acquiring a property for investment purposes; for example the rental income is used to offset the costs of owning the property, such as rates, insurance etc.

Example 1

A taxpayer borrows a substantial amount of money, and uses it to buy a house for investment as part of a retirement plan. The house is rented at a market rental, but the interest exceeds the rental income earned. The rental loss is deductible for Family Support purposes.

The taxpayer is not in the business of renting because the property has been acquired as part of a retirement investment plan, and the commitment of time and effort in collecting the rent, maintaining the property etc. is less than would normally be involved in a "rental business".

Example 2

A taxpayer owned two houses and a block of five flats. She collected the rents, interviewed tenants, and did some of the maintenance and repair work. The Taxation Review Authority in *Case F111(1984)* 6 NZTC 60,094 held that the taxpayer was carrying on the business of a landlord.

The rental loss is not deductible. For Family Support purposes the loss is treated as nil.

It cannot be assumed that a rental activity conducted by a taxpayer is a business. Before that can be determined, the nature of the rental activity needs to be considered.

Form FS 2B has been reprinted, and references to rental losses have been removed. If a taxpayer incurs an investment loss from the renting of property, that loss is to be taken into account for Family Support. However, if a taxpayer incurs a business loss from the renting of property, that loss will be excluded.

Reassessments

Taxpayers may request that their Family Support entitlement be recalculated to include a rental loss. Each request will be considered on a case by case basis after giving due attention to the nature of the rental activity.

A request for recalculation can be made at any Inland Revenue District Office. The request should be made in writing, setting out the reasons for the reassessment.

NZ resident insurance underwrites - no deductions for overseas business expenses/losses

Summary

Some New Zealand resident members of overseas-based insurance underwriting syndicates have asked Inland Revenue whether expenditure or losses incurred in respect of those syndicates are deductible. Such expenditure or losses are not deductible because the underwriters did not incur them in deriving assessable income.

Background

Section 210A of the Income Tax Act 1976 ("the Act") provides for the taxation of resident non-corporate insurance underwriters. It applies to income derived in the income years commencing from 1 April 1979 onwards. Parliament enacted the section so that income which individual resident insurance underwriters derive from an insurance business (except life insurance) carried on outside New Zealand is not assessable income.

Legislation

Section 210A(2) of the Act states that the assessable income of an underwriter carrying on the business of insurance "shall not include income derived from insurance business carried on out of New Zealand ...". This exclusion does not apply to any of the underwriters' income of the kind referred to in paragraphs (e), (f), (g), (h), (k), (l), and (m) of section 243(2) of the Act. This is any income derived from:

- ownership of any land in New Zealand
- any mortgage of land in New Zealand
- shares or debentures issued by a New Zealand company
- debentures issued by a local or public authority
- debentures or other securities issued by the Government of New Zealand
- selling or disposing of any property situated in New Zealand
- interest or a redemption payment from money lent in New Zealand
- interest or a redemption payment from money lent outside New Zealand to New Zealand residents, unless this money is used for a business carried on outside New Zealand through a fixed establishment outside New Zealand,
- interest or a redemption payment from money lent outside New Zealand to non-residents for use in a business carried on in New Zealand through a fixed establishment in New Zealand.

Section 210A(1) defines "insurance" to mean "insurance or guarantee against loss, damage, or risk of any kind whatever except life insurance". An "underwriter" is a New Zealand resident who is liable under a contract of insurance to pay, or to contribute towards payment wholly or partly of any amount that may become claimable by the person insured under that contract. It does not include a company, or a mutual insurance association incorporated under the Mutual Insurance Act 1955.

Policy

Section 210A excludes income that individual New Zealand resident insurance underwriters derive from an insurance business carried on outside New Zealand from assessable income (subject to the exceptions listed above).

Under section 104, a taxpayer may only deduct expenditure or losses if they were incurred in gaining or producing assessable income, or in carrying on a business for the purpose of gaining or producing assessable income. Income that comes within section 210A is not assessable income. This means any expenditure or losses incurred in relation to that income are not deductible because they were not incurred in gaining or producing assessable income or in carrying on a business for the purpose of gaining or producing assessable income.

Conclusion

The effect of sections 104 and 210A(2) is that individual New Zealand resident insurance underwriters cannot claim a deduction for expenditure or losses incurred in respect of their insurance business carried on outside New Zealand. This is because they were not incurred in gaining or producing assessable income. This applies whether the taxpayer incurred the expenditure or the losses as an individual or as a member of an underwriting syndicate or partnership.

Assessability of gifts received by volunteer workers in NZ

Introduction

This item states the Commissioner's current policy on the assessability of gifts received by volunteer workers in New Zealand. The item shows that there are no firm rules as to whether any particular gift is assessable income. Each gift and each case must be judged on its own merits. There are a number of factors to consider when deciding whether a gift is assessable income.

All legislative references in this item are to the Income Tax Act 1976.

Background

A gift could potentially be included in the recipient's assessable income as one or more of these items:

- profits or gains derived from any business under section 65(2)(a)
- monetary remuneration under section 65(2)(b)
- "other" income under section 65(2)(l).

If a gift is to be included as assessable income under any of the above provisions, it must have the characteristics of income.

The three main characteristics of income were identified in *Reid v CIR* (1983) 6 NZTC 61,624; (1983) 6 TRNZ 494 as follows:

- It comes in
- It is periodic, recurring, or regular
- Its quality in the hands of the recipient.

The first characteristic requires income to "come in". Income can only come in if it is money or money's worth. A gift that is not convertible into money or money's worth is not income.

The second characteristic requires income to be periodic, recurring, or regular. A gift is unlikely to be income if it is unusual for the recipient to receive gifts.

The third characteristic looks at the quality of the receipt in the hands of the recipient. This characteristic tends to be the most important when deciding if a gift is assessable income. It involves taking an overall view of the circumstances of the case to ascertain how and why the gift was made.

As a general rule, gifts to a volunteer worker will be assessable income if they are a relevant product of the taxpayer's activities. A gift will not be income if it is a personal gift made purely as a mark of affection, esteem or respect. *G v CIR* [1961] 1 NZLR 994 is a good example of this rule.

In this case, G was an Evangelical Minister. He had been preaching and receiving donations for seven or eight years before the income years in question. He supported himself and his family from the donations he received from Assemblies and individuals. This was his only means of financial support.

The Court recognised that higher principles motivated G in his preaching, but considered that G did intend that his work would lead to gifts he would accept and use for his support. Therefore, the Court held that G was carrying on a business for pecuniary profit.

The Court considered a number of different classes of gift:

- Gifts from Brethren Assemblies (whether or not they held meetings) were income. The gifts were a recognition of G's activities and were intertwined with his income producing activities.
- Gifts from private persons other than relatives were income unless they were purely personal gifts. In most cases the gifts were a recognition of G's activities and intertwined with his income producing activities.
- Christmas and holiday presents are not normally assessable income. However, the size and repetition of these gifts marked them as not normal Christmas or holiday presents. The gifts bore the characteristics of contributions in recognition of G's activities, and the Court held them to be assessable income unless the gifts were of a purely personal character.
- Gifts from persons for whom G performed marriage services were income. The gifts were a recognition of G's activities and related to his income producing activities.
- Presents from relatives were not income.

Policy

Generally, gifts will be assessable income when they are a product of the taxpayer's activities. A gift will not be income if it is a personal gift made purely as a mark of affection, esteem or respect. The case of G v CIR shows that there are no firm rules as to whether a particular gift is assessable income. Each gift and each case must be judged on its own merits.

While no factor is determinative in itself, the following need to be considered when deciding whether a gift is assessable income:

- How and why the gift was made. A gift received by a person in a working capacity in a particular area indicates that the gift is assessable income. Similarly, if a donor is motivated to make a gift because of a person's work, this is an indication that the gift is assessable income.
- Whether the gift is a common incident of the recipient's occupation or calling. A gift made to a person in an occupation where gifts are commonly received indicates that the gift is assessable income.

- Whether the gift is solicited. A solicited gift tends to indicate that the gift is assessable income.
- Whether the gift can be traced to gratitude engendered by some service rendered by the recipient to the donor. If the recipient has not been remunerated fully for the service, this tends to indicate the gift is assessable income.
- The motives of the donor. A personal gift made purely as a mark of affection, esteem or respect is unlikely to be assessable income.
- Whether the recipient relies on the gift for regular maintenance. A reliance on gifts for regular personal maintenance indicates that the gift is assessable income.

Example 1

Hine decides to take a year off from studying at university towards a social work degree to provide her services voluntarily to the IHC. Hine gives home help to parents with intellectually handicapped children as part of the tasks assigned. Hine often receives gifts from these parents in appreciation of her work and in recognition that she is not paid. Sometimes the parents make donations to IHC and express a preference that the money be passed on to Hine, although the IHC has a discretion to use the money as it wishes. Hine's parents regularly make gifts to help Hine with her living expenses.

The gifts Hine receives from her parents would not be assessable income. They are made out of natural love and affection.

The gifts Hine receives directly from the parents of the children she works with should be included as part of her assessable income in the income year she receives the gifts. The money paid by the parents to IHC is assessable income to the extent that the IHC actually passes the money on to Hine.

Example 2

Luke works as a volunteer in a youth counselling service provided by a church. Luke is motivated in his work by his Christian values and his desire to help young people in need. Luke receives gifts from the church and community groups and these gifts are his major source of financial support. Two of Luke's personal friends regularly give Luke money because of their admiration and respect for what Luke is doing. Luke has also received a sum of money from an aunt to buy a car that he could not otherwise afford because of his low-paid work.

Luke should include the gifts received from the church and community groups as part of his assessable income as the gifts are made in relation to Luke's counselling activities.

The gifts received from Luke's friends are not assessable income. They are made as a personal gift out of affection, esteem or respect.

The money received from his aunt is not assessable income. Again, it is a personal gift made out of love and affection. The fact that the gift is made in recognition of Luke's low-paid work is only a secondary factor in the donor's motives.

Example 3

Raju travels around New Zealand giving lectures at various environmental interest groups about environmental concerns and issues. Raju nearly always receives voluntary unsolicited gifts of money and other gifts from these groups after giving lectures in recognition of the important work he is doing. Raju does not give these lectures to earn money and receive other gifts, but is genuinely motivated by his concern for the environment and his desire to inform and motivate other people. Raju relies on the gifts to fund his day-to-day expenses. Sometimes Raju's personal friends and family members attend these meetings and donate gifts.

The gifts received from the general public are assessable income and Raju should include them as part of his assessable income. The gifts received from personal friends and family members are also part of Raju's assessable income, assuming the gifts are primarily given in response to the service provided (i.e. the lecture) rather than because of the personal relationship.

For his birthday, Raju receives from his sister a subscription to "New Zealand Green" magazine. This magazine focuses on the protection of New Zealand's flora and fauna.

Although the gift is related to Raju's work in the environmental field, it is not assessable income. The gift is given purely for personal reasons out of personal love and affection.

Keeping a logbook for a vehicle used for both business and private purposes

Summary

This item explains how to apply the legislation on keeping a logbook to establish the business use of a motor vehicle. It expands on the commentary in TIB Volume Two, No.2 (August 1990) on the then newly-passed legislation, and on the reminder in TIB Volume Five, No.11 (April 1994).

When a taxpayer uses a motor vehicle for both business and private purposes (and only the business costs can be claimed as a deduction), the taxpayer must keep a logbook to determine the proportion of business use. However, instead of keeping complete records, a taxpayer can generally keep a logbook for a 90-day test period every three years. The proportion of business use calculated from the 90-day test period is used to apportion annual motor vehicle expenses for the remainder of the three year period.

All legislative references in this item are to the Income Tax Act 1976.

Background

In 1990 the Tax Simplification Consultative Committee recommended a number of tax changes to reduce the compliance costs of business. One of these recommendations concerned the requirements for businesses to keep logbooks to determine the proportion of business use of motor vehicles. The Government accepted the recommendation, and enacted specific provisions governing deductions for motor vehicle expenses, which apply from the income year commencing 1 April 1991.

Application

The reason for keeping a logbook of motor vehicle use is to determine the proportion of business use when a vehicle is used for both business and private purposes.

The deductibility of motor vehicle expenses and the requirements for keeping logbooks are governed by sections 106B to 106E.

For income tax purposes it is *not* necessary for a taxpayer to keep a motor vehicle logbook in any of these situations:

- if the taxpayer is a company
- if the motor vehicle is used solely for business purposes
- if the vehicle is used solely for a purpose that constitutes a fringe benefit
- if the taxpayer's only income is from salary and wages or other employee remuneration (so the taxpayer will not be entitled to any deduction for motor vehicle expenses).

When the supply of a motor vehicle constitutes a fringe benefit, a record must be kept of days on which the vehicle is not available for use or has been used for an emergency call.

When a taxpayer has to keep a logbook, he or she can keep it for a 90-day test period, rather than keeping complete records. The proportion of business use calculated from this test period can then be used to apportion annual motor vehicle expenses. This basis of apportionment can continue for the balance of the three year "logbook application period".

Logbook test period requirements

A logbook kept for a test period must meet all of these conditions:

- it must be kept for a period of not less than 90 days
- it must show details of distance and reason for all business trips
- it must record the total distance travelled by the vehicle in the test period
- it must be kept for a period that is likely to represent the average business and private usage of the vehicle.

Logbook application period

The proportion of business use established from the logbook kept during the test period can be used for the logbook application period. The logbook application period is not to exceed three years, starting on the latest of these dates:

- the first day of the income year in which the taxpayer starts to keep a logbook for the test period
- the day on which the vehicle is purchased (unless the vehicle is a replacement vehicle that will be used similarly to the previous vehicle)
- the day following of the last day of the preceding logbook application period
- a day specified by the taxpayer.

A logbook application period will end on the earliest of these dates:

- the day on which the vehicle is sold or disposed of (unless it is being replaced with a vehicle that will be used similarly to the previous vehicle)
- a day specified by the taxpayer
- a day specified by the Commissioner
- the day on which the three year period expires.

Exceptions

With the approval of the Commissioner, a taxpayer may maintain full records over a period when business use is not representative of the average, such as a temporary and unforeseen increase in business activity.

The logbook application period should be brought to an early end on the last day of any month in which the business use percentage drops by 20 percent or more, thus making the logbook average no longer representative of actual use. An example of such a situation is when business use drops from 50 percent (the percentage that was calculated from the logbook test period) to 30 percent. However, if the change in use is of short duration or the taxpayer elects to keep full records for the abnormal period, the enforced ending will not apply.

If the Commissioner considers that a logbook is no longer representative of the average business use of a vehicle, he may require another logbook to be kept for a new test period. Alternatively, the Commissioner may deem the taxpayer to have not maintained a logbook at all for the logbook application period. In this situation, the taxpayer will be limited to a maximum claim for business use of 25 percent of total use.

When the Commissioner requires a new logbook to be kept, he can determine when the old logbook application period finished. The Commissioner can determine that the whole of the old logbook application period was invalid and should not apply at all.

If no records are kept

When a taxpayer has not kept a logbook or full records of the business use of a vehicle, deductions are restricted. The maximum proportion of vehicle expenses that can be claimed is limited to the lesser of 25 percent or the actual proportion of business use. If there are no records that can be used to establish actual business use, no deduction will be allowed.

Example

John starts business as a sole trader on 1 April 1994 and uses the secondhand car he bought on 13 January 1994. He starts keeping a logbook for a test period on 4 April 1994. The test period establishes that the vehicle is used for business use for 60 percent of the total distance travelled.

The business does well and John upgrades his car on 25 November 1994. The new car is to be used in exactly the same way as the old one.

In early 1995 John realises that he is using his car a lot more for work purposes, so he decides to end the current business use apportionment on 4 February and start another logbook test period. This time the test period shows that the vehicle's business use is 80 percent.

The initial logbook application period will start on 1 April 1994, which is the beginning of the income year in which John started to keep a logbook for a test period and after the vehicle had been purchased. Although John changed cars on 25 November 1994, the new vehicle was to be used in a similar manner to the old one so the logbook application period can continue. The initial logbook application period will end on 4 February 1995 because John specified this date.

The second logbook application period will start on 5 February 1995 and (unless there is any other relevant change in circumstances) will end on 4 February 1998. To calculate the proportion of deductible motor vehicle expenses for the 1994/95 income year, a weighted average of the business use determined in both logbook application periods must be calculated. The calculation should be based on the number of days each logbook application period applied during the income year.

The calculation is as follows:

$$\text{1994/95 business use} = \frac{(307 \times 60\%)}{365} + \frac{(58 \times 80\%)}{365} = 63\%$$

Tax exemptions for some United Nations and Asian Development Bank salaries

Introduction

The International Finance Agreements Act 1961 provides income tax exemptions for designated officials and employees of several agencies of the United Nations and also the Asian Development Bank. This item discusses how these exemptions apply to New Zealand resident taxpayers.

Background

The International Finance Agreements Act 1961 provides for New Zealand's membership of the following international bodies:

- International Monetary Fund (IMF)
- International Bank for Reconstruction and Development (the World Bank)

continued on page 12

from page 11

- International Finance Corporation (IFC)
- International Development Association (IDA)
- Asian Development Bank.

The first four organisations listed are specialised agencies of the United Nations.

The International Finance Agreements Act makes certain articles of the constituting agreements of the organisations binding law in New Zealand. Included amongst these are income tax exemptions for certain officials and employees of the organisations.

These exemptions are incorporated into the Income Tax Act 1976 by section 61(50) of that Act. Section 61(50) exempts income that is expressly exempted by any other Act.

All legislative references in this item are to the Income Tax Act 1976 unless otherwise stated.

Policy

The exemption articles contained in the articles of agreement of the IMF, the World Bank, the IFC and the IDA are identical in all substantive respects, and differ from the exemption article in the Asian Development Bank agreement. The following policy is therefore separated into 'United Nations Agencies' sourced income and 'Asian Development Bank' sourced income. The policy on the United Nations agencies applies only to the four organisations mentioned.

United Nations Agencies

The IMF, World Bank, IFC, and IDA are specialised agencies of the United Nations.

Apart from differences in the terms used to refer to staff (for example; Executive Directors or Directors, officers or officials), the exemption article in each of the organisations' agreements is worded as follows:

> No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to Executive Directors, Alternates, officers, or employees of the Fund who are not local citizens, local subjects, or other local nationals.

The salaries and emoluments of the designated officials and employees of the organisations are exempt from income tax if the official or employee **is not** a local citizen, local subject or local national of the country seeking to impose tax on the salary or emoluments. On the other hand, if the official or employee **is** a local citizen, local subject or local national of the country seeking to impose tax, the salaries or emoluments will not be exempt from tax in that country.

This means a local citizen, local subject or local national of New Zealand who receives salary or emoluments from one of the United Nations organisations **is not** exempt from New Zealand tax on that income.

Salaries and emoluments of officials or employees of the organisations are only exempt from income tax if the official or employee **is not** a local citizen, local subject or local national of New Zealand.

If the person is not resident in New Zealand under the tests in section 241 of the Income Tax Act, he or she will not be subject to New Zealand tax on the salary or emoluments derived. If the person is not subject to New Zealand tax, the question of whether an exemption from New Zealand tax under section 61(50) and the International Finance Agreements Act applies is irrelevant (PIB 180 (July 1989) sets out the Commissioner's policy on residence).

If a person is resident in New Zealand under section 241 but is not a local citizen, local subject or local national of New Zealand, the income that person derives from any of the United Nations organisations is exempt from tax in New Zealand. Section 242 of the Act provides that

> "Subject to this Act...all income derived by any person who is resident in New Zealand...shall be assessable for income tax..."

Section 242 is subject to section 61(50). Therefore the exemption provided for by section 61(50) and the International Finance Agreements Act applies to salary and emoluments derived by a person who is not a local citizen, local subject or local national of New Zealand, even if the person is resident in New Zealand.

Example 1

Ms Walker is a New Zealand citizen and she has lived in New Zealand all her life. In July 1993 she travelled to the United States to take up employment with the IMF. In December 1993, her assignment finished, she returned to New Zealand.

The salary she earned while working in the United States is subject to New Zealand tax. She remained resident in New Zealand. The exemption under section 61(50) and the International Finance Agreements Act does not apply because she is a local citizen, local subject or local national of New Zealand.

Example 2

Mr Runner is a New Zealand citizen but has lived abroad for the last 15 years. He has not returned in that time and has no family here. From July to December 1993 he worked for the IMF in the United States on a temporary assignment.

The salary he earned while working in the United States is not subject to New Zealand tax. He is not resident in New Zealand and so he is not subject to New Zealand tax on income earned outside New Zealand. The application of the exemption under section 61(50) and the International Finance Agreements Act is irrelevant.

Example 3

Ms Campbell is a Argentinian citizen. In August 1993 she came to New Zealand to work on a four month assignment for the World Bank. She has not been to New Zealand before.

Ms Campbell's salary is exempt from New Zealand tax. She is not a local citizen, local subject or local national of New Zealand and so the exemption applies.

Example 4

Mr Bramble, a Thai citizen, comes to New Zealand to work on an assignment for the IMF. He is in New Zealand for 12 months.

Income Mr Bramble derives from the IMF is not subject to New Zealand tax. Although he is resident in New Zealand under section 241 of the Income Tax Act, he is not a local citizen, local subject or local national of New Zealand and so the exemption under section 61(50) and the International Finance Agreements Act applies.

Asian Development Bank

The tax exemption article in the Asian Development Bank agreement is different from the exemptions in the United Nations agencies agreements. The exemption is worded in the following way:

> No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to Directors, Alternates, officers or employees of the Bank, except where a member deposits with its instrument of ratification or acceptance a declaration that such member retains for itself and its political subdivisions the right to tax salaries and emoluments paid by the Bank to citizens or nationals of such member.

The salaries and emoluments of the various officials are exempt from tax except when the officials are citizens or nationals of a country that has reserved its right to tax its citizens or nationals. New Zealand has not reserved its right to tax New Zealand citizens and nationals. Salaries and emoluments derived by New Zealand residents are therefore exempt from New Zealand tax.

Example 5

Mrs Evans has lived in New Zealand for twenty years. In August 1993 she accepted a three month assignment with the Asian Development Bank in the Philippines.

The salary she earned from her assignment is not subject to New Zealand tax.

Exemption from income tax under another Act

Introduction

This item discusses the application of section 61(50) of the Income Tax Act 1976. Section 61(50) provides an exemption from income tax for:

> "Income expressly exempted from income tax by any other Act, to the extent of the exemption so provided".

Application

A number of different statutes other than the Income Tax Act 1976 expressly exempt certain income from income tax. These are some examples of these exemptions:

1. Section 5(1) of the Diplomatic Privileges and Immunities Act 1968 exempts the following people from income tax:
   - Heads of diplomatic missions, members of the staff of the mission who have diplomatic rank, and the members of their families who form part of their households. The exemption does not apply to family members who are New Zealand citizens.
   - Members of the administrative and technical staff of a diplomatic mission, together with members of their families who form part of their households, provided these members are neither New Zealand citizens nor permanently resident in New Zealand;

   (In both the above cases, the income tax exemption applies only to mission employment income and income from sources outside New Zealand)

   - Service staff and private servants of members of the mission, providing these staff are neither New Zealand citizens nor permanently resident in New Zealand. The exemption applies only to mission employment income.
2. Section 4(1)(a) of the Consular Privileges and Immunities Act 1971 provides similar exemptions to those provided under the Diplomatic Privileges and Immunities Act 1968 for consular officers, employees and members of their families. Section 4(1)(a) also exempts the income received by honorary consular officers from the foreign government in respect of the exercise of consular functions.
3. Section 19(1)(b) of the Diplomatic Privileges and Immunities Act 1968 provides for the exemption from income tax for these people:
   - A representative or officer of the Government of a foreign state or the representative's or officer's spouse or dependent child

continued on page 14

from page 13

- A member of the representative's or officer's official or domestic staff and that staff member's spouse and dependent children. This exemption does not apply if the staff member is a New Zealand citizen and not a citizen of the country concerned. Further, the exemption applies only if the staff member is resident in New Zealand solely for the purpose of performing his or her duties as a member of the staff.

  In effect, this provision gives all foreign public servants, parliamentarians, or other accredited representatives of another government who are visiting New Zealand the same exemption as that provided to long-term diplomatic mission staff. The exemption applies only to direct employees or members of overseas governments. It does *not* apply to:

  - School teachers on exchange in New Zealand;
  - Officers of an overseas government who are seconded to work for the New Zealand government (because the New Zealand Government pays their salary and expenses either directly or by reimbursing their overseas employer);
  - Employees of government-owned corporations or government-sponsored or subsidised institutes.

  In each of the three above cases, a double tax agreement may exempt or partially exempt from income tax the income of the foreign visitor.

4. Certain international organisations are exempt from tax by either Order In Council under the Diplomatic Privileges and Immunities Act 1968 or the International Finance Agreements Act 1961. These organisations are:

   - Specialised agencies of the United Nations (namely the International Monetary Fund, the International Bank for Reconstruction and Development, the International Finance Corporation and the International Development Association).
   - Asian Development Bank
   - Commonwealth Secretariat.

   Certain officials and employees of the above organisations are also exempt from taxation. The previous article in this TIB discusses the individuals that are exempt from taxation under section 61(50) when they receive payments from agencies of the United Nations or the Asian Development Bank.

   Emoluments received by private consultants or consulting partnerships from the above international organisations can be exempt from income tax. In *Andrews v CIR*; *Muir v CIR* (1979) 4 NZTC 61,443 the taxpayers were partners in a firm of consulting engineers. The Asian Development Bank employed the firm to furnish engineering services. The Court decided that the remuneration received by the firm and, in turn, by the partners was exempt from income tax. Each partner was an expert performing services for the Bank in return for which the Bank paid an emolument.

   The exemption from income tax extends only to the person who receives the payment. In *Walker v CIR* (1988) 10 NZTC 5,094, the taxpayer was an economist employed by a firm of accountants. The Asian Development Bank entered into an agreement with the firm so that the Bank could use the services of the taxpayer. The agreement provided for the Bank to pay a fee to the firm and for the firm to release the taxpayer to the Bank for a specified period. The taxpayer claimed a deduction for a portion of his salary representing the period of time his services were utilised by the Bank. The Court disallowed the deduction claim. The exemption from tax under section 61(50) extended only to the person who received the payment. In this case, the taxpayer received no payment from the Bank.

5. A number of governmental or quasi governmental bodies are exempt from tax, usually under their enabling statute. These include the following organisations:

   - Accident Rehabilitation and Compensation Insurance Corporation
   - Broadcasting Standards Authority
   - Broadcasting Commission
   - Carter Observatory Board
   - Earthquake Commission
   - Export Guarantee Office
   - Film and Literature Classification Office
   - Hillary Commission for Sport, Fitness and Leisure
   - Historic Places Trust
   - Lotteries Commission
   - Museum of New Zealand Te Papa Tongarewa Board
   - National Library Trustees
   - New Zealand Council for Educational Research
   - New Zealand Fire Commission
   - Pacific Islands Polynesian Education Foundation
   - Queen Elizabeth the Second Arts Council
   - Royal New Zealand Foundation for the Blind
   - Royal Society of New Zealand
   - Securities Commission
   - Standards Council
   - Testing Laboratory Registration Council
   - Te Taura Whiri I Te Reo Maori (Maori Language Commission)

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

Rebate for donations made in lieu of sending funeral flowers

Section 56A - Rebate in respect of gifts of money: A taxpayer who made a donation to the Cancer Society of New Zealand (Inc.), in lieu of sending flowers to a relative's funeral, asked if the donation would qualify for the donation rebate.

Section 56A allows a rebate for donations of $5 or more that are paid during the year to specified organisations. The maximum rebate is $500 or $33^{1}/_{3}$ cents in the dollar of the donations made, whichever is less.

To claim the rebate the taxpayer must produce receipts, or be able to satisfy Inland Revenue that the payment has been made. The reason for making the donation is not a consideration. Therefore, provided the taxpayer has a receipt (or other proof of payment such as a letter of acknowledgement) the rebate may be claimed.

A couple may split the donation between them, and claim half the rebate each, up to the maximum rebate. In these cases, only one receipt need be obtained. The receipt should be included with one return, and a note to that effect should be attached to the other return.

As the Cancer Society of New Zealand (Inc.) is a qualifying organisation, subject to proof of payment, the rebate may be claimed.

(Note: If you wish to check whether an organisation has been granted donee status for Inland Revenue purposes, contact your local Inland Revenue office.)

Depreciation deduction on shareholder-employee vehicles

Section 108 - Annual depreciation deduction: The taxpayer is a private company whose shareholder/directors are a married couple. The husband is employed by the company. For some years the company had leased four motor vehicles for use in its business. The shareholder/husband then decided to purchase four motor vehicles and lease them (not under a specified lease) to the company at market rates. He has asked if, as a shareholder- employee, he can claim depreciation on the leased vehicles, and if he is considered to be in the business of leasing vehicles.

Under section 108, a taxpayer must claim a deduction for depreciation on depreciable property owned during an income year. From the 1993-94 income year, the new depreciation rules (contained in sections 107A to 108O) apply. These rules are set out in TIB Volume Four, No.9 of May 1993.

In this case, as the shareholder-employee incurred the depreciation expense as a result of leasing the motor vehicles to the company, the expense is deductible because the property owned is used in gaining or producing assessable income. Although the shareholder is an employee of the company, he is also in the business of leasing motor vehicles.

When beneficiary should return income when balance date different from trust

Section 227(7) - Balance dates: A beneficiary of a trust has a 31 March balance date. The trust has a 30 September balance date. The beneficiary wishes to know in which income year to return beneficiary income derived from the trust.

Under section 227(7), when a trust has a balance date other than 31 March, any income the trustees derive in a particular year that is also beneficiary income is deemed to be derived by the beneficiary in the same income year as that which corresponds to the balance date of the trustee.

In this particular case, if the trust derived beneficiary income in the year ended 30 September 1993, the beneficiary should return that income in a return for the year ended 31 March 1993.

Fringe benefit tax - low interest loan to employee who resigns

Section 336N(1) - Definition of employee: A company representative advised that two years ago the company provided a low interest loan to a senior employee. The loan agreement specified that the loan would run for three years, unless the employee left the company's employ. In that event, the loan was to be repaid within six months of the termination of employment. The company has paid fringe benefit tax on the loan during the person's employment, but queries whether FBT is payable for the remaining six months now that the employee has taken other employment.

The FBT liability exists until the loan is repaid. The section 336N(1) definition of "employee" states:

"employee.... means a person who will receive, receives, or has at any time received ..."

Effectively, the former employee remains an employee for FBT purposes whilst in receipt of a continuing benefit.

Superannuation fund administration fees

Section 336Z - Specified Superannuation Contribution Withholding Tax (SSCWT): An employer pays a fee to a company for the administration of superannuation plans. He has asked if this fee should attract SSCWT and fringe benefit tax (FBT).

A contribution that an employer makes to a superannuation fund for an employee's benefit is liable to a withholding tax (SSCWT) at a flat rate of 33 cents in the dollar.

In this case the employer is not making a contribution to the fund itself, but rather, paying a fee to a company that administers the fund. The payment is not subject to either SSCWT or FBT.

Goods and Services Tax Act 1985

Whether GST applies to homestay business

Section 6 - Meaning of term "Taxable Activity": A partnership is considering the purchase of a homestead and 4 hectares of land that has recently been subdivided from a large sheep station. The partners intend to operate the property as a high quality homestay business, and have asked whether they are able to register for GST and claim an input tax credit on the purchase of the property.

A taxable activity is defined in section 6 as:

"Any activity that is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration."

The operation of a homestay business would meet this definition.

When goods and services are acquired for the principal purpose of making taxable supplies, the input tax incurred can be reclaimed. In this example, the house has 6 bedrooms, 4 of which will be available for homestays. In addition there is a formal dining room, a formal lounge, library, billiards room and a large kitchen, all of which will be used as part of the homestay business. The outside facilities include a tennis court and swimming pool.

The property has been acquired for the principal purpose of making taxable supplies, so the purchasers can claim a full input tax credit on the settlement figure, providing the tax invoice requirements are met.

GST input tax claims when stamp duty paid

Section 20 - Calculation of tax: A GST registered person asked if he could claim, in his GST return, one-ninth of an amount of stamp duty paid when he recently purchased a business property.

Stamp duty is defined in section 2 of the Stamp and Cheque Duties Act 1971 as:

"includes conveyance duty and lease duty but does not include cheque duty or credit card transaction duty."

Stamp duty is a tax paid directly to the Crown, and is therefore not consideration for a supply. As there has been no supply of goods and services, GST will not be payable and no input tax credit may be claimed.

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

Arrangement to avoid income tax

Rating: • • • •

Cases: TRA Nos. 92/61, 62, 63, 64, 65

Act: Income Tax Act 1976 - sections 99, 25, 104
Inland Revenue Department Act 1974 - section 39
New Zealand Bill of Rights Act 1990

Keyword: *Tax avoidance, void arrangements, adjustment of shareholders' income*

Summary: The individual objectors sold their shares in the objector company to the purchaser, who paid part of the company's profits to the individual objectors as tax-free loan repayments. Judge Barber found that there was a tax avoidance arrangement and used section 99(3) to adjust each individual objector's assessable income to include all of the company's profits.

Facts: The individual objectors sold their shares in the objector company to a company ("the purchaser") that belonged to a group of companies with tax losses. The sale occurred in the following way:

- The individual objectors advanced a sum equivalent to the purchase price to the purchaser.
- The objector company regularly paid its net profits to the purchaser as an administration charge.
- The purchaser repaid the loan of the purchase price to the individual objectors out of this charge.
- The purchasers offset the administration charge income against the group's accumulated losses to reduce tax.
- The individual objectors treated the loan payments as non-taxable capital receipts.
- The individual objectors continued to manage the objector company and had a right to repurchase the objector company's assets at a nominal value.

The objector company claimed a deduction for a consulting fee paid to the purchaser. The consulting services provided related in part to advice about the operation of the sale and purchase scheme and in part to other general commercial advice.

Decision:

The primary purpose of the arrangement was to reduce or avoid the tax liability of the objectors. The individual objectors' purpose was to sell their shares in the objector company for an inflated price and obtain that price from company profits that had been laundered from revenue into capital. The arrangement was always void for tax purposes under section 99 of the Income Tax Act.

Judge Barber used section 99(3) to reconstruct the individual objectors' assessable income to include the administration charge (including the share of the charge which was kept by the purchaser) in order to counteract any tax advantage obtained under the arrangement. The adjustment reflected what the individual objectors were likely to have received if they had not entered the arrangement.

The objector company could only deduct the consulting fee that it paid to the purchaser to the extent that the consultation services related to the provision of general commercial advice and did not relate to the tax avoidance scheme.

The assessments were not statute barred under section 25 of the Income Tax Act because the objectors had omitted income from a particular source from their returns. The "loan repayments" were always income because the arrangement was void from the beginning.

The objectors challenged the assessment process on the grounds of unfairness. Judge Barber said that, although the TRA does not have the judicial review powers of the High Court, administrative law type issues are relevant when determining whether an assessment is incorrect. There was no evidence of unfairness in this case and the objection under this head was dismissed under section 39 of the Inland Revenue Department Act as frivolous and vexatious.

The purchaser alleged that certain evidence from an interview was not admissible in accordance with the New Zealand Bill of Rights Act 1990. Judge Barber found that, in this case, the Act did not exclude the evidence.

Comment:

The taxpayer will be appealing this decision.

Calculating "other income" when superannuitant receives overseas pension

Rating: • • •

Case: TRA No 93/115

Act: Income Tax Act 1976 - Section 336B (now section 336D)

Keywords: *GRI, surcharge, other income, specified foreign social security pension, superannuation*

Summary: A New Zealand resident who receives a United Kingdom pension is effectively in exactly the same position as a New Zealand superannuitant. The foreign pension cannot be deducted twice under the formula for calculating “other income”.

Facts: The taxpayer received a United Kingdom pension of $2,032.16, as well as New Zealand superannuation (known then as guaranteed retirement income) of $6,779.24. When added, the two pensions equalled the full New Zealand superannuation rate ($8,811.40), that any superannuitant in the taxpayer’s circumstances received.

A superannuitant pays a surcharge on the amount by which other income exceeds the specified exemption.

Section 336D (previously section 336B) defines “other income” as the amount calculated by the formula, a - b - c, where:

a Is the amount of taxable income of the New Zealand superannuitant in respect of the income year, together with one-half of any amount received in the form of a pension from a superannuation fund or any annuity to which section 61(59) of this Act applies, which amount is not otherwise included in the taxable income of the New Zealand superannuitant; and

b Is the gross New Zealand superannuation that the New Zealand superannuitant received in the income year; and

c Is the amount of any specified foreign social security pension, or as the case may be, the sum of the amounts of every specified foreign social security pension received by the New Zealand superannuitant in the income year.

The taxpayer contended that the deduction at “b” was the gross New Zealand superannuation of $8,811.40, and the deduction at “c” was the UK pension of $2,032.16.

The Commissioner submitted that the objector, by deducting her UK pension twice, is claiming an advantage over other taxpayers. The Commissioner maintained that “b” is the New Zealand superannuation only. That is, the sum of $6,779.24 that the New Zealand government contributes, to bring the total pension up to the same amount as other New Zealand superannuitants. The amount at “c” is the UK pension.

Decision: The TRA found that the gross New Zealand superannuation payable reduces by the amount of the UK pension.

In effect, “b” of the formula consists of the reduced New Zealand superannuation of $6,779.24. The UK pension ($2,032.16) is deducted as “c”, and cannot also be deducted as “b”.

This places recipients of the UK pension in the same position as other New Zealand pensioners, and avoids unfairness. The legislature could not have intended any unfairness or injustice.

Comment: The taxpayer will not be appealing this decision.

Whether rates are included in the consideration for the taxable supply of leasing land

Rating: • • • • •

Case: TRA No. 93/173

Act: Goods and Services Act 1985 - Sections 2, 10 and 51

Keywords: *Consideration, registration, value of supply*

Summary: This case establishes that consideration for the taxable supply of leasing land can include rates as well as the rent under the lease, when the tenant pays those rates.

Facts: A GST registered taxpayer claimed a secondhand goods input tax credit on the purchase of a farm from a family trust that was not registered for GST. The Commissioner disallowed the input tax credit. He then concluded that the trust should have been registered for GST as the value of the taxable supplies made from leasing the farm before the sale exceeded the GST registration threshold. The Commissioner included rates and accounting fees as well as the rent paid by the tenant as part of the consideration in valuing the taxable supplies. The taxpayer and the trust objected because in their view the consideration should have only included the rent. This would have meant that the value of the supplies made by the trust would have fallen below the GST registration threshold.

Decision: The main issue was whether the payment of rates by a tenant is “consideration” for a taxable supply. The TRA also had to consider whether accounting fees formed part of that consideration. The TRA stated that it was sufficient if the consideration is in respect of, in response to, or for the inducement of, the supply. The consideration does not have to pass to the supplier. In addition, when a tenant agrees to pay other charges as well as the rent, those charges and the rent are the consideration for GST purposes. On the facts, the TRA found that there was a strong connection between the payment of rates by the tenant and the supply by the trust of the lease. There was no such connection in relation to the accounting fees.

The TRA concluded that the consideration should include rates as well as the rent in valuing the taxable supplies provided by the trust. Therefore, the trust was liable to be GST registered as the value of the taxable supplies exceeded the GST registration threshold. Part of the lease supply was exempt due to the supply of a farm dwellinghouse. However, the TRA held that the apportionment for such an exemption would not bring rent plus rates below the registration threshold.

The TRA stated that once a person satisfies the test for GST registration that person becomes liable to be registered and is deemed to be registered. When the trust sold the farm it was deemed a registered person. Consequently, the trust must return output tax on the sale of the farm and the purchaser can claim an input tax credit.

Comment: The taxpayer is appealing this decision.

Expenditure on repiling a boatshed - whether deductible under the second proviso to section 108

Rating: • • • •

Case: Mark Charles Sherlaw v CIR, HC M 108/92

Act: Income Tax Act 1976, section 108 (now repealed)

Keywords: *Repairs, alterations*

Summary: The case concerned expenditure principally relating to the repiling of a boatshed. The issue was whether that expenditure was deductible under the second proviso to section 108 of the Income Tax Act 1976 or whether the work constituted reconstruction beyond the ambit of that section. The High Court found that the expenditure came within the second proviso and therefore was deductible.

Facts: In 1982 Mr Sherlaw (the objector) and some friends purchased a boatshed. Ultimately the objector became the sole owner of the boatshed, after paying approximately $20,000 to secure ownership. Expenditure was required to repair and protect the piles which had deteriorated over the years. In 1985 the objector commenced the business of commercial crab fishing and boat hire from the premises. In 1987 he took advice as to the best method of repairing the piles to the building and strengthening the floor. The advice the objector received was that it was preferable to repile the building with a lesser number of piles than to endeavour to repair the existing piles. As a result the contract was let to repile the building and work was started in 1988. The contractor involved decided that the only practical way of placing the piles was to take sheets of iron off the roof and then place the piles by crane.

In 1988 the objector took advice about the roof. As a result a substantial part of the roof structure had to be replaced because it could not be repaired. Part of the roof was slightly higher than before because of the relocation of the floor at a slightly higher level after the new piles were installed.

Because the extent of the work that had to be carried out was more than the objector first envisaged, he decided to attend to all deferred maintenance matters at the time. He accepted that a certain amount of this work constituted capital improvement to the boatshed and this was not in dispute. The original cost of repiling and strengthening the floor was $27,250.22 and the ultimate cost of the work overall was $41,100. The objector attributed $34,449 of this total to repairs and maintenance. There was evidence that before work started on the boatshed its value was approximately $22,000, and that after the work its value was $28,700.

The objector submitted that the work had to be carried out so that the boatshed remained and he was able to carry on business from it. He submitted that the case was entirely different from cases where there has been a renewal of premises with reconstruction of substantially the whole subject matter under construction. He accepted that as a result of the repiling of the building some reconstruction was necessary. However, he did not accept that there was a renewal of the building. He considered it to be solely a matter of necessary repair either arising from the original condition of the building or as a consequence of the repiling operation.

The Commissioner submitted that the case was one which came close to complete reconstruction of the premises. The Commissioner also submitted that the objector chose to improve the asset rather than repair it. The scale of the work done in proportion to the asset was disproportionate enough to indicate that the work done was of a capital nature rather than a revenue nature. The Commissioner relied on the cases *Auckland Trotting Club (Inc) v Commissioner of Inland Revenue* (1968) NZLR 967 and *Colonial Motor Company Limited v Commissioner of Inland Revenue* (1994) 16 NZTC, 11,060.

Decision: Justice Doogue decided that the expenditure incurred by the objector did fall within the second proviso to section 108 of the Act and was therefore deductible. He distinguished *Auckland Trotting Club* on the basis that in that case the trotting track had to be reconstructed because the original construction was entirely unsatisfactory and dangerous. In this case the building's piles gradually deteriorated, and needed to be replaced. Replacing the piles resulted in other work becoming essential. Justice Doogue considered that *Colonial Motor Company* was concerned with the transformation of an unsound warehouse into a sound commercial building. This was far removed from this case, in which the boatshed retained much the same layout and size as previously.

Justice Doogue noted that the Commissioner did not seek to categorise any of the work additional to the original piling and floor work as capital work unless the whole work was so treated. He noted that certain aspects of the alterations may have been capital in nature but that he was not asked to make a ruling of that kind.

Comment: Inland Revenue is not appealing this decision.

Timing of assessability of business interruption insurance payments

Rating: • • • •

Cases: CIR v Soma President Textiles Limited AP 152/93
CIR v New Zealand Knitting Mills Limited AP 153/93

Act: Income Tax Act 1976, section 65(2)(a)

Keywords: *Derivation of income, loss of profits insurance, timing of assessment of payments based on estimated liability*

Summary: This was an appeal to the High Court by the Commissioner from *Case P85* (1992) 14 NZTC 4,564. In that case the Taxation Review Authority held that all payments received under business interruption insurance were assessable in the income year of final settlement. On appeal, the High Court held that interim payments based on reliable estimates, that were unlikely to be refunded, should be assessed on a receipts basis.

Facts: The taxpayers operated a manufacturing business and owned associated warehouse, factory and office premises. During the material time both taxpayers were insured under a business interruption insurance policy. The policy gave specified indemnity against loss of profits arising from interruption of business caused by damage to certain identified buildings. The cover was for a period of 15 months from the time of damage.

On 9 February 1988 a fire damaged a warehouse owned by one of the taxpayers. This resulted in a major loss of stock and affected production capacity. At the time of the fire the taxpayers were planning a move to joint premises in Hastings. On 24 November 1988 there was a second fire at the new Hastings premises, again causing severe destruction and interruption of business. The insurer accepted liability for both claims made for loss of profits. However, due to the complex circumstances surrounding the claims and the terms of the policy, the insurer could not immediately determine the amount due.

During the period February to October 1989 the insurer made a number of interim liability payments on a without prejudice basis and subject to refund in

continued on page 24

from page 23

the event of overpayment. The parties settled the amount of the claims for both fires in November 1990. The insurer made two final payments in December. The parties reached settlement through negotiation and not by any strict application of the formula laid down in the policy. The sums agreed therefore were not calculable or foreseeable before the final settlement. Both taxpayers returned the various insurance payments on a receipts basis. However, the Commissioner assessed the taxpayers on the basis that they should spread the total of the sums received for each fire evenly over each of the respective 15 month indemnity periods. The taxpayers objected to that assessment.

The Taxation Review Authority reached a different result than that argued for by either of the parties. It held that the taxpayers should be assessed for the insurance payments in the year the claims were finally settled as it was impossible for the taxpayers to accurately quantify the amount due under the policy until final settlement. The Commissioner appealed the decision, arguing that at the very least the income should be recognised at the time of receipt. The taxpayers argued for the position as determined by the Taxation Review Authority.

Decision:

The High Court held that income from a debt due is not derived until the amount due is accurately quantified. However, when there are reliable estimates and interim payments are made within those estimates, and a refund is highly unlikely, those payments are derived at the time of receipt. In these circumstances, as a matter of commercial reality, any theoretical liability to repay did not deprive the interim receipts of their income character at the time of receipt.

The High Court did not discount the possibility that in certain circumstances it might be appropriate to assess interim payments on an accruals basis, as originally contended by the Commissioner. It considered that an accrual treatment may be justified when reliable estimates have been made and there is a commercial likelihood that a final payment will be made within the income year in terms of those estimates.

Comment:

We do not know whether the taxpayers will be appealing this decision.

Upcoming TIB articles

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

- Spreading of authors' income for income tax purposes
- Payments made by instalments - accounting for GST on a payments basis
- Ceasing to satisfy the conditions for using the payments basis when accounting for GST
- GST and sales made under the Door to Door Sales Act 1967
- When Inland Revenue can grant relief from payment of tax in cases of financial hardship
- Treatment of dividend imputation credits and dividend withholding payment credits in the hands of trustees and beneficiaries
- GST and secondhand goods
- Meaning of terms "own" and "acquired" for depreciation purposes
- Personal sickness and accident and loss of earnings insurance policies
- Tax status of bodies corporate

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

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 IRD 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 1994/95

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.

Depreciation (IR 260) April 1994

Explains how to calculate tax deductions for depreciation on assets used to earn assessable income.

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 which 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 booklet "GST - do you need to register?" 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.

Non-resident withholding tax payers' guide (IR 291)Jul 1994

A guide for people or institutions who pay interest, dividends or royalties to people who are not resident in New Zealand.

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 dividends (IR 284) Oct 1993

A guide for companies, telling them how to deduct RWT from the dividends that they pay to their shareholders.

Resident withholding tax on interest (IR 283) March 1993

A guide to RWT for people and institutions which 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 continues on page 26

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 which an organisation must meet to get an exemption.

Clubs and societies (IR 254) June 1993

Explains the tax obligations which 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 which must be paid by groups which operate gaming machines.

Grants and subsidies (IR 249)

An guide to the tax obligations of groups which receive a subsidy, either to help pay staff wages, or for some other purpose.

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) Nov 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 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 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.

Your guide to the Child Support formula
Explains the components of the formula and gives up-to-date rates.

Due dates reminder

October

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

7 Provisional tax and/or Student Loan interim repayments: first 1995 instalment due for taxpayers with June balance dates.
Second 1995 instalment due for taxpayers with February balance dates.
Third 1995 instalment due for taxpayers with October balance dates.

1994 end-of-year payments of income tax, Student Loans and ACC premiums due for taxpayers with November balance dates.

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

QCET payment due for companies with November balance dates with elections effective from the 1995 income year.

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

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

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

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

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

RWT deducted in period 1/4/94-30/9/94 due for six-monthly payers.

RWT on dividends deducted during September 1994 due.

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

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

November

5 Large employers: PAYE deductions and deduction schedules for period ended 31 October 1994 due. *(We will accept payments received on Monday 7 November as on time.)*

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

1994 end-of-year payments of income tax, Student Loans and ACC premiums due for taxpayers with December balance dates.

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

QCET payments due for companies with December balance dates with elections effective from the 1995 income year.

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

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

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

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

RWT on dividends deducted during October 1994 due.

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

(For all payments due on 20 November, we will treat payments received on Monday 21 November as on time.)

30 GST return and payment for period ended 31 October 1994 due.