GST - the definition of secondhand goods

Summary

This item states the Commissioner's current policy on the interpretation of the term "secondhand goods" in the Goods and Services Tax Act 1985. The item illustrates the Commissioner's interpretation of this phrase, but it does not discuss the three statutory exclusions to the phrase.

The Commissioner's policy is that the term "secondhand goods" takes its ordinary meaning, namely that the goods have been previously used by someone else. Examples of goods that are not secondhand goods are animals, primary produce, manufactured goods that are supplied for the first time, and trading stock consisting of any of these classes of goods.

All legislative references in this item are to the Goods and Services Tax Act 1985.

Background

There has been some uncertainty about when goods are "secondhand goods" for the purposes of the GST Act. There have also been a number of court decisions that confirm the Commissioner's interpretation.

Legislation

Section 2 provides an exclusive definition of "secondhand goods". It reads:

"Secondhand goods", does not include-

(a) Secondhand goods consisting of any fine metal; or

(b) Secondhand goods which are, or to the extent to which they are, manufactured or made from gold, silver, platinum, or any other substance which, if it were of the required fineness, would be fine metal; or

(c) Livestock.

Court decisions

The courts have considered this issue in these cases:

- *Case N16* (1991) 13 NZTC 3,142.
- *LR McLean and Co. Ltd & Others v CIR* (1993) 15 NZTC 10,100 (High Court).
- *LR McLean and Co. Ltd & Others v CIR* (1994) 16 NZTC 11,211 (Court of Appeal).

In *Case N16*, the Taxation Review Authority was required to determine whether deer velvet purchased from an unregistered person was "secondhand goods" for the purposes of the Act. The TRA concluded that the deer velvet was not secondhand goods on the basis that primary produce is normally used for consumption. Accordingly, it could not be sold on a secondhand basis when it was purchased from a hunter or farmer, by a manufacturer or distributor.

The TRA considered the meaning of the term "secondhand" at page 3,147:

> The word "secondhand" as an adjective to "good" or "goods" means, in my view, that in some way or another the item has been used or treated or stored by a previous owner in such a manner that it can no longer be regarded as new. Items in a retail shop are regarded as new, but they have quite possibly passed through a number of hands prior to being available at retail. Items in the shop of a secondhand dealer are regarded as secondhand, because they have been used for their intrinsic purpose by at least one prior owner; and even items which are in new condition will then be regarded as secondhand.
>
> In my view, primary produce is not normally referred to as secondhand because its use is that of consumption...
>
> I agree with counsel that the concept of secondhand relates to pre-ownership or pre-use. I agree with Mr Brownie that the emphasis is on pre-use. I consider that there is quite some commonsense flexibility in ascertaining whether a good is still new or has become secondhand. I do not regard second ownership as necessarily rendering an item secondhand. Many goods pass from manufacturer to wholesaler to retailer to customer or consumer (with other levels of distributors sometimes also involved), and yet are not regarded as secondhand at the consumer purchase level, even though the item has been used as stock-in-trade at the various distribution levels. The good is not usually regarded as secondhand until it has been used for its intrinsic purpose.

The High Court in *LR McLean and Co. Ltd & Others v CIR* was asked to decide whether wool purchased from unregistered persons was a purchase of secondhand goods for the purposes of the Act. The Court concluded that the scheme and purpose of the legislation did not give the definition of "secondhand goods" a specialised meaning. The Court considered the amendment that introduced the current definition of "secondhand goods" was based on the ordinary meaning of the words, and stated at page 10,105:

> It is impossible to stretch the definition, as it now is, to include new goods, to include goods which are not in any ordinary sense secondhand goods.

The taxpayers appealed this decision. The Court of Appeal dismissed the appeal and reaffirmed the High Court's decision.

The Court of Appeal rejected submissions that the scheme and purpose of the legislation had given the term "secondhand" a technical meaning. It concluded that as the definition was only by exclusion the words had to have their ordinary meaning unless the context required otherwise. The Court did not consider the context required a different meaning in this case.

In deciding what the ordinary meaning of "secondhand" is, the Court adopted Judge Barber's definition of "secondhand" as stated in *Case N16.* Consequently, the term "secondhand" was considered capable of referring to both previous ownership and previous use, however, prior ownership did not always make the goods "secondhand".

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Policy

The case law supports the Commissioner's current policy on the interpretation of the term "secondhand goods". The Commissioner's view is that except for the specific exclusions, "secondhand goods" takes its commonly understood meaning. The Shorter Oxford English Dictionary defines "secondhand" as:

1. Not original or obtained from the original source; borrowed.
2. Not new, having been previously worn or used by another.

The Commissioner has based his policy on this concept, namely that goods are secondhand goods if they have been used or are not new or not obtained from the original source, and do not fall within the specific statutory exclusions.

The following is a list of the goods that the Commissioner does not accept as secondhand. It is not exhaustive and is only intended as a guide:

- All animals, including progeny (Livestock includes domestic animals generally and any animals kept or dealt in for use or profit)
- Primary produce from farming, e.g., wool, meat, milk
- Any goods which have been manufactured that are being supplied for the first time
- Trading stock that consists of any of the above.

Ports cannot zero-rate supplies of storage facilities to non-residents

Summary

This item states the Commissioner's current policy on zero-rating supplies of storage facilities to non-residents who store goods at New Zealand ports. The Commissioner's policy is that port companies will usually be unable to zero-rate supplies of storage facilities to non-residents storing goods at New Zealand ports.

All legislative references in this item are to the Goods and Services Tax Act 1985.

Background

As part of the services they provide, ports often have storage facilities available for customers. Non-residents may wish to use these facilities when they have bought New Zealand-produced goods which are to be exported. Inland Revenue has been asked whether section 11(2) (the provision that zero-rates certain supplies of services) will apply to zero-rate supplies to non-resident customers.

Legislation

Section 11(2) zero-rates certain supplies of services. In particular it states:

Where, but for this section, a supply of services would be charged with tax under section 8 of this Act, any such supply shall be charged at the rate of zero percent where-

(a) The services (not being ancillary transport activities such as loading, unloading, and handling) comprise the transport of passengers or goods-

(i) From a place outside New Zealand to another place outside New Zealand; or

(ii) From a place in New Zealand to a place outside New Zealand; or

(iii)From a place outside New Zealand to a place in New Zealand; or

...

(ab) The services (including any ancillary transport activities such as loading, unloading, and handling) comprise the transport of goods from a place in New Zealand to another place in New Zealand to the extent that those services are supplied by the same supplier as part of the supply of services to which subparagraph (ii) or subparagraph (iii) of paragraph (a) of this subsection applies; or

...

(e) The services are supplied for and to a person who is not resident in New Zealand and who is outside New Zealand at the time the services are performed, not being services which are supplied directly in connection with-

(i) Land or any improvement thereto situated inside New Zealand; or

(ii) Moveable personal property (other than choses in action, and other than goods to which paragraph (ca) of this subsection applies) situated inside New Zealand at the time the services are performed;-

and not being services which are the acceptance of an obligation to refrain from carrying on any taxable activity, to the extent that the conduct of that activity would have occurred within New Zealand; ...

Policy

A port company's supply of storage facilities to non-residents will not qualify for zero-rating under any of the paragraphs of section 11(2).

Section 11(2)(a)

Section 11(2)(a) allows the zero-rating of supplies of services when the services comprise the transport of passengers or goods between two overseas places, from overseas to New Zealand, or from New Zealand to an overseas destination. This provision will not zero-rate a port's supply of storage services to a non-resident for these two reasons:

- "Storage" is not "transport".
- Supplies of storage services occur totally within New Zealand and have no international aspect to them.

Section 11(2)(ab)

Section 11(2)(ab) allows the zero-rating of supplies of services when the services comprise domestic transport of goods (including ancillary transport activities), to the extent that those services are supplied by the person who has undertaken the international transport of goods mentioned in section 11(2)(a). This provision will not zero-rate a port's supply of storage services to a non-resident for these two reasons:

- The port company is usually not the supplier of international transport services.
- Even if the port company is the supplier of international transport services, "storage" is not "transport", nor is it an "ancillary transport activity" as it is not essential or related to the transport of goods.

This second point derives support from *Auckland Regional Authority v CIR* (1994) 16 NZTC 11,080. In *ARA* the court found that international terminal charges and sewage disposal charges were ancillary transport activities. The terminal charge was a charge for the use of air bridges, carousels, gate lounges and the baggage loading system. These services were akin to loading, unloading and handling rather than storage. The sewage disposal charge was a charge for the airport's service of removing and treating sewage from the plane. This service has more similarities with loading or unloading services than storage.

Section 11(2)(e)

Section 11(2)(e) allows zero-rating supplies of services to non-residents (if they are outside New Zealand at the time the services are performed) unless the services are supplied directly in connection with either of the following:

- land or any improvements situated in New Zealand
- moveable personal property (other than choses in action and goods to which section 11(2)(ca) applies) situated inside New Zealand at the time the services are performed.

This provision will not zero-rate a port's supply of storage services to a non-resident, because the services will be supplied directly in connection with moveable personal property situated inside New Zealand.

Example

Port of Alexandra has extensive storage facilities for timber processed in the surrounding region. Slash and Burn Limited has an export contract with a Japanese company to supply processed timber. The Japanese company arranges with Port of Alexandra to store the timber at the port until arrival of the ship it has arranged to transport the wood. Port of Alexandra charges the Japanese company $2,000 per week for use of a storage shed.

The port should charge GST for this supply. The storage is not transport of the goods and therefore is not zero-rated under section 11(2)(a). The storage is a supply by the port, not by the person who provides the international transport of goods (the Japanese company or its agent or freight forwarder). Therefore, section 11(2)(ab) does not apply.

Even if the port was the international transporter, the storage of goods is not transport or an ancillary transport activity. Finally, the goods are in New Zealand at the time the services are supplied and section 11(2)(e) does not apply.

Salaries and qualifying payments paid to partners in a partnership

Summary

This item outlines the provisions of section 167B of the Income Tax Act 1976. Section 167B allows a deduction for payments that a partnership makes to a partner for services performed as a working partner of that partnership. Other than these payments, no deduction is allowable for payments of salary, wages, or other remuneration to partners.

Legislation

Section 167B(1) contains these definitions:

"Working partner", in relation to a partnership and to any period in an income year, means any partner of the partnership who, in that period, personally and actively performs any of the duties required to be performed in the carrying on of the business of the partnership.

"Contract of service", in relation to a partnership and to any partner who is a working partner thereof, means a binding agreement in writing, entered into by all the partners, which specifies the terms and conditions under which the partner is to be a working partner of the partnership, including any amount payable to the working partner for services performed by him in the carrying on of the business of the partnership pursuant to that agreement, whether or not -

(a) The amount so specified includes any amount, so payable for those services, by way of bonus to the working partner; and

(b) There is so payable for those services, by way of bonus to the working partner, an amount additional to the amount so specified:

Section 167B(2) provides that

Subject to section 97 of this Act, where any payment is made by any partnership to any working partner of the partnership for services performed by him as a working partner of the

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partnership in any period of any income year (being a period commencing not earlier than the date on which the contract of service in relation to that partner becomes binding, and ending not later than the date on which that contract of service terminates), the amount of that payment shall, to the extent that it does not exceed, as the case may be, -

(a) Such amount as, in accordance with the said contract of service, is the amount payable to that partner in respect of that period; or

(b) The aggregate of -

(i) The amount referred to in paragraph (a) of this subsection; and

(ii) The amount (being an amount additional to the said amount payable to that partner in respect of the said period) of any payment of bonus or further bonus made by the partnership to that working partner for the said services performed by him, -

be deemed, for purposes of this Act, to be an amount of expenditure of the kind referred to in section 104 (b) of this Act.

Section 167B(3) provides that the section does not apply to investment partnerships.

Comment

Section 167B allows a deduction for payments that a partnership makes to a partner for services performed as a working partner of that partnership. These specific payments require a written contract of service to be in place. No deduction is allowable for any other payments of salary, wages or other remuneration to partners.

The reason for this is that a partnership is not a separate legal entity from its partners. Under general law a person cannot employ him/herself and a partnership cannot employ any of its partners. Tax cases that illustrate that salaries paid to partners are not deductible expenses (except as provided for in section 167B) are *TRA Case L28* (1989) 11 NZTC 1,172 and *TRA Case F123* (1984) 6 NZTC 60,157.

When there is an agreement to pay a salary to a partner, it is necessary to consider how the profit attributable to each individual partner is calculated. If a deduction is not available under section 167B, the issue of allocating partnership profits is a matter to be decided by interpreting the partnership agreement.

Policy

When a salary is paid to a partner under a partnership agreement, but section 167B does not apply to that payment, the salary is not a business expense and the partnership cannot take it into account in determining its business profit or loss. However, the payment is relevant to the allocation of profit or loss between the partners.

Example

Joyce and Mike are partners. The partnership deed provides for Mike to receive a salary of $40,000 per year (which does not meet the requirements of section 167B), and the residual profits and losses, after taking into account Mike's salary, are to be shared equally between Joyce and Mike.

Case 1

Profit before salary:	$70,000 - to be allocated for individual assessment
Salary:	$40,000 - not deductible from partnership income for tax purposes, but attributed to Mike
Profit after salary:	$30,000

The partnership income is attributed $55,000 to Mike and $15,000 to Joyce. Mike's share of the partnership income comprises the salary attribution of $40,000 and a half share of the balance - $15,000. Joyce's share of the partnership income is $15,000, which is half of the balance after attributing Mike's "salary".

Case 2

Profit before salary:	$20,000 - to be allocated for individual assessment
Salary:	$40,000 - not deductible from partnership income for tax purposes, but attributed to Mike
Loss after salary:	$10,000

The partnership income is fully attributed to Mike. This is because in terms of the partnership agreement he is entitled to the first $40,000 of partnership income. Mike will have assessable income from the partnership of $20,000 and Joyce will have nil assessable income from the partnership.

FBT - prescribed interest rate increased to 8.4%

The prescribed rate of interest used to calculate the fringe benefit value of low interest employment-related loans has been increased to 8.4% for the quarter starting on 1 October 1994. This rate will also apply to all subsequent quarters unless it requires further revision. The new rate reflects increased market interest rates.

The prescribed rate was previously 7.9% for the quarter which started on 1 July 1994.

Resident withholding tax on interest paid to partners

Introduction

This item explains when a partnership must deduct resident withholding tax (RWT) from interest it pays to its partners on loans that they advance over and above their capital contributions.

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

Legislation

Under section 327C a person who pays interest must deduct RWT from payments of resident withholding income unless certain exceptions apply.

"Resident withholding income" is defined in section 327B. It includes interest, but excludes interest paid to someone who holds a valid certificate of exemption. (There are also various other exclusions which are not relevant to this item.)

There are some exceptions to section 327C. A payer of interest does not have to deduct RWT from a payment of interest if that payer does not have a certificate of exemption, and meets both of these conditions:

- The payer has made payments of interest totalling less than $5,000 in the year preceding the year in which the interest is paid.
- The total of all interest payments (including the payment being made) paid in the year does not exceed $5,000.

This means that when a partnership pays interest to a partner, it must consider whether it paid $5,000 or more interest in the previous year, and whether the total amount of interest paid in the current year (including the payment being made) will exceed $5,000. If so, it must deduct RWT from the payment being made. This rule is contained in section 327C(5).

Another situation in which RWT does not have to be deducted is when the person paying the interest does not have a presence in New Zealand. Under section 327C(4)(a), a person is only liable to deduct RWT from a payment of interest if the person is:

(i) Resident in New Zealand for the purposes of this Act; or

(ii) Not resident in New Zealand for the purposes of this Act but carrying on a taxable activity in New Zealand through a fixed establishment in New Zealand.

A partnership will not be resident in New Zealand under the residence tests in section 241, because it is not a separate taxpaying person for the purposes of the Act. (See PIB 180 of June 1989 for the Commissioner's policy on residence.) A partnership carrying on an activity in New Zealand will come under the test in (ii). Although a partnership is not itself taxed on income (the partners are), it may carry on an activity which gives rise to assessable income to the partners.

Example

Tall Trees Partnership carries on a gardening and landscape design business. On 1 April 1992, Annabel Shrub, one of the partners, lent the partnership $83,300 at 6% to enable the partnership to purchase some machinery. She advanced the loan for a five-year term. No loans had been advanced to Tall Trees in the preceding year. On 31 March 1993, the partnership paid Annabel $5,000 in interest. This was the only interest paid by the partnership for the 1993 year.

On 1 April 1993, Annabel lent the partnership a further $45,000, and Randall Leaf, another partner, also lent the partnership $45,000 at 6% for five years.

On 31 March 1994 Tall Trees partnership paid Annabel $7,700 and Randall $2,700 in interest. Tall Trees does not have a certificate of exemption. Annabel and Randall also do not have certificates of exemption.

Tall Trees must deduct RWT from all the interest paid to Randall and Annabel on 31 March 1994. Tall Trees paid $5,000 interest in the preceding year (the 1992/93 year) and in the 1993/94 year paid more than $5,000 interest.

Tall Trees was not required to deduct RWT in the 1992/93 year because, in terms of the exception discussed above, it did not have a certificate of exemption, did not make interest payments in the preceding year (the 1991/92 year) and payments in the 1992/93 year did not exceed $5,000.

Shareholder elections under qualifying company rules when shares sold to existing shareholder

Summary

This item states the Commissioner's current policy on qualifying company ("QC") elections when a shareholder in a QC sells his or her shares to another shareholder in the QC. There is generally no need for a further shareholder election by the purchasing shareholder, unless majority shareholder elections are involved.

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

Background

Generally, for a company to be a QC all shareholders who have full legal capacity to deal with their own affairs must elect in writing that the company shall become a QC. When shareholders make an election they elect to be personally liable for their share of any income tax which is not paid by the company for each income year that the election is in force. There is provision for majority shareholders to elect in respect of the minority shareholders' shareholding in the company. These provisions enable a company to become a QC even though some of the minority shareholders do not elect for it to do so.

Legislation

Under section 393E(2) a shareholder's election is deemed to be revoked when that shareholder sells or disposes of all of his or her shares in relation to which the election was made, unless the shareholder disposed of the shares to an existing shareholder in the company, for whose shareholding a valid shareholder election is already in effect.

When shares are sold, there are two situations in which new elections will be required. Sections 393E(2)(d) and 393E(2)(e) revoke shareholder elections in either of these situations:

- if the purchasing shareholder was formerly a minority shareholder for whom an election had been made by a majority shareholder or shareholders, and the former minority shareholder now has an effective interest in the company of 50% or more
- if as a result of the sale of shares, the effective interest of any majority shareholder or shareholders in the company falls below 50%, and the shareholder or shareholders had made an election in respect of the minority shareholders' shareholding in the company.

Policy

When a shareholder sells shares to an existing shareholder of a QC, there is generally no need for a further shareholder election by the purchasing shareholder. However, the Commissioner's policy is that the transfer of shares held by a trustee to a new trustee constitutes a disposal of the shares for the purposes of section 393E, and a new election must be made.

Periods of Grace

Deemed revocations under section 393E take effect on the first day of the income year in which the event giving rise to the revocation occurred. There is a period of grace of 63 days immediately succeeding the event that gave rise to the deemed revocation. The Commissioner may also allow an extended period if the company or any person who may make a shareholder election in respect of the shareholding applies for the extension.

Example

Mr Smith, Mr Jones, and Ms Black are shareholders in a QC. Their effective interests in the company are:

Mr Smith	20%
Mr Jones	40%
Ms Black	40%

Mr Jones and Ms Black have made a majority election on behalf of Mr Smith. Mr Smith then buys a further 30% of the company's shares from Mr Jones. This gives Mr Smith an effective interest in the company of 50%. An effective interest, if no market value circumstance exists, is the person's voting interest in the company. Their effective interests in the company after the sale are:

Mr Smith	50%
Mr Jones	10%
Ms Black	40%

Mr Jones and Ms Black now have a 50% effective interest which is still enough for a majority election but Mr Smith has a 50% effective interest which is no longer a minority interest. Therefore, the election on behalf of Mr Smith is deemed to be revoked. If the company is to remain a QC, Mr Smith has 63 days (or such longer period as the Commissioner may grant) in which to make an election.

Depreciation rates for Crown Health Enterprise assets - 1993/94 income year

Section 108M(2) says that when the Commissioner issues a determination under section 108I(1)(b) of this Act, which applies to a class of taxpayers, he must put a notice in the Gazette that he has issued the determination. The notice must be published within 30 days of when the Commissioner issues the determination, and it must say where taxpayers can get a copy of the determination.

A copy of the provisional depreciation determination for the Crown Health Enterprises (CHEs) is reproduced below. This determination sets eighteen new asset classes and depreciation rates for the CHEs, for the 1993/94 income year only. It applies to assets acquired on or after 1 July 1993 and on or before 30 June 1994.

Determination of provisional tax depreciation rates for Crown Health Enterprises

1. Application

This determination shall apply to the Crown Health Enterprises for their 1993/94 income year only for the asset classes listed below that were acquired on or after 1 July 1993 and on or before 30 June 1994.

2. Determination

Pursuant to section 108I of the Income Tax Act 1976 I determine that the provisional basic economic depreciation rates for the following asset classes are:

Medical and Health	Estimated Useful Life (years)	DV Banded Depn Rate (%)	SL Equiv Banded Depn Rate (%)
Analysers	8	22	15.5
Beds (domestic type)	8	22	15.5
Beds (Hi-Lo)	10	18	12.5
Beds (standard)	15.5	12	8
Blood warmers	10	18	12.5
Dialysis / By-pass machines	8	22	15.5
Fibre optic scopes	5	33	24
Infusion pumps (and the like)	5	33	24
Laproscopic equipment	4	40	30
Linear accelerator / simulator	10	18	12.5
Linen	3	50	40
Medical laboratory equipment - general	8	22	15.5
Patient weighing equipment	12	18	12.5
Treatment planning system (radiotherapy)	6.66	26	18
Ultrasonic diagnostic equipment	5	33	24
Vaporisers / absorbers	10	18	12.5
Washer Decontaminators	8	22	15.5
X-ray cassettes	5	33	24

3. Interpretation

In this determination, unless the context otherwise requires, expressions have the same meaning as in the Income Tax Act 1976.

This determination is signed by me on the 2nd day of November 1994.

Murray McClennan
Manager (Rulings - Tax Policy)

Deductibility of amounts paid for failure to repair and maintain leased land

Introduction

This item sets out the application of section 138 of the Income Tax Act 1976. Under section 138, a taxpayer who is a lessee of land can claim a deduction for amounts paid to a lessor when the taxpayer has failed to observe a lease obligation to maintain the land or to repair improvements on the land.

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

Background

Agreements for the lease of land usually contain a provision under which the lessee must maintain the land or make repairs to any land improvements. Section 138 allows the lessee to claim a deduction for certain amounts paid to a lessor as indemnity, compensation, or damages when the amounts paid relate to a failure to observe the lease obligation to repair and maintain.

Section 138 is a corollary to section 70. Section 70 deems the payments made by the lessee to be assessable income in the hands of the lessor.

Note that section 104A (which deals with accrual expenditure) does not apply to amounts claimed under section 138. Section 104A ensures that expenditure incurred in an income year that actually relates to a future income year is matched with the assessable income of the future income year. In contrast to this, section 138 is concerned with expenditure incurred in an income year that relates to past income years, i.e. the expenditure relates to repairs and maintenance that the taxpayer should have carried out in earlier years.

Application

A lessee has two options when claiming a deduction for repairs or maintenance under section 138:

- to claim the deduction in the income year in which the lessor is paid or recovers any amount under the covenant
- to spread the deduction to any one or more of the three income years immediately preceding the year in which the lessor is paid or recovers any amount under the covenant.

Claiming the deduction in the year paid or recovered

The taxpayer can claim a deduction when all of these conditions are met:

- The taxpayer leases (or once leased) land and the taxpayer uses (or used) the land to produce assessable income.
- The lease requires the taxpayer to maintain the land or to make repairs (including such things as painting and general maintenance) to any improvements on that land.
- The taxpayer has failed to meet that requirement and as a result becomes liable to pay the lessor a sum of money by way of compensation, damages, or indemnity
- The lessor recovers the sum of money (or any part of it) from the taxpayer.

A deduction is allowable to the extent that the amount of money paid or recovered was in respect of repair or maintenance work which would have been deductible if the taxpayer had incurred it during the term of the lease. See page 1 of TIB Volume 5, No. 9 (February 1994) for the Commissioner's view as to what constitutes repairs and maintenance.

Spreading the deduction

If a taxpayer wishes to spread the deduction over one or more of the three income years immediately preceding the year in which the sum is paid or recovered, the taxpayer must meet the conditions set out above. In addition, the taxpayer must give to the Commissioner written notice of the election to spread the deduction. The notice must state the amount of the deduction to be allocated to each of the three previous income years. The three previous income years must be years in which the taxpayer used the land in the production of assessable income.

The taxpayer cannot revoke the election once it is made.

The taxpayer must give this notice to the Commissioner within the time he or she is required to furnish a tax return for the income year in which the amount of money was paid or recovered. However, the Commissioner does have a discretion to accept notices outside this time period.

Example

Lucy has carried on a restaurant business in a leased building for the past 15 years. The lease contained a covenant to repair and maintain the building. In March 1994 Lucy sold the restaurant business and retired. Before new tenants shifted in, the landlord carried out a number of jobs:

- replacing three broken windows
- professionally cleaning the oven and kitchen walls
- painting the restaurant area
- replacing bathroom tiles

Lucy admits that she was obliged to carry out these jobs under the lease and in June 1994 she fully

compensates the landlord for the expenditure incurred. Lucy asks if she can claim the amount paid as a tax deduction. Her balance date is 31 March.

Lucy can claim the sum paid to her former landlord in her 1995 income tax return to the extent that the amount paid was in respect of repairs and maintenance. The expenditure incurred would ordinarily be repairs and maintenance.

Instead of claiming the deduction in the 1995 year, Lucy may prefer to spread the deduction over earlier years. Lucy can spread the deduction over one or more of the 1992, 1993, or 1994 income years, assuming she used the leased land to produce assessable income in all of these years. (For example, if the land was used to produce assessable income in the 1991, 1992, and 1994 income years, but not the 1993 income year, the spreading of the deduction should not include the 1993 income year. Instead, the deduction would be spread over the 1991, 1992, and 1994 income years.)

Lucy should notify the Commissioner in writing of an election to spread the deduction by 7 July 1995. If Lucy's return is prepared by a tax agent, the election is due by 31 March 1996.

Upcoming TIB articles

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

- Details to be supplied to Inland Revenue when seeking to claim a deduction for payments to spouse
- Voluntary payments made to employees
- Revocation of qualifying company election and payment of qualifying company election tax
- GST and debt collection services
- 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
- Meaning of terms "own" and "acquired" for depreciation purposes
- GST and rates apportionment
- Gift duty exemption under section 72 of the Estate and Gift Duties Act 1968
- GST and zero-rating of goods sold to people leaving New Zealand

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

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.

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Income Tax Act 1976

Interest on qualifying tax in dispute

Section 34A - Interest on certain excess tax: A taxpayer wrote to Inland Revenue objecting to her 1993 income tax assessment. Enclosed with the letter was a payment of 50 percent of the 1993 tax assessed. During the time the letter was being considered, the taxpayer asked for interest to be paid on the payment she had made.

Section 34A allows for interest to be paid or be payable on certain excess tax. The interest entitlement applies if Inland Revenue receives a competent objection, and fully or partly allows it. Under section 34(1), a "competent objection" is an objection made in accordance with section 30. The key points of a competent objection are:

- It must be in writing.
- It must state clearly the grounds of the objection.
- It must give all the facts.
- It must be made within the time limits.
- It must not be a "non-qualifying" objection, as defined in section 34(1).

When a taxpayer makes a competent objection and Inland Revenue disallows all or part of it, the taxpayer may defer payment of up to half the tax in dispute until the final liability is decided. The deferred amount is called "deferrable tax in dispute", and the half that must be paid by the normal due date or new due date set by Inland Revenue is called "non-deferrable tax in dispute".

The non-deferrable tax in dispute is payable by the due date shown on the notice of deferrable tax; it does not have to be paid at the time the objection is filed.

If the objection is fully or partly allowed in the taxpayer's favour, under section 34A(2) Inland Revenue must refund any consequential overpayment and pay interest on the qualifying tax in dispute. The qualifying tax in dispute is the amount of the assessed tax to which the taxpayer has made a competent objection.

The taxpayer in this case filed a competent objection that meets section 30 requirements. However, interest will not be paid until and unless Inland Revenue wholly or partly allows the objection. Before that time, no interest is payable.

For a full explanation of the objection process and when interest is payable on deferrable tax in dispute, see Inland Revenue's "Objection Procedures" booklet (IR 266).

Deductibility of forest seedlings

Section 74(15) - Deduction for planting, maintaining trees: A taxpayer who is operating a forestry business has asked if the cost of forest seedlings is a deductible expense.

Section 74(15) allows a deduction, for those in the forestry business, of any expenditure incurred in planting or maintaining trees on the land. Such expenditure includes the purchase of forestry seedlings, costs of pruning and thinning the trees, etc.

Section 74(16) set out the amount of the deduction allowable as:

- in the income year commencing 1 April 1987, 90 percent of that expenditure
- in the income year commencing 1 April 1988, 75 percent of that expenditure
- in the income year commencing 1 April 1989, 55 percent of that expenditure
- in the income year commencing 1 April 1990, 30 percent of that expenditure
- in the income year commencing 1 April 1991, and any subsequent year, the full amount of that expenditure.

As the taxpayer is conducting a forestry business, the cost of the forestry seedlings is a deductible expense.

Claim for legal expenses incurred in seeking compensation

Section 105 - Deduction for expenditure or loss incurred in production of income from employment: An employee incurred legal expenses in claiming earnings-related compensation under the Accident Rehabilitation and Compensation Insurance Act 1992. He has asked whether these expenses are deductible.

Payments of earnings-related compensation are included within the definition of "salary and wages" under section 2 of the Income Tax Act 1976. Under the same section, "salary and wages" are deemed to be income from employment.

Section 105 precludes the deduction of expenditure incurred in gaining or producing income from employment. The legal expenses incurred by the taxpayer are not deductible.

Deduction for stamp duty and legal expenses

Section 106(1)(a) - Capital expenditure: A taxpayer has recently acquired a business property on which she has been assessed for stamp duty. She has asked whether she could claim an income tax deduction for the stamp duty and the legal expenses associated with the assessment of the stamp duty.

Under section 106(1)(a) a deduction is not available for expenses incurred in acquiring a capital asset. This includes any stamp duty paid when purchasing a business property, or the fees charged by the solicitor for the preparation, stamping, and registration of the various documents relating to the purchase.

The above expenses may be added to the cost of the assets purchased for depreciation purposes.

Under section 106(1)(fc), the taxpayer is also unable to claim a deduction for any penalties charged by Inland Revenue in respect of stamp duty.

Impact on Family Support where LAQC incurs a loss

Section 374B(1)(e)(vii) - Loss Attributing Qualifying Company and Family Support Tax Credit: A Loss Attributing Qualifying Company (LAQC) has incurred a loss. A shareholder of that company has asked how the portion of the loss attributed to her is taken into account for Family Support purposes.

Section 374B(1)(e)(vii) provides that any loss attributable to a LAQC shareholder under section 393P is not to be included in any calculation for Family Support purposes:

- to determine assessable income derived; or
- in ascertaining the loss incurred.

In determining assessable income for Family Support purposes the loss is to be treated as nil. This is also explained in the Notes for Guidance on Form FS 2B - Adjustments to Income for Family Support.

Goods and Services Tax Act 1985

GST incorrectly charged on exported goods

Section 11 - Zero-rating: An Australian resident who purchased some computer software from a New Zealand mail order company was charged GST at 12.5 percent on the purchase. She has written to Inland Revenue asking if the GST was correctly charged, since the goods were sent direct to her Australian residence. If the GST should not have been charged, she wanted to know how she could obtain a refund.

Under section 11(1), goods exported by a supplier under the Customs Act 1966 are taxed at zero percent. In this case the goods were mailed direct to Australia by the supplier, and so GST should have been charged at zero percent.

The overcharging of the tax is a matter between the supplier and the customer. Inland Revenue is unable to refund GST incorrectly charged. Therefore, we advised the person to contact the supplier and ask for a refund of the tax charged in error.

If the supplier makes this refund to the Australian resident before filing the relevant GST return, the sale could be included with other zero-rated sales in box 6 of the GST return. If the supplier has already filed the GST return and incorrectly accounted for the GST to Inland Revenue, it is able to have that return reassessed to correct the oversight.

GST on services supplied in New Zealand to non-residents

Section 11(2) - Zero-rated services: A non-resident businesswoman incurred GST on accommodation, meals, rental cars, and other expenses while travelling in New Zealand. On her return home she wrote to Inland Revenue enclosing receipts for these costs, and asked if the GST portion of that expenditure could be refunded to her.

Section 11(2)(e) allows GST to be charged at zero percent on services provided for and to a person who is not resident in New Zealand, and who is outside New Zealand at the time the services are performed.

In this case, the services were consumed in New Zealand as the businesswoman was in New Zealand at the time the services were performed. The zero-rating provisions of section 11(2) cannot be applied. Inland Revenue declined the request for the GST refund, and returned the receipts.

(The item on page 2 of this TIB is also related to this subject.)

Child Support Act 1991

Child Support liability for adopted children

Section 7 Meaning of "Parent": A person asked whether he is liable to pay child support for children he adopted, now that his marriage to the mother of the children has ended.

Section 7(1)(c) states that a person is a parent of a child if the person adopted the child under the Adoption Act 1955, or under an adoption to which section 17 of that Act applies (i.e., an adoption taking place in an overseas jurisdiction), and that adoption order has not been discharged.

Section 6(1)(a) of the Child Support Act 1991 states that Child Support may be sought from any person who is a parent of the child within the meaning of section 7.

In this case the dissolution of the marriage is irrelevant. The person is liable to pay Child Support for the children he adopted, as the Adoption Act 1955 deems him to be the parent of the children, and the Child Support Act 1991 makes the parent liable for Child Support.

Legal decisions - case notes

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

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

- ••••• Important decision
- •••• Interesting issues considered
- ••• Application of existing law
- •• Routine
- • Limited interest

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

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

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Deduction for seismic strengthening costs

Rating: •••

Case: Colonial Motor Company Ltd v Commissioner of Inland Revenue CA 51/94

Act: Income Tax Act 1976, former section 108(1) - second proviso

Keywords: *Capital expenditure, alterations of assets*

Summary: The Court of Appeal found that the costs incurred by the taxpayer in the seismic strengthening of a building were not deductible for tax purposes.

Facts: The appellant, Colonial Motor Company Ltd, appealed to the Court of Appeal from a judgment by Justice Ellis in the High Court reported at (1994) 16 NZTC 11,060.

The appellant owned a building in Courtenay Place, Wellington. The building was an earthquake risk and the Wellington City Council required its demolition or strengthening by 1988. The appellant decided to strengthen and refurbish the

building in 1984. The total expenditure spent on the building between 1984-1988 was $5.7 million. It was divided into 3 categories:

(1)	Seismic strengthening	$1.282 million
(2)	Repairs	$0.942 million
(3)	Capital	$3.476 million
		$5.7 million

As a result of the $5.7 million spent, the building was transformed from a warehouse that was an earthquake risk and had to be demolished, into a sound commercial building with a 50 year life. The deductibility of the repairs and capital costs were not at issue in the case.

The appellant sought to deduct the seismic strengthening costs of $1.28 million from its assessable income. In the High Court, Justice Ellis held that the seismic strengthening costs were not deductible. In his view, the work done to the building was not “alterations” and even if the expenditure was “alterations” it increased the capital value of the asset by more than the sums expended.

Decision: The Court of Appeal dismissed the appeal

The appellant’s argument was that under the second proviso to section 108(1), the expenditure on seismic strengthening was for “alterations” which did not increase the value of the asset. The appellant argued that due to the unusual market conditions prevailing over the income years in question, had the company done the seismic strengthening and nothing else year by year, the capital value of the premises at the end of each income year would have not increased at all.

The Court rejected this argument. It held that the costs attributable to seismic strengthening could not be hypothetically separated out from the total expenditure and viewed as if only that work had been done. The statutory inquiry that was required related to the work that was actually done. If there was one overall construction project, it was the total work involved in relation to the premises which had to constitute “repairs or alterations of any such asset” so as to come within the proviso.

The Court found there was a single project and it was essential to consider the total work carried out. The combined effect of the strengthening, repairs and capital had increased the value of the building by more than the expenditure outlaid.

The Court did not specifically consider whether the seismic strengthening costs went beyond repairs or alterations. However, it was satisfied that under the second proviso to section 108(1), the alterations increased the capital value of the asset by more than the cost of the alterations.

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

Various life insurance company income tax issues

Rating: • • •

Case: Colonial Mutual Life Assurance Society Limited (Life Branch) v The Commissioner of Inland Revenue AP 214/91

Act: Income Tax Act 1976, sections 106(1)(h) and 150 and former sections 108 and 204

Keywords: *Life insurance and reinsurance companies, deduction, subsidised employee superannuation scheme, indirect general revenue costs, direct investment revenue costs, direct premium revenue costs, long service leave, incurred, apportionment, depreciation*

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Summary: This is a test case for various issues relevant to the income tax treatment of companies carrying on the business of life insurance and reinsurance under the scheme of the former section 204 of the Income Tax Act 1976.

Facts: There were six separate issues for determination in relation to the period 1 April 1983 to 31 March 1990.

Decision: The High Court considered and decided the following six issues:

Superannuation claim

The objector argued that contributions to an employee superannuation scheme were deductible under section 150 (the general deduction provision for contributions to employees' superannuation schemes). The Commissioner argued that such deductions were properly deductible under the former section 204, which provided a separate taxation scheme for life insurance companies. A deduction under section 204 would give a less favourable result to the objector because the apportionment and reduction provisions in sections 204(6) and (9) respectively would also apply. Section 204(6) apportioned certain costs between life insurance business and other business. Section 204(9) reduced income to the extent to which it related to exempt superannuation funds.

The Court held that the contributions were deductible under section 204 (Commissioner's argument accepted). His Honour noted that section 204 did not intend to give a hybrid status to deductions, so that some but not all conventional deductions would fall within section 204. His Honour further noted, that if such contributions were not deductible under section 204, that would result in allowing deductions for expenditure which relates or is deemed to relate to income which has already been removed from the taxpayer's assessable income.

Interest on bank overdraft

The objector argued that interest expenditure it incurred in deriving assessable investment income was deductible under the general interest deductibility provision of section 106(1)(h). The Commissioner argued that the interest was deductible under section 204. Again, a deduction under section 204 would give a less favourable result to the objector because the apportionment and reduction provisions in sections 204(6) and (9) would apply.

The Court held that the interest expenditure was deductible under section 204 (Commissioner's argument accepted). Justice Heron noted that the interest deduction logically fell within the formula provided in section 204, and to allow a deduction under section 106(1)(h) would defeat the application of section 204(9), which was to apply after all relevant deductions were made, and not just certain deductions.

Interest on overdue premiums

The objector argued that the additional charges on overdue premiums are to be treated as further premium income and therefore non-assessable. The Commissioner argued that these receipts should be treated as interest received from an investment, and therefore be assessable.

The Court held that additional charges on overdue premiums are to be treated as interest payments and not as premium income (Commissioner's argument accepted). His Honour noted that the objector accepted that the High Court was bound by the Court of Appeal decision in *Commissioner of Taxes v AMP Society* [1902] 22 NZLR 445.

Apportionment of property charges

The objector argued that property charges it incurred in respect of an investment property that it partly occupied could be apportioned on a floor area basis. The Commissioner argued that apportionment was not possible. If the property

charges were apportionable, then the costs attributable to the tenant's floor area would fall within the definition of "direct investment revenue costs" as defined in section 204(1), resulting in a lower income tax liability for the objector. If they did not, the property charges would fall within the definition of "indirect general revenue costs" as defined in section 204(1).

The Court held that the objector was entitled to apportion property charges for the investment property partly occupied by the objector, on a floor area or other equitable basis (objector's argument accepted). His Honour did not accept the argument that the word "exclusively " in section 204 prevented the apportionment of an item of global expenditure.

Long service leave

The objector argued that its liability for employees' long service leave could be deducted under section 204 as an "indirect general revenue cost" at the time the employee first qualified for the long service leave. The Commissioner argued that such a deduction could only be claimed when the leave was actually taken.

The Court held that a deduction could be claimed under section 204 when the objector became liable for employees' long service leave (objector's argument accepted). Justice Heron considered that the liability was "incurred", because there was an immediately-identifiable liability which could be calculated exactly. His Honour said the meaning of the term "incurred" was well established in New Zealand Courts and referred to the Court of Appeal decision in *CIR v Mitsubishi Motors NZ Ltd* [1994] 16 NZTC 11,100.

Depreciation

The objector argued that depreciation deductions under section 108, on administration assets and buildings that the objector owned and partly occupied, were to be calculated without taking into account the adjustment formulae in section 204. The Commissioner argued that when exercising his discretion under section 108, he was entitled to take into consideration the adjustment formulae found in sections 204(6) and 204(9).

The Court held when the Commissioner exercised his discretion under section 108, he could take into account the adjustment formula in section 204(6) because this was a consideration related to the usage of the assets and buildings in the production of assessable income (Commissioner's argument accepted). However, the Court held that the Commissioner could not take into account the adjustment formula in section 204(9) when exercising his discretion under section 108. This subsection had the effect of taking into account considerations which were not concerned with the usage of the assets (objector's argument accepted).

Comment: Inland Revenue is still considering whether to appeal the High Court's decision on apportionment of property charges, long service leave and depreciation. We understand that the objector is also considering whether to appeal the decision.

Whether warranty reimbursements liable to GST

Rating: • • •

Case: TRA 93/21

Act: Goods and Services Tax Act 1985, sections 8(1), 10(2), 60(1)

Keywords: *Agent, consideration, supply, value of supply*

Summary: The objector acquired cars and other products from its overseas parent company. The parent company warranted the condition of the goods to the objector.

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The objector sold the products to dealers who then sold the products to the public. The TRA found that the objector was not required to pay output tax on reimbursement payments made by the objector's parent company under the warranty for the cost of repairs to the cars and other products.

Facts: The objector acquired cars and other products from its overseas parent company ("MC") who, under the sale and purchase agreement, warranted the condition of the products. The objector sold the products to independent dealers who then sold the products to the public at retail. The dealers sold each vehicle with a warranty provided by the objector. The warranty was separate from the warranty agreement between the objector and MC.

The dealers agreed to provide certain warranty repair services to the objector under a dealer agreement. Under this agreement, the objector agreed to reimburse the dealer for any repairs carried out by the dealer to any product sold and covered by the warranty. The dealer accounted for output tax on the reimbursement payments and the objector claimed an input tax credit.

After the dealer completed the repairs, the objector registered a claim with MC under the warranty provided by MC to the objector. MC then reimbursed the objector under the terms of its agreement.

Decision: The main issue under consideration was whether the warranty reimbursements received by the objector were subject to GST. The Commissioner contended that the relationship of principal and agent existed between the objector and the dealers. Section 60(1) deems the objector, as principal, to make the supply of repairs to the customers. The payments received by the objector from MC were consideration for the repairs and the objector was liable for output tax on the consideration received. The payment by the objector to the dealers was not consideration for the supply of repairs but consideration for a separate supply, namely, the supply of agency services.

Judge Barber held that the relationship of principal and agent did exist between the objector and the dealers in respect of the repairs. However, Judge Barber held that the reimbursement from MC could not be regarded as consideration for the repairs because this would mean full consideration was paid twice for the same supply. Judge Barber found that full consideration had already been paid by the objector for the repair supplies and the dealer had returned the GST output tax.

Comment: Inland Revenue is appealing this decision

Ability of taxpayer to use foreign tax credit

Rating: • • •

Case: TRA 94/89

Act: Income Tax Act 1976, sections 293(2) and 304

Keywords: *Tax credit, tax paid or payable*

Summary: A taxpayer can only receive a foreign tax credit when it has New Zealand tax paid or payable on the foreign income. If a taxpayer offsets its entire year's taxable income by using group losses, it has no tax paid or payable, so it cannot claim a credit or refund for tax paid on foreign income.

Facts: The taxpayer company offset its total 1992 taxable income by using the available losses of other group companies. The taxpayer received interest payments from Australian bank deposits. This interest was subject to Australian tax at the rate of 10%. The taxpayer sought a refund in New Zealand of the Australian tax. The Commissioner disallowed the claim.

Decision: The relevant sections are sections 293(2) and 304. Section 293(2) allows a New Zealand resident taxpayer a credit for tax paid overseas on foreign sourced income, against New Zealand tax on that same income. Section 304 restricts the credit for foreign tax to the amount of New Zealand tax payable on that income. (In this case section 304 did not apply because the New Zealand tax rate on the income was higher than the Australian tax rate).

His Honour found that no credit was available to the taxpayer when no New Zealand tax was payable in an income year. In the 1992 income year the taxpayer had no New Zealand tax to pay, because it had offset its taxable income by using group losses.

The taxpayer had claimed that New Zealand tax was payable by it, and that it had paid that tax by utilising losses. His Honour found that when losses in a group are offset against tax that is to be paid, then that tax is not paid or payable. There is nothing against which the credit can be applied.

His Honour noted that if the taxpayer had offset a lower amount of group losses it could have used the tax credit, and preserved more of its tax losses for future years.

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

Whether sale of land is a supply in the course or furtherance of a taxable activity

Rating: • • •

Case: TRA No 93/234

Act: Goods and Services Tax Act 1985, sections 6 and 8

Keywords: *Taxable activity, hobby, farming, grazing, land investment*

Summary: A taxpayer may buy land but not use it in the course of a taxable activity for which he or she is registered for GST, or in any other business that he or she carries on. However, the sale of the land may still be a supply in the course or furtherance of a taxable activity and subject to GST.

Facts: The objector was registered for GST. His main taxable activity was as a solicitor. He purchased two lots of land next to each other. He used one lot (A block) for deer farming. He intended to sell the other lot (B block) but in the meantime he let it out for grazing. He included the income from grazing in his farm accounts and deducted expenses for B block such as rates and interest. When the objector sold B block, Inland Revenue assessed GST output tax on the proceeds of the sale.

The issue is whether the sale of B block was a supply for GST purposes made in the course or furtherance of a taxable activity.

Decision: The use of B block was not part of the objector's deer farming activity. Therefore, the TRA had to consider whether any activity of the objector in relation to B block was a taxable activity. The TRA noted that a taxable activity can be something that is less than a business, but the term does not cover a hobby. To be involved in a taxable activity in B block the objector must carry on an activity that is continuous or regular, whether or not for pecuniary profit, that involves or is intended to involve the supply of goods and services for consideration. The TRA found that the objector continuously or regularly carried on either one or both of the following taxable activities:

- Grazing, because he let the land out for that purpose
- Land investment, because he bought the land with the intention of selling it.

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The objector was carrying on a commercial activity of either grazing or land investment and not merely a private recreational pursuit or hobby. The sale of B block was on termination of that activity so it is deemed under section 6(2) to be carried out in the furtherance of that taxable activity. It did not matter that the supply was not in the course of the activity for which the objector was registered. Therefore, the sale of B block was a supply by the taxpayer in the course or furtherance of a taxable activity and subject to GST.

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

Whether penal tax charged was excessive

Rating: •

Case: TRA No. 88/104

Act: Income Tax Act 1976, section 423(1)

Keywords: *Penal tax*

Summary: The Commissioner imposed penal tax at the rate of 100% on a barrister and solicitor for PAYE tax offending. The Commissioner had taken into consideration the profession of the taxpayer, previous warnings and a prosecution, and the fact that the prosecution appeared to have been ineffective. The TRA decided to reduce the amount of penal tax from $3,948 to $1,500, or to the amount calculated under paragraph (b) of the proviso to section 423(1) if that exceeds $1,500.

Facts: The taxpayer was a barrister and solicitor in a small legal practice. He was late in paying PAYE tax totalling $3,948.65 for the months of October, November, and December 1985. The PAYE was outstanding for those respective periods for two months, three months, and two months. The Commissioner assessed penal tax on the deficient tax at 100%.

The taxpayer had a history of non-compliance with PAYE obligations. On 1 November 1984 the taxpayer had been convicted in the District Court for charges under section 368(1) of the Income Tax Act 1976. He was fined and penal tax was assessed at a rate of 50%.

The taxpayer wrote to Inland Revenue in July 1986 explaining why he had not paid the PAYE for those months. He explained that he had overlooked to pay the PAYE for October and December due to oversights caused by the after-effects of an overseas trip and taking his children on holiday. He also claimed that he had sent a cheque for the November PAYE but that Inland Revenue had not received it.

In the TRA the taxpayer argued that the penal tax imposed by the Commissioner was excessive under these circumstances. He pointed out the relatively short periods of offending and small amounts of money concerned. He also argued that:

- It was improper to penalise him on the basis of being a “professional person”.
- The Commissioner had not taken into account his 26 year record of general compliance, or the penalties that he had paid for his previous offences.

The Commissioner argued that the penal tax rate of 100% of the deficient tax was justifiable considering the taxpayer’s previous convictions for failing to pay PAYE, previous warnings and the fact that the taxpayer was a practising professional.

Decision: From the facts of the case, Judge Barber concluded that the taxpayer had offended due to personal worries and general mismanagement and carelessness. Consequently, he considered that the penal tax rate of 100% was too high and reduced it to $1,500 provided that the calculation in paragraph (b) of the proviso to section 423(1) did not exceed $1,500.

In reaching this decision, he took into account the fact that there had been no previous offending since 1985 and the relatively minor amounts and delays that were involved. He also considered that the Commissioner had over-emphasised the fact the taxpayer was a practising professional. Although he recognised that this behaviour was unprofessional conduct, Judge Barber did not consider that the Commissioner should treat a professional person any differently from a business person.

Comment: The Commissioner is not appealing this decision.

List of Inland Revenue booklets

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

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

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) June 1994
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 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.

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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) July 1994
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. This is part of the school resource kit "What about the kids?"

Your guide to the Child Support formula (CS 68)
Explains the components of the formula and gives up-to-date rates.

Child Support administrative reviews (CS 69A)
Explains how the administrative review process works, and contains an application form.

Due dates reminder

December 1994

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

7 Provisional tax and/or Student Loan interim repayments: first 1995 instalment due for taxpayers with August balance dates.
Second 1995 instalment due for taxpayers with April balance dates.
Third 1995 instalment due for taxpayers with December balance dates.

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

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

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

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

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

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

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

RWT on dividends deducted during November 1994 due.

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

31 Non-resident Student Loan repayments: Third instalment of 1995 Student Loan non-resident assessment due. *(We will accept any payments received on Wednesday 4 January 1995 as in time.)*

January 1995

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

7 Provisional tax and/or Student Loan interim repayments: first 1995 instalment due for taxpayers with September balance dates.
Second 1995 instalment due for taxpayers with May balance dates.
Third 1995 instalment due for taxpayers with January balance dates.

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

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

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

(We will accept any payments received on Monday 9 January as on time for 7 January.)

15 GST return and payment for period ended 30 November 1994 due. *(We will accept any payments received on Monday 16 January as on time.)*

20 Large employers: PAYE deductions and deduction schedules for period ended 15 January 1995 due.

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

FBT return and payment for quarter ended 31 December 1994 due.

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

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

RWT on dividends deducted during December 1994 due.

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

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

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Answers to enquiries we've received at Inland Revenue, which could have a wider application. See page 10 or the inside front cover for a list of topics covered in this bulletin.

Legal decisions - case notes

Notes on recent cases heard by the Taxation Review Authority, the High Court, the Court of Appeal and the Privy Council. See page 14 or the inside front cover for a list of cases covered in this bulletin.

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