Motor vehicle reimbursement - new rates to replace public service mileage rates

Summary

This item sets out the new Inland Revenue mileage rates that can be used to calculate the cost of motor vehicle use for tax purposes. The new rates apply from 1 August 1995. The Inland Revenue mileage rates replace the Public Service Mileage Rates (PSMRs) and the averaged mileage rates given in Tax Information Bulletin Volume Three, No.2 (August 1991).

The new mileage rates use a simple two tier scale. For the first 3,000 kilometres the mileage rate is 56 cents per km. For each km over 3,000 km the mileage rate is 19 cents per km.

Alternatively, a flat mileage rate of 26 cents per km can be used with no limit on the kilometres travelled.

Apart from the new rates, an important change from the previous policy is that the limitation on shareholder-employees and self-employed taxpayers has been relaxed. These taxpayers can now use mileage rates for a maximum of 5,000 km a year. Previously, the maximum was 2,000 km.

Inland Revenue intends to revise the mileage rates every year and alter them if there is a significant change in motor vehicle operating costs. From 1996, we intend to apply any changes from 1 April.

Background

For many government departments used the PSMRs to calculate the reimbursement of employees using private motor vehicles for work use. For tax purposes, the Commissioner of Inland Revenue allowed employers to use PSMRs for calculating the tax-free reimbursement paid to employees who used their car for work purposes. The Commissioner has allowed self-employed taxpayers who used a motor vehicle for a small amount of work-related travel to use PSMRs to calculate their deductible motor vehicle expense.

After the Tax Simplification Consultative Committee made recommendations on simplifying and extending the use of PSMRs in 1990, Inland Revenue produced some averaged mileage rates that could be used instead of the PSMRs. These rates are set out in Tax Information Bulletin Volume Three, No. 2 (August 1991) and applied from 1 August 1991.

In 1994 the State Services Commission decided that it would no longer calculate and provide PSMRs. The PSMRs were last amended in 1989, and had remained unchanged because subsequent reviews showed the total cost of owning and running a car had not changed substantially.

Inland Revenue reviewed the use of PSMRs and concluded that they tend to over-reimburse the average motorist for the proportion of overhead costs incurred in work-related running. Inland Revenue also found that the PSMRs treat depreciation as an ongoing running cost rather than a fixed cost.

Policy

The following table gives the new Inland Revenue mileage rates applying from 1 August 1995. The Commissioner will allow the mileage rates to be used by:

- employers to calculate the tax-free reimbursement paid to employees who use their own vehicle for work-related use
- employers to calculate the tax-free reimbursement paid to shareholder-employees who use their own vehicle for work-related use of up to 5,000 km.
- self-employed taxpayers to calculate the tax-deductible motor vehicle expense incurred in using their own vehicle for work related use of up to 5,000 km.

Inland Revenue mileage rates applying from 1 August 1995

Motor cars - two tier scale

Annual work-related km	Mileage rate
1 to 3,000 km	56c per km
3,001 km and over	19c for each km over 3,000

Motor cars - flat rate

Mileage rate:	26c per km

Motorcycles - two tier scale

Annual work-related km	Mileage rate
1 to 3,000 km	28c per km
3,001 km and over	10c for each km over 3,000

Motorcycles - flat rate

Mileage rate:	14c per km

Note: the distance on which the appropriate mileage rate is calculated is work-related mileage only - not the total distance travelled by the motor vehicle for the year.

Motor cars

The two tier rate scale uses two significantly different rates. A full cost-recovery mileage rate of 56 cents

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per km, that includes estimated overheads such as depreciation, applies for up to 3,000 km of work-related vehicle use. For each km over 3,000 km, a running cost only mileage rate of 19 cents per km applies. The running cost mileage rate includes the estimated cost of petrol, oil, tyres, and repairs and maintenance.

Under the two tier scale, the mileage rate drops substantially after 3,000 km to prevent taxpayers who use mileage rates from being better off than taxpayers who keep full records and claim a deduction for actual costs incurred. The 3,000 km threshold is calculated as 25% of the average private car usage of 12,000 km a year.

As an alternative to the two tier rate scale, a flat rate of 26 cents per km can be used to reimburse employees for an unlimited distance.

Shareholder-employees and self-employed taxpayers can also use the mileage rates, but are limited to using mileage rates for a maximum of 5,000 km per year. Previously, the maximum was 2,000 km. When a shareholder-employee or a self-employed person exceeds the 5,000 km limit in any financial year, the person has the option of claiming either:

- The specified rates up to 5,000 km only.
- The actual expenses incurred apportioned to the percentage of business running over total annual running.

The mileage rates are necessarily based on average car operating costs and apply to all cars regardless of size, age, or value.

Excess reimbursement

Any allowance paid to an employee for motor vehicle use that is greater than the amount allowed using the Inland Revenue mileage rates must be treated as a taxable allowance. The taxable allowance must be treated as part of normal salary or wages, and PAYE is to be deducted accordingly.

However, employers can choose to reimburse employees for actual costs incurred for motor vehicle use. Normally, the only verifiable costs incurred by employees using their vehicle for work-related use are petrol costs.

For self-employed taxpayers, the Inland Revenue mileage rates give the maximum deduction that can be claimed without full supporting records.

Record keeping requirements

The year over which the work-related mileage of employees must be accumulated is the standard 1 April to 31 March income year. Self-employed taxpayers can use the same standard income year or, if they have a non-standard balance date, choose to aggregate their annual mileage over their non-standard income year. Whichever approach is adopted, it must be used consistently from year to year.

When an employee is reimbursed for motor vehicle use, a claim form should be filled out by the employee and retained by the employer. The claim form should record the date of the trip, the mileage, and the destination.

If the two tier rate scale is used and it is possible that the employee will be reimbursed for more than 3,000 km during the year, the employer must also keep a running total of the mileage reimbursed to that employee since the beginning of the income year. This will enable the right mileage rate to be selected. It will not be necessary to keep a running total if the flat rate is used.

Self-employed taxpayers must similarly keep details of each work-related use of their vehicle and calculate their total work-related mileage for the income year.

Alternatively, a self-employed taxpayer can keep a full record of all motor vehicle expenses and deduct the actual expenses incurred. In this case, if the vehicle is used for both private and business use, a logbook of all vehicle use must be kept for at least a three-month test period to determine the proportion of private use. The special provisions covering the use of logbooks are discussed in Tax Information Bulletin Volume Six, No. 3 (September 1994).

Transition to new rates

Until 31 July 1995, the old PSMRs or averaged mileage rates can be used to calculate motor vehicle costs for tax purposes. From 1 August 1995, the new Inland Revenue mileage rates must be used. However, the rate (apart from the flat rate) must be determined by considering the mileage travelled since 1 April or the start of the taxpayer's non-standard income year.

Example 1

Mr A is an employee who uses his own car to travel to work-related conferences and meetings. In the 1995-96 income year he uses his car for 4,800 km of work-related travel, with 1,600 km of travel occurring between 1 April 1995 and 31 July 1995. His employer uses the averaged mileage rates and the new Inland Revenue mileage rates to reimburse him to the maximum extent possible.

In calculating Mr A's non-taxable reimbursement for motor vehicle use for the 1995-96 income year, his employer can pay for 1,600 km at the old averaged mileage rate of 65 cents. The remaining 3,200 km has to be reimbursed using the new rates, based on the annual mileage of 4,800 km. This means 1,400 km (the balance of the first 3,000 km) can be reimbursed at 56 cents per km and the last 1,800 km at 19 cents per km. This gives a total reimbursement for the year of:

(1,600 x 65c) + (1,400 x 56c) + (1,800 x 19c) = $2,166.

Example 2

Mrs B is a self-employed retailer who uses her car for work-related deliveries. She has a 31 July balance date, and had work-related mileage of 2,200 km in the period 1 August 1995 to 31 July 1996.

Rather than keep full records of her car expenses, Mrs B uses mileage rates to calculate her deductible motor vehicle expense. Mrs B can choose to aggregate her work-related mileage to her balance date of 31 July or she can measure her mileage from 1 April to 31 March. She decides to use her non-standard income year as her measuring base from the 1996 year onwards.

Since Mrs B has 2,200 km of work-related mileage in her 1995-96 income year, which began on 1 August 1995, she can use the 56 cents per km mileage rate for all 2,200 km of travel, giving a total claim of $1,232.

Goods and Services Tax

No GST input deduction can be claimed on motor vehicle expenses calculated using mileage rates. The Commissioner's policy on this issue is given in Tax Information Bulletin Volume Three, No. 4 (December 1991).

Fruit vines and trees replaced by regrafting or replanting - income tax treatment

Summary

This item states the Commissioner's current policy on the income tax treatment of the cost of replacing fruit vines and trees used in producing assessable income. The Commissioner's policy is that in most cases the cost of replacement trees, whether regrafted on to existing rootstock or completely replaced, must be capitalised to the vines or trees account. A current year deduction will only be allowed for replacements when the new vine or tree is a replacement for a vine or tree of the same species and variety that has died or been destroyed.

Taxpayers can write off the unexpired book value of vines or trees that have been completely removed from the orchard and have ceased to be used in the production of assessable income.

All legislative references in this item are to the Income Tax Act 1994 unless otherwise indicated.

Background

From time to time, orchardists replace varieties, and in some cases, species of vines or trees in order to ensure that their product is of high quality and the variety meets market demand. Replacements are made by either regrafting a new variety onto a cut-back rootstock or by replacing the vine or tree altogether. The costs associated with these replacements are capital in nature, but there is provision in the Act to amortise the capital cost at a flat rate of 10% each year.

Plantings made between 16 December 1991 and the end of the taxpayer's 1994-95 income year qualify for the extra 25% deduction, i.e., 12.5%. Plantings made in the taxpayer's 1995-96 and subsequent income years qualify for a 12% annual deduction.

The Commissioner has a discretion to allow the write-off of the unexpired book value of the vines or trees that have ceased to exist or have ceased to be used in the production of assessable income.

Legislation

Cross-reference table

Income Tax Act 1994	**Income Tax Act 1976**
DO 4	128A
DO 4 (4)	128A(4A)
BB 7	104
Schedule 7	Schedule 13

Section DO 4 provides a "depreciation-type" rule for expenditure on land improvements used for farming or agricultural purposes, effective from the 1987-88 income year. Specific categories of land improvements listed in Schedule 7 are capitalised and amortised at the rate specified in the schedule. These rates are either 5% or 10%, depending on the nature of the improvement.

One of the categories in Part A of the schedule is:

(12) The planting of vines or trees on the land other than trees planted primarily and principally for the purposes of timber production.

The percentage of diminished value of expenditure allowed for vines and trees is 10%.

Section DO 4 (4) gives the Commissioner authority to allow a deduction greater than the 10% specified in Schedule 7 if he is satisfied that the vines or trees have ceased to exist or have ceased to be used in the production of assessable income. The section states:

The Commissioner may, in respect of any item of expenditure of a kind specified in clause 12 of Part A of Schedule 7, allow a deduction of an amount greater than that otherwise allowable under subsection (3) where the Commissioner is satisfied that the vines or trees have ceased to exist or have ceased to be used in the production of assessable income:

Provided that this subsection shall not apply in respect of any vines or trees-

(a) That have ceased to exist before 16 December 1991; or

(b) In respect of which the Commissioner is satisfied that those vines or trees have ceased, before 16 December 1991, to be used in the production of assessable income.

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Policy

Replacement trees

Schedule 7 refers to the "planting" of vines and trees. The Commissioner's view is that "planting" means the initial planting at the establishment of an orchard, and any future replacement plantings when a particular species or variety is removed and replanted with a new species or variety

Schedule 7 refers to vines and trees rather than orchards. The Commissioner's view is that the term "vines or trees" refers to vines or trees collectively, whether as a complete orchard or part of the orchard such as blocks, or rows of trees. Any replacement plantings of any part of the orchard are a capital expense, and the cost must be capitalised to the orchard account and written off at the 10% rate specified in Schedule 7.

The Commissioner will only allow a current year deduction when a small number of vines or trees are replaced because they die or are destroyed. The number of trees and vines allowable as a current year deduction will depend on the facts of each particular case, but will generally be limited to replacing a small number of trees in a row or block, rather than replacing every vine or tree in that row or block.

For example, an orchardist plants a new block of apple trees. Of the 50 trees planted, 6 die due to wind damage. The cost of replacing those 6 trees can be claimed as a current year deduction under the general deductibility provisions of section BB 7. There is no need to adjust the tree account to which the cost of the whole planting had been capitalised.

In summary, for tax purposes the replacement of vines and trees will be treated as follows:

- New plantings — capital
- Replacement with new varieties — capital
- Regrafting to existing trees — capital
- Replanting of blocks — capital
- Single vine or tree replacements — revenue

Write-off of vines or trees

Section DO 4 (4) permits the write-off of the unexpired book value of vines or trees that have been replaced and completely removed. The replacement of a variety of vine or tree by cutting back and regrafting to the existing rootstock does not qualify for a write-off. This is because the vine or tree has not ceased to exist or ceased to be used for producing assessable income. The rootstock once regrafted with new budwood will still be producing assessable income sometime in the future.

Further, the write-off does not apply to vines or trees that ceased to exist or ceased to be used for producing assessable income before 16 December 1991.

Example

Mrs Pip Stone has an established orchard which contains a block of 300 royal gala apple trees. She decides to change to a braeburn variety over a three-year period. Her plan is to replace 50% of the old trees by regrafting to the existing rootstock and 50% by complete replanting. The written-down book value of the trees at the beginning of the 1994 income year is $3,000.

The treatment for income tax purposes is as follows:

Notes: For simplicity, this example uses the flat 10% annual deduction. Plantings made between 16 December 1991 and the end of the taxpayer's 1994-95 income year qualify for the extra 25% deduction, i.e., 12.5%. Plantings made in the taxpayer's 1995-96 and subsequent income years qualify for a 12% annual deduction.

1994 income year

Opening value of trees (1 April 1993)	$3,000
less trees fully replaced (50 @ $10) *(written off)*	- $500
trees regrafted (50 @ $10)	- $500
	$2,000
plus replacement trees (50 @ $20)	$1,000
regrafted trees (50 @ $20)	$1,000
	$4,000
Less 10% deduction under section DO 4	- $ 400
Closing value of trees (31 March 1994)	$3,600*

* Closing value - royal gala = $1,800 (200 @ $9.00)
- braeburn = $1,800 (100 @ $18.00†)

† (opening value of $10.00 plus cost of regrafting ($10.00), less 10% reduction)

Note: Mrs Stone can claim a deduction of $500 for the 50 trees completely removed and the 10% reduction of $400.

1995 income year

Opening value of royal gala trees (1 April 1994)	$1,800
less trees fully replaced (50 at $9) *(written off)*	- $ 450
less trees regrafted (50 at $9)	- $ 450
	$ 900
Opening value of braeburn trees (1 April 1994)	$1,800
plus replacement trees (50 @ $20)	$1,000
plus regrafted trees (50 @ $19)	$ 950
	$3,750
Total of above values	$4,650
less 10% deduction under section DO 4	$ 465
Closing value of trees (31 March 1995)	**$4,185**‡

‡ Closing value - royal gala = $810 (100 @ $8.10)
- braeburn = $3,375 (200 @ $16.88)

Note: Mrs Stone can claim a deduction of $450 for the 50 trees completely removed and the 10% reduction of $465.

Similar adjustments will apply in the 1996 income year.

If the orchardist is the lessee of the land, it is the person incurring the expenditure, whether the owner or the lessee, who is entitled to the deduction.

A deduction is not permitted in the year the land is sold. Any balance of the unexpired book value of the vines or trees cannot be written off in the year of sale. The book value of the vines or trees is used by the purchaser of the orchard as an opening value to continue the deduction available under section DO 4.

Building and engineering industries - successive supplies

Summary

This item considers the nature of supplies covered by section 9(3)(aa)(ii) of the Goods and Services Tax Act 1985. Supplies made in the building and engineering industries that are subject to an agreement or enactment providing for periodic payments are subject to the time of supply rule as provided in section 9(3)(aa)(ii).

The types of supplies to which section 9(3)(aa)(ii) applies are:

- Civil engineering works (examples listed in this item).
- Other engineering works such as the manufacture of plant.
- Building works such as the construction of a house or office block.

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

Legislation

Section 9(3)(aa)(ii) provides a special time of supply rule for the building and engineering industries. The section applies to goods and services supplied directly in the construction, major reconstruction, manufacture, or extension of a building or an engineering work when those goods and services are supplied under an agreement or enactment which provides for periodic payments.

Section 9(3)(aa)(ii) determines that the time of supply for each successive supply is the earlier of the time that any payment is due or received, or any invoice is issued relating to that payment.

Types of supplies covered by section 9(3)(aa)(ii)

In addition to the construction of buildings, section 9(3)(aa)(ii) applies to engineering works. The following list, which is not intended to be exhaustive, indicates the types of engineering supplies considered by the Commissioner as falling within the provisions of section 9(3)(aa)(ii):

Civil engineering work examples:

- walls, roadworks, canals, railways, aqueducts, bridges, tunnels, viaducts, docks, harbours, piers, quays, wharves, lighthouses, airfields, landing grounds, and cable ducts
- water supply systems, dams, reservoirs, water towers, major drainage and sewage schemes, river works, and sea defence works
- hydro-electric installations, cooling towers, overhead transmission lines, gas works, pipelines, cable laying, and shaft sinking
- bunkers, tanks, silos, or similar containers for bulk storage of materials
- defence works, such as rocket ranges and other installations wholly or partly underground
- outdoor public recreation grounds, sports arenas, and race tracks involving substantial construction work
- work of a subterranean nature involving excavation, tunnelling, segment and steel work, and all subsidiary and complementary work in timber, concrete, brick, tile and other material of construction, together with work in connection with escalators and lifts
- thermal power stations, oil refineries and chemical plants, steelworks, and similar large scale industrial or commercial undertakings.

Other engineering works:

- the manufacture of large items of plant and machinery, such as pulp and paper processing machinery or plant used in the meat and dairy industries
- the construction and refurbishment of ships and aircraft
- the manufacture of mining equipment.

GST de minimis rule applying to exempt supplies by a registered person

Introduction

This item considers the application of the "de minimis" rule in the first proviso to section 21(1) of the Goods and Services Tax Act 1985.

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

Background

"De minimis" is the shortened version of the phrase *de minimis non curat lex*, meaning that the law does not concern itself with trifles. The de minimis rule in section 21 simplifies accounting for GST for registered persons who supply only a minimum of exempt goods and services in proportion to their total supplies. These registered persons need not make GST output adjustments for their exempt supplies when accounting for GST.

Legislation

Section 21(1) states:

Subject to section 5(3) of this Act, to the extent that goods and services applied by a registered person for the principal purpose of making taxable supplies are subsequently applied by that registered person for a purpose other than that of making taxable supplies, they shall be deemed to be supplied by that registered person in the course of that taxable activity to the extent that they are so applied:

Provided that this subsection shall not apply to any goods and services to the extent that they are applied for the purpose of making exempt supplies where at the commencement of any taxable period there are reasonable grounds for believing that the total value of all exempt supplies to be made by that registered person in that month then commencing and the 11 months immediately following that month will not exceed the lesser of-

(a) The amount of $48,000:

(b) An amount equal to 5 percent of the total consideration in respect of all taxable and exempt supplies to be made during that 12 month period.

Application

GST registered persons may claim an input tax deduction for goods and services they have acquired for the principal purpose of making taxable supplies.

If the goods are subsequently used for a purpose other than for making taxable supplies (exempt or private purposes), section 21(1) deems a supply of those goods to occur to the extent they are used for that other purpose. In these circumstances, the registered person must then return output tax on this "deemed supply".

However, the de minimis rule in the first proviso to section 21(1) may apply. The rule applies when the goods and services are subsequently applied for the purpose of making exempt supplies, and it is expected that the total value of all exempt supplies will not exceed the lesser of these two amounts:

- $48,000
- 5% of the total consideration in respect of all taxable and exempt supplies, made during the current month and the immediately following 11 months.

In this situation the registered person does not need to account for and return output tax on the "deemed supply".

The rule does not apply when goods or services purchased for making taxable supplies are later applied for private purposes.

The 12-month period in the de minimis rule runs from the beginning of the first month of the taxable period under consideration and includes the following 11 months.

If the taxpayer expects the exempt supplies to exceed the threshold over the current month and the next 11 months, he or she must account for output tax on the deemed supply. The de minimis rule will not apply. This does not affect any previous GST returns in which the person did not account for output tax on deemed supplies, as long as the de minimis rule was properly applied in the prior periods.

Example

Brenda runs her own business, a dairy near the beach at Happy Sands. She leases the premises, and claims an input tax deduction for the GST component of the rental. The property includes a little cottage used for storage.

A holidaymaker asks Brenda if he and his family can use the cottage during the summer.

Brenda agrees. This is an exempt supply under section 14(c).

Section 21(1) deems a supply of those goods to occur under these circumstances, as goods have been subsequently used for a purpose other than for making taxable supplies.

Brenda should then return output tax on this "deemed supply". However, the de minimis rule in the first proviso to section 21(1) may apply.

Brenda makes annual taxable and exempt supplies of approximately $130,000: the exempt supplies being the rental of the cottage for $6,240.

Five per cent of the value of the total taxable and exempt supplies that Brenda will make in the next 12 months is $6,500. In these circumstances, Brenda need not make any adjustment to reflect that the lease is now being applied for a purpose other than that of making taxable supplies.

Specified suspensory loans - income tax treatment when remitted

Summary

This item states the Commissioner's current policy on the tax treatment of remitted specified suspensory loans. Section DC 2 of the Income Tax Act 1994 (formerly section 172 of the Income Tax Act 1976) deems that any amount of specified suspensory loan remitted is assessable income. The income is assessable in three equal amounts in the year of the remittance and the next two income years. However, the taxpayer can elect to have the income which would normally be assessable in the second and third years wholly or partly allocated to an earlier year in the three year period.

All legislative references in this item are to the Income Tax Act 1994 unless otherwise indicated.

Background

Before the major tax reforms of the mid-1980s, the Government provided incentives to help various manufacturers and other producers. The Development Finance Corporation, the Rural Banking and Finance Corporation, the Ministry of Energy (as they then were), and other public authorities made various suspensory loans to businesses to encourage development. Each "specified suspensory loan" listed in section DC 2 (5) had varying criteria, but the basis of the loans was for the business concerned to meet specific production targets after the granting of the loan. Once these targets are met the loans are remitted either in whole or in part. Section DC 2 deems the amount remitted to be assessable income.

No new loans have been made for some time, but some loans still exist and will be remitted in the future, provided the requirements of the particular loan are met.

Legislation

Cross-reference table

Income Tax Act 1994	Income Tax Act 1976
DC 2	172

Section DC 2 states:

(1) Subject to this section, where any taxpayer has been granted a specified suspensory loan in relation to the business of the taxpayer and the liability of the taxpayer in respect of that loan is remitted, in whole or in part, the amount remitted shall be deemed to be assessable income derived equally in 3 income years, being the income year in which that amount is remitted and the next 2 succeeding income years, and the taxpayer shall be assessable and liable for income tax accordingly:

Provided that the taxpayer may, if the taxpayer elects by notice in accordance with subsection (3) (which election shall, subject to subsection (4), be irrevocable) be entitled to allocate the whole or any part of that amount which is deemed to be assessable income derived by the taxpayer in either of those 2 succeeding income years to be income derived by the taxpayer in any earlier income year, being one of those 3 income years.

(2) Upon receiving notice of allocation under the proviso to subsection (1), the Commissioner shall determine that the amount allocated shall be deemed to be assessable income derived by the taxpayer in the income year to which it is so allocated by the taxpayer and not in the income year in which it was deemed to be assessable income under that subsection.

(3) Every notice of allocation under the proviso to subsection (1) shall be given to the Commissioner within the time within which the taxpayer is required to furnish a return of income for the year to which the amount is so allocated, or within such further time as the Commissioner, in his discretion, may allow in any case or any class of cases.

(4) Notwithstanding anything in this section, where a taxpayer ceases to carry on the business in relation to which a specified suspensory loan was granted in any income year, any amount remitted in respect of that loan which is deemed to be assessable income derived in any succeeding income year shall be determined by the Commissioner to be assessable income derived by the taxpayer in that income year in which the taxpayer ceased to carry on that business.

(5) In this section, "specified suspensory loan" means-

(a) Any loan made by the Development Finance Corporation of New Zealand as-

(i) An applied technology investment finance loan under an applied technology programme; or

(ii) An export suspensory loan, -

and designated as such by that Corporation:

(b) Any loan made by the Rural Banking and Finance Corporation of New Zealand as-

(i) A rural export suspensory loan; or

(ii) A fishing vessel construction suspensory loan; or

(iii) A land development encouragement loan; or

(iv) A sharemilkers suspensory loan, -

and designated as such by that Corporation:

(c) Any loan made by the Ministry of Energy as a liquefied petroleum gas distribution suspensory loan and designated as such by that Ministry:

(d) Any other loan, made by a public authority and designated by that public authority as a specified suspensory loan.

Application

Under section DC 2 the Commissioner is only concerned at the point the various loans are converted to

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grants, i.e. when the loans are remitted. Until that time the loans are ignored for income tax purposes. When a taxpayer has received a specified suspensory loan and that loan is wholly or partly later remitted, the amount remitted is deemed to be assessable income. Section DC 2 (1) deems it to be derived equally in the year of remission and the two following income years.

The proviso to section DC 2 (1) allows the taxpayer to elect to have the amount which would normally be assessable in the second or third year allocated instead wholly or partly to an earlier year in the three-year period. This means that all or part of the amount can be assessed in the year of remission and/or the first year after remission.

Under section DC 2 (3), a taxpayer who wants to make such an election must make it within the time for filing his or her tax return for the year to which the income is to be allocated. Once made, this allocation becomes irrevocable.

If a taxpayer ceases to carry on the business for which a remitted loan was given, any amount not already allocated is deemed to be assessable income for the year that the business ceased.

Example:

A sharemilker, Sam Cheeseman, received a sharemilker's suspensory loan of $6,000 on 12 May 1984 to help him buy his first dairy farm. The term of the loan is ten years. Provided Mr Cheeseman personally owns and farms the property for the ten-year period, the loan is interest free and written off at the end of that period.

Sam meets the conditions of the loan and it is remitted on 13 May 1994. Sam has the industry balance date of 31 May. Under section DC 2 (1) one-third of the amount remitted is deemed to be assessable income in each of the 1994, 1995, and 1996 income years - $2,000 for each year.

If Sam makes the appropriate election, the $4,000 deemed to be assessable income in the 1995 and 1996 years can be allocated wholly or partly to either of the 1994 and 1995 income years. In effect, this means that Sam could have the entire amount assessed in the 1994 income year, or could allocate the $4,000 in what ever portion he so wishes between the 1994 and 1995 income years.

GST - impact on the preparation of income tax accounts

Introduction

This item explains how GST affects income and expenses when people prepare their income tax accounts.

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

Summary

GST registered persons generally prepare their income tax accounts on a GST exclusive basis. A registered person's assessable income is adjusted to account for:

- GST not claimed as an input tax deduction for GST purposes; and
- GST adjustments made under section 21.

A non-registered person treats GST on the same basis as any other cost and completes GST inclusive accounts.

Legislation

Cross-reference table

Income Tax Act 1994	**Income Tax Act 1976**
ED 4	140B
EG 1	108

Section ED 4 of the Income Tax Act 1994 provides the specific rules for the income tax treatment of GST.

Section ED 4 contains two general provisions. In summary these are:

- A person's assessable income excludes any output tax charged on supplies made (sales), and any refunds of GST from the Commissioner.
- A person cannot deduct from assessable income any input tax charged, levied, or calculated to that person on supplies received (purchases and GST paid to Customs), or any GST payable to the Commissioner.

However, the following are exceptions to the above general provisions:

- A GST adjustment under section 21(1) for the exempt use of a business purchase is deductible from assessable income.
- A GST adjustment under section 21(5) for the business use of a private or exempt purchase is included as assessable income.
- A GST adjustment under section 21(3) on supplies to employees that are subject to fringe benefit tax is deductible from assessable income.

The first two exceptions (relating to section 21(1) and 21(5)) do not apply to GST adjustments for the permanent change in the principal purpose of a capital asset (for example, an adjustment to reflect the permanent change in the use of a motor vehicle from business use to exempt use). The GST amount of such adjustments is "capitalised" to the asset. This means that for the purposes of making a depreciation deduction under section EG 1 of the Income Tax Act 1994, the cost price is:

- reduced when the GST adjustment arises from the permanent change from a non-taxable purpose to taxable purpose; and
- increased when the GST adjustment arises from the permanent change from a taxable purpose to a non-taxable purpose.

Section ED 4 of the Income Tax Act 1994 also provides that a GST exclusive value is applied to the determination of trading stock values, the calculation of capital expenditure, and the calculation of depreciation recovered.

Preparing income tax accounts

Non-registered persons

Non-registered persons cannot deduct input tax for GST charged on expenditure incurred. This means that GST charged to them is a real cost. To account for the “cost” of GST, non-registered persons complete their income tax accounts on a GST inclusive basis. This means that all expenditure items are claimed inclusive of the GST charged, depreciation is based on the GST inclusive cost of the asset, and trading stock is valued using the GST inclusive cost of the stock.

Section ED 4 of the Income Tax Act 1994 does not apply to non-registered persons.

Registered persons

Registered persons may complete their income tax accounts on a GST inclusive or GST exclusive basis. The application of section ED 4 of the Income Tax Act 1994 ensures that GST does not affect the calculation of a person’s income tax liability.

The “Statements of Standard Accounting Practice” (“SSAPs”) published by the New Zealand Society of Accountants describe the methods of accounting approved by the Council of the New Zealand Society of Accountants. SSAP 19 states that the preferred method of accounting for GST is to state both income and expenditure items net of GST, but that GST inclusive amounts should be used for expenditure items when no input tax deductions are claimed.

GST inclusive accounts

GST inclusive accounts record income and expenditure on a GST inclusive basis. Revenue and expenditure amounts are calculated using GST inclusive values. To eliminate GST from the net profit figure, GST refunds are treated as assessable income and GST paid to Inland Revenue is allowed as a deduction against assessable income.

GST exclusive accounts

GST exclusive accounts record transactions using GST exclusive values, taking into account any GST adjustments made under section 21(1) and section 21(5), and any expenditure items not claimed for GST purposes.

Example

A company has sales including GST of $112,500, inputs including GST of $33,300, and wages of $40,400. In that income year it provides $9,000 of fringe benefits to employees, and purchases plant costing $22,500 including GST. Some of the company’s assets are applied to a minor degree for making GST exempt supplies, and ongoing output tax adjustments totalling $1,200 are made in that year under section 21(1).

GST exclusive accounts - registered person

Sales		$100,000
Expenditure		
Inputs	$29,600	
Wages	$40,400	
Depreciation of plant (10% of $20,000)	$ 2,000	
Output tax relating to GST adjustments		
• Section 21(1)	$ 1,200	
• Section 21(3)	$ 1,000	
	$74,200	
Net profit		$ 25,800

GST inclusive accounts - registered person

Sales		$112,500
Expenditure		
Inputs	$33,300	
Wages	$40,400	
Depreciation of plant (10% of $20,000)	$ 2,000	
GST payable*	$11,000	
	$86,700	
Net profit		$ 25,800

* GST payable calculated as follows:

Output tax:	1/9th x $112,500	$12,500	
	Section 21(1)	$ 1,200	
	Section 21(3)	$ 1,000	
			$14,700
Input tax:	1/9th x $33,300	$ 3,700	
	1/9th x $22,500	$ 2,500	
			$ 6,200
GST payable to IRD			$ 8,500
Add input tax deduction for capital item (not deductible for income tax purposes)			$ 2,500
GST payable figure to include in accounts			$11,000

Determining a person's permanent place of abode

Summary

This item discusses the various factors to take into account when determining whether a person has a permanent place of abode in New Zealand.

An overview of the New Zealand residence rules, including a discussion of the meaning of permanent place of abode, appeared initially in PIB 180 (June 1989).

Case law establishes that when determining whether a person has a permanent place of abode in New Zealand the material factors to consider are continuity, the duration of the person's presence in New Zealand, and the durability of the person's association with New Zealand. Those factors are weighed and viewed in context as a whole rather than in isolation.

All legislative references in this item are to the Income Tax Act 1994 unless otherwise indicated.

Legislation

Cross-reference table

Income Tax Act 1994	**Income Tax Act 1976**
BB 3	242
BB 11	294
OE 1	241
OE 1 (1)	241(1)

Under section BB 3, a person who is resident in New Zealand is liable for income tax on all income derived at the time he or she was resident, whether the income is derived from New Zealand or from elsewhere. The person's liability is subject to other provisions of the Act (for example, section BB 11 which allows relief from double taxation on income potentially liable for tax in two or more countries).

Section OE 1 sets out the tests for whether a person is a resident in New Zealand. Under section OE 1 (1) the overriding test of residence is whether the person has a "permanent place of abode" in New Zealand. Section OE 1 (1) applies despite any other provision in section OE 1. OE 1 (1) states:

> Notwithstanding any other provision of this section, a person, other than a company, is resident in New Zealand within the meaning of this Act if that person has a **permanent place of abode** in New Zealand, whether or not that person also has a permanent place of abode outside New Zealand [emphasis added].

Application

The legislation does not define "permanent place of abode". Case law has established that the expression means a "fixed and habitual place of abode", "a place of abode with which the person has an enduring relationship and where the person habitually or normally lives".

Whether a person has a permanent place of abode is a question of fact, and a number of factors are taken into account such as:

- relevant period of association with New Zealand
- continuity and duration of presence
- durability of association.

Relevant period of association with New Zealand

In determining whether a person has a permanent place of abode, a person's past and future associations with New Zealand can be considered. The inquiry is not limited to factors occurring within the relevant income year(s).

Continuity and duration of presence

How long has the person been absent from New Zealand? Generally, the longer a person is absent from New Zealand, the more likely it is that he or she does not have a permanent place of abode here. A temporary stay overseas will usually point to a person having a permanent place of abode in New Zealand.

In *FCT v Jenkins* 82 ATC 4,098 (an Australian case), Justice Sheahan discussed the meaning of a "temporary" stay overseas. He held that the fact the taxpayer had agreed to accept a transfer for a fixed period did not mean that his stay away was only temporary as opposed to leaving Australia permanently. He said at page 4,101:

> ...how long a stay is a "temporary" one. If a stay [overseas] of ten years cannot sensibly be regarded as "temporary", why should a period of three years be so regarded. True it is that in the Shorter Oxford Dictionary one of the primary meanings of "temporary" is "lasting for a limited time". To limit means, inter alia, to assign within limits, **but I baulk at the notion that a stay out of Australia by a person on transfer for a fixed period of ten years must be regarded as temporary simply because the limits of the stay are fixed and ascertainable** [emphasis added].

Durability of association

"Durability of association" involves looking at the extent and strength of the attachments and relationships that the person has established and maintained in New Zealand. A number of relevant factors include:

Availability and use of dwelling

What type of accommodation does the person have while in New Zealand? Does the person rent, board, own a home, live with relatives, or house sit? If a person owns a home, what happens to it while the person is overseas? Is it let out, occupied, unoccupied, or made available to friends?

The pattern of accommodation is important. A person owning or occupying a house for a number of years (as opposed to temporary accommodation) is more likely to have an enduring connection with New Zealand.

Intention

Does the person intend to return to New Zealand? Determining a person's intention is a subjective matter, but the actual actions of the person can later indicate what his or her intention really is. A person's intention is important, but it is not viewed in isolation and is balanced against the other factors.

Family and social ties

Does the person have a spouse or children? Is the person's family accompanying him or her overseas? Where does the person's immediate family live? How strong are the family ties?

The weight attached to family ties may vary from individual to individual according to the circumstances. Generally, the stronger the family ties are to New Zealand the more likely it is that the person has a close association with New Zealand.

Other social ties may also be important, for example, sporting and cultural connections.

Employment and business interests and economic ties

How much of the person's employment, business, trade, or profession is carried out in New Zealand? Does the person retain employment, business, trade, or professional ties with New Zealand while absent? Does the person retain membership of professional and trade associations in New Zealand? Has the person resigned or applied for leave to go overseas?

The person's overall economic connections with New Zealand are also relevant. Does the person have credit cards, bank accounts, shares, property investments, superannuation, or other investments in New Zealand?

All of these factors can indicate that the person has a close association with New Zealand.

Personal property

If the person has personal property, (e.g., furniture or a vehicle) situated in New Zealand, that can be taken into account in determining whether the person has an enduring association with New Zealand.

Miscellaneous

Miscellaneous factors, such as whether the person receives any social welfare payments or returns to New Zealand for holidays, may also be relevant.

Conclusion

Case law establishes that in determining whether a person has a permanent place of abode in New Zealand the material factors to consider are continuity, the duration of the person's presence in New Zealand, and the durability of the person's association with New Zealand. Those factors are weighed and viewed in context as a whole rather than in isolation.

Case law

The following examples from case law may provide guidance as to the way the courts have considered the various factors.

Case J98 (1987) 9 NZTC 1,555

The objector, a health inspector from New Zealand, exchanged jobs and homes with a person from Canada. The objector and his family were absent from New Zealand for a total of 315 days. Judge Barber of the Taxation Review Authority held that the objector's permanent place of abode during the period of his absence was New Zealand. The factors that were material in the case were:

- The objector retained his job in New Zealand during the period of the exchange.
- The employer released the objector on leave for 10 months.
- There were documents stating that it was only a temporary exchange and each health inspector was to return to his job in his own country.
- The objector retained his home during the exchange and could re-occupy it once he returned from overseas.
- The objector continued to live in the same home for 15 months when he returned from overseas.

Case H97 (1986) 8 NZTC 664

A construction worker entered into a contract of employment to work at a mining site in New Guinea for a minimum period of six months. Before his departure the objector lived with his parents, and left in their care his motor vehicle for resale. He took his other personal belongings to New Guinea. While in New Guinea the objector lived in spartan conditions. After six months he returned to New Zealand for a holiday. However, he became ill and remained in New Zealand.

Judge Barber of the Taxation Review Authority held that the objector's permanent place of abode was the home of his parents in New Zealand. He considered the following factors to be relevant in the particular case:

- The construction camp was of a temporary or transitory nature.
- The objector had entered into a contract of employment for a fixed period.
- The home of the objector's parents was his "fall-back base".

Judge Barber noted that in his evidence the objector seemed to suggest that he intended to remain out of New Zealand indefinitely. He said at page 668:

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Case law has held that in determining where the permanent place of abode is located, the Authority should look at "**not only what was intended but what in fact occurred**": Case F139 (ibid). The objector stated that his intention "to stay out of New Zealand" is proved by his possession of the air ticket to Perth before he underwent medical tests in New Zealand. **However, the concept of staying out of New Zealand for a substantial time is not inconsistent with having a permanent place of abode in New Zealand** [emphasis added].

Case Q55 (1993) 15 NZTC 5,313

The objector was a university professor who went on sabbatical leave overseas for a period of 368 days. During his absence the objector retained ownership of his city residence in New Zealand and ensured that it was available for reoccupation by him and his wife as their home immediately upon their return to New Zealand. It was clear that their stay overseas was temporary and that they intended to return to the house. They retained the same telephone number. They retained possession of the small basement room for storage purposes and a garage in which the objector's wife's car was stored.

The objector continued to be employed by the university while overseas and was paid by the university during his absence. He retained other extensive financial ties with New Zealand. He derived dividends from 11 New Zealand companies. He had investments in 11 overseas banks or companies and net dividends or interest was forwarded to New Zealand for him. He derived rental income from about five properties in New Zealand. He also retained membership of a medical care society and of other associations and clubs.

The objector and his wife were out of New Zealand for 368 days from 21 January 1990 until 25 January 1991. Judge Barber of the Taxation Review Authority thought that relative to the circumstances, that was not a particularly long period. The objector had resided at the city residence for about 51 years before his departure overseas. It was also relevant that the objector lived at the city residence ever since his return to New Zealand in January 1991.

The objector argued that he could not have been a New Zealand resident because there was nowhere in New Zealand he could have slept or lived. The objector submitted that the main issue in the case was whether a house let on long-term lease can be a person's permanent place of abode.

Judge Barber found that the objector had and continued an enduring relationship with New Zealand and his permanent place of abode was in New Zealand. He was simply on leave from his New Zealand employer during his absence and retained his dwelling, assets, and connections. Judge Barber said at page 5,319:

> I consider that having a permanent place of abode in New Zealand, in terms of s.241(1) of the Act, is not the same as having accommodation there at one's disposal on a permanent basis... in my view, **it does not much matter that a house is not available for a taxpayer's use during the taxpayer's temporary absence from New Zealand.**
>
> ...I consider that the phrase "has a permanent place of abode" require, inter alia, **the availability of a place in which to dwell** but that the existence of a home or dwelling does not necessarily create a permanent place of abode. The latter concept also requires some durability of connection with a locality as well as the availability of a place in which to sleep.
>
> ...**I think the strength of a person's ties with New Zealand is the paramount factor in assessing residency but those ties must include the availability on a permanent basis (continuing indefinitely) of a place in which to dwell and sleep if that person is to have a permanent place of abode somewhere in New Zealand**. The enduring availability of a dwelling is a fundamental criterion to having a permanent place of abode, but it is not decisive on its own [emphasis added].

Example

Bob left New Zealand to take up a job as a chef in London. Initially, it was a three year contract, but if all went well Bob intended to stay there indefinitely. Most of Bob's family and friends lived in London and his wife was to accompany him. Bob sold his house and his car, and gave some furniture he did not want to his sister. He closed off his New Zealand bank accounts and terminated his New Zealand superannuation scheme. Bob also resigned from the various clubs he belonged to and has no business or professional ties with New Zealand.

After considering Bob's circumstances, the Commissioner would determine that Bob did not have a permanent place of abode in New Zealand.

1995 international tax disclosure exemption ITR6

Introduction

Section 61 of the Tax Administration Act 1994 (TAA) requires people to disclose interests they hold in foreign entities. This section came into force on 1 April 1995, replacing the previous section 245W of the Income Tax Act 1976.

Under section 61(1) of the TAA, a person who has a control or income interest in a foreign company or an interest in a foreign investment fund (FIF) at any time during the income year must disclose the interest held. However, section 61(2) allows the Commissioner of Inland Revenue to exempt any person or class of persons from this requirement if disclosure is not necessary for the administration of the international tax rules (as defined by section OZ 1) contained in the Income Tax Act 1994 (ITA).

Under section 61(2), the Commissioner has issued an international tax disclosure exemption which applies for the income year ended 31 March 1995. This exemption may be cited as "International Tax Disclosure Exemption ITR6", and the full text appears at the end of this item.

Scope of exemption

The scope of the 1995 disclosure exemption is the same as the 1994 exemption. Disclosure is required for these interests:

- an interest held in a FIF
- an "income interest of 10% or greater" held in a foreign company. The disclosure obligation applies to all foreign companies regardless of the country of residence.

An "income interest of 10% or greater" is defined in section OB 1 of the ITA. For the purposes of determining exemption from disclosure it includes these interests:

1. an income interest held directly in a foreign company
2. an income interest held indirectly through any interposed foreign company
3. an income interest held by an associated person (which is not a controlled foreign company) as defined by section OD 8 (3) of the ITA.

Example

If a husband and wife each hold an income interest of 5% in a Cayman Islands company, the interests would not be exempt from disclosure because the husband and wife are associated persons under section OD 8 (3)(d). Under the associated persons test they are each deemed to hold the other's interests, so they each hold an "income interest of 10% or greater" which must be disclosed.

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

In this example the husband and wife must disclose their interests as interests in a foreign company and as interests in a FIF. However, only the FIF interests should be disclosed on an IR 4H series form (see "Overlap of interests" on page 14).

Foreign company interests

A person who holds a control or income interest in a foreign company must disclose that interest, regardless of the company's country of residence. The 1995 international tax disclosure exemption also makes no distinction about residence, and any interest in a foreign company which is an "income interest of 10% or greater" must be disclosed. Disclosure is to be made on form IR 4G "Interest in a Foreign Company Disclosure Schedule".

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

- attributed (non-dividend) repatriation rules apply to an "income interest of 10% or greater" in a controlled foreign company (CFC) regardless of the CFC's country of residence.
- to identify tax preferences applied by the taxpayer (whether or not specified in Schedule 3, Part B of the ITA) in respect of an interest held in a foreign company which is resident in a Schedule 3, Part A of the ITA jurisdiction .
- the requirement for a CFC which is resident in a country not listed in Schedule 3, Part A of the ITA to attribute foreign income or loss from 1 April 1993.

Foreign investment fund interests

An interest in a foreign entity must be disclosed if it constitutes an "interest in a foreign investment fund" specified within section CG 15 (1) of the ITA. These types of interest must be disclosed:

- rights in a foreign company or anything deemed to be a company for the purposes of the ITA (e.g., a unit trust)
- an entitlement to benefit from a foreign superannuation scheme
- an entitlement to benefit from a foreign life insurance policy
- an interest in an entity specified in Schedule 4, Part A of the ITA (no entities were listed when this TIB went to press).

However, any interest that does not fall within the above types or which is specifically excluded as an interest in a FIF under section CG 15 (2) does not have to be disclosed. The following are listed in section CG 15 (2) as exemptions from what constitutes an interest in a FIF:

- an "income interest of 10% or greater" in a CFC
- an interest in a foreign entity that is resident and liable to income tax in a country or territory specified in Schedule 3, Part A of the ITA
- an interest in an employment-related foreign superannuation scheme
- interests in foreign entities held by a natural person, if the aggregate cost or expenditure incurred in acquiring the interests remains under $20,000 at all times during the income year
- an interest held by a natural person in a foreign entity located in a country where exchange controls prevent the person deriving any profit or gain or disposing of the interest for New Zealand currency or consideration readily convertible to New Zealand currency
- an interest in a foreign life insurance policy or foreign superannuation scheme acquired by a natural person before he or she became a New Zealand resident for the first time, for a period of up to four years.

There is more information on exemptions from the FIF rules in Inland Revenue's "Foreign Investment Funds" booklet (IR 275B).

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A person who holds an interest in a FIF at any time during the 1995 income year must disclose the interest and calculate FIF income or loss on the form "Interest in Foreign Investment Fund Disclosure Schedule and Worksheet" (IR 4H). The FIF rules allow a person four options to calculate FIF income or loss (accounting profits method, branch equivalent method, comparative value method and deemed rate of return method), so the Commissioner has prescribed four forms under the IR 4H series to disclose and calculate FIF income or loss from an interest in a FIF using one of the methods.

Overlap of interests

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

However, to meet the disclosure obligations only one disclosure return (either form IR 4G or the appropriate IR 4H series form) is required for each interest a person holds in a foreign entity.

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

1. Use the appropriate IR 4H series form to disclose all FIF interests, and in particular:
   - an interest in a foreign company which is not resident in a Schedule 3, Part A country and is not a CFC (regardless of the level of interest held)
   - an income interest of less than 10% in a CFC which is not resident in a Schedule 3, Part A country
   - an interest in a foreign life insurance policy or foreign superannuation scheme, regardless of the country or territory in which the entity was resident.
2. Use the IR 4G form to disclose:
   - an "income interest of 10% or greater" in a foreign company (regardless of the country of residence) that is not being disclosed on the appropriate IR 4H series form.

Disclosure is not required on either forms IR 4G or IR 4H for an income interest of less than 10% in a foreign company (whether a CFC or not) which is also not a FIF interest. An example is an interest which is excluded under the Schedule 3, Part A exemption of the FIF rules.

Summary

The 1995 international tax disclosure exemption removes the requirement to disclose an interest held in a foreign company (if the interest is not also an interest in a FIF) that does not constitute an "income interest of 10% or greater" (i.e., it is less than 10%). The disclosure exemption is not affected by the foreign company's country of residence. Further, an interest in a FIF must be disclosed.

Persons not required to comply with section 61 of the Tax Administration Act 1994

This exemption may be cited as "International Tax Disclosure Exemption ITR6"

1. Reference

This exemption is made pursuant to section 61(2) of the Tax Administration Act 1994. It details interests in foreign companies in relation to which any person is not required to comply with the requirement in section 61 of the Tax Administration Act 1994 to make disclosure of their interests, for the income year ending 31 March 1995. This exemption does not apply to interests in foreign companies which are interests in foreign investment funds.

2. Interpretation

In this exemption, unless the context otherwise requires, expressions used have the same meaning as in section OB 1 of the Income Tax Act 1994 or the international tax rules (as defined by section OZ 1 of the Income Tax Act 1994).

3. Exemption

Any person who has an income interest or a control interest in a foreign company (not being an interest in a foreign investment fund), in the income year ending 31 March 1995, shall not be required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that income interest or control interest in that foreign company and that income year, except where:

- the interest held by that person during any accounting period of the foreign company (the last day of which falls within that income year of the person), would constitute an "income interest of 10% or greater", as defined by section OB 1 of the Income Tax Act 1994, as if the foreign company was a controlled foreign company.

This exemption is made by me acting under delegated authority from the Commissioner of Inland Revenue pursuant to section 7 of the Tax Administration Act 1994.

This exemption is signed on the 17th day of July 1995.

Brian Hutton
Acting Director, Taxpayer Audit

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 1994

Self-employed person's medical costs not deductible

Section BB 7 (section 104, Income Tax Act 1976) - Expenditure or loss incurred in the production of assessable income: A self-employed builder recently fell while working on a construction site, injuring his back. The Accident Rehabilitation and Compensation Insurance Corporation (ACC) accepted his claim for compensation as a work injury, and paid for part of his medical treatment. The builder paid the balance of the medical costs himself. He asked if he can claim a deduction for these costs.

Section BB 7 is the main provision allowing for deductions. It states that:

> In calculating the assessable income of any taxpayer, any expenditure or loss to the extent to which it-
>
> (a) Is incurred in gaining or producing the assessable income for any income year; or
>
> (b) Is necessarily incurred in carrying on a business for the purpose of gaining or producing the assessable income for any income year-
>
> may, except as otherwise provided in this Act, be deducted from the total income derived by the taxpayer in the income year in which the expenditure or loss is incurred.

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If the expenditure is necessarily incurred in carrying on a business, a deduction is permitted under section BB 7. Notwithstanding section BB 7, in some cases section BB 8 specifically limits the wider deductions that would otherwise be permitted under section BB 7. Under section BB 8 (b), in calculating the assessable income derived by any person, no deduction is allowed for:

Any expenditure or loss to the extent to which it is of a private or domestic nature:

Inland Revenue's view is that expenditure required to remedy injury or disability to the human body is expenditure of a private or domestic nature, even if the expenditure is to enable the taxpayer to resume earning income by having his or her health restored. Such expenditure is not incurred in the course of gaining or producing income, nor is it an overhead or functioning cost in a taxpayer's business. Instead, it is a health maintenance cost for a taxpayer as a human being.

In this case the builder cannot claim an income tax deduction for the medical costs that weren't recoverable through ACC, because they are private or domestic expenditure.

Rental property expenses - relocating a rental building

Section BB 8 (section 106(1)(a), Income Tax Act 1976) - Certain deductions not permitted: A taxpayer is in the business of renting houses. She plans to relocate one of her houses and build a second dwelling on the site. She has asked if the following costs are deductible:

- relocating the old house
- repairs to the old house arising from damage caused by the shift
- upgrading the old house at the time of the relocation

Section BB 7 allows a deduction for any expenditure or loss which is incurred in gaining or producing assessable income, or in carrying on a business for that purpose. However, under section BB 8 capital expenditure is not deductible. (See previous question for relevant text from section BB 7.)

Inland Revenue's view is that the relocation costs of the house are a capital cost, so they are not deductible. The cost is not a repair, or an alteration, or maintenance to a building in the normal sense.

Any minor repairs to the house as a result of damage from the shift will be deductible, as will any routine maintenance carried out at the same time. The upgrading done at the same time as the shift must be capitalised and depreciated.

The taxpayer may need to make an apportionment between non-deductible capital expenditure (moving and upgrading the building), and deductible revenue expenditure, (repairs and maintenance). Architects and builders are usually able to show such apportionments in their charges.

For more information on repairs and maintenance and capital/revenue expenditure, see TIB Volume Five, No. 9 (February 1994).

Industrial research promoter - income tax exemption

Section CB 4 (1)(b) (section 61(24), Income Tax Act 1976) - Categories of exempt income: A company plans to apply to the Royal Society of New Zealand for approval as an industrial research promoter. Before submitting its application, a representative of the company has asked Inland Revenue to confirm that a company can be eligible for the income tax exemption in section CB 4 (1)(b).

Section CB 4 (1)(b) exempts from tax:

Income derived by any society or association, whether incorporated or not, which is, in the opinion of the Commissioner, established substantially or primarily for the purpose of promoting or encouraging scientific or industrial research, and which is approved by the Royal Society of New Zealand, if no part of the income or other funds of the society or association is used or available to be used for the private pecuniary profit of any proprietor, member, or shareholder of the society or association.

The Royal Society and Inland Revenue have agreed on the following eligibility criteria for exemption under section CB 4 (1)(b):

- The applicant must be an organisation (not an individual), but it does not have to be incorporated.
- The organisation must be established substantially or primarily to promote or encourage scientific or industrial research.
- The Royal Society must be satisfied that such research falls within the Society's definition of that term.
- The organisation must have one of: a constitution, charter, trust deed, rules, or Memorandum and Articles of Association, and this must include clauses to the effect that:
  - No part of the organisation's income or other funds may be used or be available to be used for the private pecuniary profit of any proprietor, member, or shareholder; and
  - If the organisation is wound up, any surplus funds are to be transferred to any tax exempt organisation having similar aims and objects.

The word "company" implies an *association* of a number of individuals formed for some common purpose. A company will not fail to qualify for the exemption simply because it is a company.

We advised the company representative that the company's application will be considered against the above criteria, firstly by the Royal Society of New Zealand and secondly by the Commissioner. However, as administrator of the Income Tax Act 1994, the Commissioner must ultimately determine any particular applicant's eligibility for tax exemption.

If Inland Revenue grants approval, it will apply from the start of the income year in which the application was made or from such other date as the Commissioner may determine.

Overseas dividends - income tax liability

Section CF 1 (section 65(2)(j), Income Tax Act 1976) - Dividends included in assessable income: A taxpayer received a dividend from an overseas company whose advice notice stated that the dividend had been paid from the share premium account. No tax had been deducted by the overseas company. The taxpayer has asked if the dividend is taxable in New Zealand, and if she should include it in her tax return.

Dividends are assessable income for taxation purposes under section CF 1, whether paid from an overseas source or paid by a New Zealand company. However, certain dividends are excluded from the term "dividends"; these are detailed in section CF 3 (section 4A, Income Tax Act 1976).

Although this overseas dividend was paid from the company's share premium account, it does not fit within the exclusions. Therefore the dividend is still a taxable dividend and must be included as assessable income.

Write-off of assets costing $200 or less

Section EG 16 (section 108O, Income Tax Act 1976) - Low value asset write-off: A taxpayer heard that the depreciation rules allow the cost of assets purchased for $200 or less to be deducted from assessable income in the year of purchase. She wonders if this is conditional in any way.

From the 1993-94 income year onwards, the cost of low value property may be claimed as a deduction in the year in which it was acquired or created for income-producing purposes and was primarily and principally used, or available for use, for those purposes. A taxpayer can claim the deduction, provided all the following criteria are met:

- The property would be "depreciable property" as defined in section OB 1 (section 107A, Income Tax Act 1976) but for the election to treat it as low value property.
- The asset is not created at the same time or purchased from the same supplier at the same time as other assets to which the same depreciation rate applies (unless the entire purchase costs less than $200).
- The asset will not become part of other depreciable property (for example, materials to build a wall in a factory).
- The cost of the asset is not specifically deductible under any other provision of the Act.

"Low value property" is defined in section OB 1 (section 108O, Income Tax Act 1976) as any property of a taxpayer:

(a) Which is acquired or created by the taxpayer for a total cost not exceeding $200 or such higher value as may be specified by the Governor-General by Order in Council...

The $200 write-off limit excludes GST for GST registered taxpayers who acquire the property for the principal purpose of making taxable supplies. It includes GST for those taxpayers not registered for GST, or when an input tax deduction cannot be claimed.

If an asset which has been written off under the above provisions is subsequently sold, the sale proceeds are assessable income in the year the asset is sold.

Income equalisation scheme deposits and matrimonial property agreements

Section EI 1 (section 175, Income Tax Act 1976) - Income equalisation deposits: A farmer made deposits to an income equalisation account under section 175 of the Income Tax Act 1976, and claimed the appropriate deduction from his assessable income. Subsequently, he entered into a matrimonial property agreement in which half of his assets were transferred to his wife. Since entering into that agreement, the couple have filed partnership returns for their farming business, splitting profits on a 50:50 basis. The farmer has now applied for a refund of his deposits, and has asked if that assessable income is assessed to him individually or to the partners of the partnership on a 50:50 basis.

Under section EI 1 (5), amounts entered in any taxpayer's income equalisation account can in no way be assigned, charged, or passed to any other person by operation of the law. Although the farmer entered into a matrimonial property agreement with his wife, he made the deposit before entering into the agreement. He will therefore have to return the income equalisation refund in his own tax return.

Qualifying company shareholder becoming sui juris

Section HG 4 (section 393D, Income Tax Act 1976) - Shareholder elections: A shareholder in a qualifying company has a 19-year old son who is also a shareholder of the company. She has asked if her son turning 20 will affect the shareholder election in any way.

Section HG 4 (1) states that:

A company may only be a qualifying company where each shareholder in that company who is sui juris has by notice in writing to the Commissioner in such a form as the Commissioner may allow-

(a) Elected that the company should become a qualifying company; and

(b) Elected to be personally liable in respect of each income year during which the election is at any time in effect for such percentage of...

"Sui juris" is a legal phrase to describe people who are under no disability affecting their legal capacity to deal with their property, bind themselves to contracts, and to sue and be sued. People who do not have full legal capacity (and are therefore not sui juris) include minors and people who are mentally disabled. A minor is a person under the age of 20 years.

Section HG 6 (section 393F, Income Tax Act 1976) allows a period of grace for new shareholder elections made under specified circumstances. Section HG 6 (3) states:

A company shall not cease to be a qualifying company by reason only of a failure to comply with section OB 3 (1)(f) due to-...

(b) An existing shareholder becoming sui juris,-

if, within the period of 63 days following the date upon which the shares were acquired or the shareholder became sui juris, or within such extended period as the Commissioner may allow on the application of the new shareholder or the newly sui juris shareholder, or of any other person who may make a shareholder election in respect of the relevant shareholding, a valid shareholder election is made in respect of that shareholding.

Once the son turns 20 years of age, and provided he is under no disability, he will be sui juris. Accordingly, he will have to make a shareholder election within the specified timeframe if the company is to remain a qualifying company.

Estate cannot pass on losses to beneficiary

Section HH 3 (section 227, Income Tax Act 1976) - Income assessable to beneficiaries: A beneficiary of an estate that has losses at the time of distribution has asked if, as one of the three beneficiaries, she can offset one-third of the estate's loss against other income she has derived during the income year.

Under section HH 3 a person's assessable income in any income year includes any beneficiary income and any taxable distribution derived by that person in that income year.

"Beneficiary income" is defined in section OB 1 as:

....income derived during that income year by a trustee of the trust which -

(a) During that income year vests absolutely in interest in the beneficiary; or

(b) Is paid or applied by the trustee to or for the benefit of the beneficiary during, or within 6 months after the end of, that income year; -

but does not include income derived by a trustee of the trust in any income year during which the trust is a superannuation fund...

When an estate incurs a loss, that loss is considered to have been incurred by the trustee, not by the beneficiaries. The loss is not "beneficiary income" and cannot be passed on to the beneficiaries to be offset against income from other sources during the year in the beneficiaries' individual assessments. Instead, the estate must carry the loss forward and offset it against trustee income in future years.

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The above will not apply when the trustee carries on the business as a bare trustee. In such cases beneficiaries are treated as partners for income tax purposes, and both income and losses are transferable to them.

Resident withholding tax deducted in error - refunds

Section NF 6 (section 327F, Income Tax Act 1976) - Resident Withholding Tax deductions varied to correct errors: The treasurer of a sports club which is exempt from income tax under section CB 4 (h) (section 61(30), Income Tax Act 1976), invested surplus club funds with the local bank. When the bank paid interest it deducted resident withholding tax (RWT), despite the club holding a certificate of exemption from RWT. The treasurer has asked if there is any way this money can be refunded to the club.

An exemption from income tax granted under section CB 4 to a non-profit body or charity includes an exemption from RWT. Organisations are issued with a certificate of exemption that they can present to all the financial institutions they deal with, to ensure that RWT is not deducted from any interest they may earn.

Section NF 6 permits a bank to refund RWT deducted in error, when the refund will be made before 31 March in the year in which the deduction was made, and either:

- a resident withholding tax deduction certificate including the excess deduction has not been issued; or
- a resident withholding tax deduction certificate including the excess deduction has been returned and cancelled.

The bank will issue an amended tax deduction certificate, and either offset the amount refunded against future RWT payments to Inland Revenue, or apply to Inland Revenue for a refund of the excess RWT it has refunded to its customer.

Alternatively, under section NF 7 (section 327G, Income Tax Act 1976), Inland Revenue can refund any RWT that has been deducted in error and paid to Inland Revenue by the institution that made the deduction. This refund would go directly to the person who derived the income .

To obtain the refund, the treasurer (or another duly authorised officer of the club) must complete a Resident Withholding Tax on Interest Refund Request (IR 15F), and have it authorised by the bank (or organisation that deducted the RWT). The completed form should be presented to Inland Revenue, and we will send a refund to the club.

If the club has other unpaid tax outstanding, we may instead offset the refund against the overdue amount.

NRWT deducted at wrong rate - refunds

Section NF 7 (section 327G, Income Tax Act 1976) - Refunds of deductions: A non-resident who has money deposited with a New Zealand bank had resident withholding tax (RWT) of 33% deducted from the interest she received. She has asked if she is liable for RWT, and if not, if the over-deduction can be refunded.

Non-residents who have money deposited with New Zealand banks are liable for non-resident withholding tax (NRWT) of 15%. The tax is deducted from any interest earned, unless the deposit is subject to the approved issuer levy rules, or there is a relevant double taxation agreement in place that varies the NRWT deduction rate. Non-residents should advise their bank of their residence status so that the correct rate of tax is deducted.

Under section NF 7 (1), when the deduction of RWT exceeds the amount of tax that should have been deducted, and the tax has been paid to Inland Revenue, the excess tax must be refunded.

To apply for a refund, the non-resident should complete a Resident Withholding Tax on Interest Refund Request (IR 15F). He or she should then send the completed form and evidence to support the claim (such as a copy of the bank statement or deduction certificate) to:

Non-Resident Centre
Inland Revenue
Private Bag 1932
Dunedin
NEW ZEALAND

Secondhand motor vehicle - cost price for FBT

Schedule 2 (Tenth Schedule, Income Tax Act 1976) - Value of fringe benefit provided to employees: A company bought a secondhand car from a car hire company for $35,000. The unlimited private use of the vehicle by the firm's accountant, an employee, will be a fringe benefit.

The car is only one year old and originally cost $45,000. The car hire company's policy is to dispose of its hire vehicles after one year's use. The manager of the company that bought the car has asked what the value of the vehicle will be for FBT purposes. His company files quarterly FBT returns.

Schedule 2 shows fringe benefit values for motor vehicles used or enjoyed privately, or available for private use or enjoyment. When the motor vehicle is owned by the employer (as in this case) the value of the fringe benefit is 6% of the cost price of the motor vehicle to the employer, per quarter. The motor vehicle cost the purchaser $35,000 (including GST).

Under clause 2 of Schedule 2, the "cost price" of a car includes any GST that was paid on the acquisition of the car by the person providing the benefit.

The value of the fringe benefit is therefore $2,100 per quarter ($35,000 x 6%). FBT is payable at 49% of the value of the fringe benefit, so the quarterly FBT payable is $1,029 ($2,100 x 49%).

Income Tax (Withholding Payments) Regulations 1979

Shearing contractor with no certificate of exemption - withholding tax deductions

Regulation 12 - Tax deductions from payments made by contractors to employees or subcontractors: A shearing contractor who does not have a certificate of exemption has asked whether a farmer must deduct withholding tax from the contract payment made to him. The shearing contractor will be faced with a shortage of funds if, after withholding tax is deducted, he has to pay PAYE deducted from his shearers' wages to Inland Revenue.

Under regulation 1(3), the withholding payments regulations apply to all withholding payments. The Schedule attached to the Regulations provides that payments for shearing are to have withholding tax deducted at the rate of 15 cents in the dollar (30 cents at the no-declaration rate).

The shearing contractor does not have a certificate of exemption, so the farmer must deduct withholding tax at 15 cents in the dollar. If the shearing contractor has not properly completed an IR 13, the farmer must deduct withholding tax at the no-declaration rate of 30 cents in the dollar.

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Regulation 12(b) gives some relief to the shearing contractor by providing that when the farmer has deducted withholding tax, the shearing contractor no longer has to account to Inland Revenue for the PAYE deducted from his shearers on a monthly basis.

When the shearing contractor files his wages reconciliation, the credit held from the withholding tax is first offset against any PAYE due.

Goods and Services Tax Act 1985

Cruise ship passengers - when purchases can be zero-rated

Section 11(1) - Zero-rated goods: A retail company frequently sells goods to customers from visiting cruise ships.

The goods usually have a value of less than $1,000, and so there is no requirement for them to be entered for export. The retail company obtains documentation confirming the customer's overseas travel. A representative from the company has asked Inland Revenue to confirm that goods delivered direct by her company to the ship's purser, and signed for by the purser, will qualify for the zero-rating provisions of the Goods and Services Tax Act 1985.

As a general rule, the effects of GST are felt on goods and services consumed or supplied in New Zealand. When goods and services are supplied overseas, GST should not be charged at the full rate, for by doing so the price of the commodity would increase on overseas markets.

Section 11(1)(ab) allows goods normally subject to GST at 12.5 percent under section 8 to be zero-rated when:

The supplier has satisfied the Commissioner that the goods have been exported by the supplier to a place outside New Zealand.

To zero-rate the goods in the above situation, the supplying company must do two things:

- It must ensure that the document signed by the purser contains a clause to the effect that the purchaser will not gain access to the goods while they are in New Zealand. When the ship berths at more than one New Zealand port, the goods may only be made available to the purchaser after the vessel has left its final New Zealand port of call.
- It must keep records that identify the purchaser's name and address and the ship's name and departure date, together with a copy of the document signed by the purser.

If the retailer meets these conditions, it will be considered to have satisfied the Commissioner under section 11(1)(ab) and will be able to zero-rate supplies made under the conditions outlined by the representative. We consider that the supplier is complying with the legislation through the purser who is ensuring that the goods will not become available to the purchaser until the vessel has left New Zealand.

For more information about zero-rating of goods supplied to people leaving New Zealand, see TIB Volume Six, No.7 (December 1994).

GST on excise duty and "in bond" goods

Section 13 - Imposition of goods and services tax on goods liable to excise duty and supplied at "in bond" prices: A taxpayer has asked what bonded warehouses are, and what happens when a supplier sells goods held in them. The taxpayer is considering purchasing goods stored in a bonded warehouse.

Part IVA of the Customs Act 1966 (the Customs Act) imposes excise duty on the manufacturing of tobacco products, alcoholic beverages, and fuel. New Zealand Customs grants licences to people to operate “bonded” warehouses when they manufacture or export goods that are subject to excise duty. People who hold such a licence may keep the goods and only pay the excise duty when they remove the goods from the bonded warehouse.

People often sell goods they are storing in bonded warehouses. Usually, the vendors include the excise duty in the sale price of the goods. However, sometimes the sale price does not include excise duty.

When the supplier sells the goods for a price that includes excise duty, section 8 imposes GST on the supply. The total value of the supply is the price charged plus the excise duty imposed on the goods.

If the price excludes excise duty, section 8 only imposes GST on the price the buyer pays for the goods because the excise duty is not included in the total consideration paid. In this instance, section 13 will apply to impose GST on the excise duty when the buyer becomes liable for excise duty.

Therefore, in answer to the taxpayer’s query:

- Bonded warehouses are premises where taxpayers may store goods that are subject to excise duty under the Customs Act. Excise duty is not payable while the goods are in store, but is paid when the goods are removed from the warehouse.
- The GST Act imposes GST on the sale of goods that the supplier is storing in a bonded warehouse. When the consideration for the supply of goods includes the excise duty, GST is levied on the price of the goods and the excise duty by section 8. When the price excludes excise duty, New Zealand Customs levies GST on the excise duty when the goods are removed from the bonded warehouse under section 13.

Progress payments for motel - private use adjustment

Section 21(1) - Adjustment for private use: A GST registered person is having a motel complex built, and running the motel will become her taxable activity. During construction, she makes progress payments to the builder which include GST. As her private accommodation will be part of the complex, she realises that she will be required to make output tax adjustments covering the private use. She has asked if the adjustments should be made from each progress payment, or when the private accommodation is completed.

The motel is being acquired for the principal purpose of making taxable supplies, so the taxpayer is allowed a full input tax deduction as long as she holds the necessary tax invoices when she files her GST return.

Section 21(1) requires the registered person to make an adjustment:

> ... to the extent that goods and services applied by a registered person for the principal purpose of making taxable supplies are subsequently applied by that registered person for a purpose other than that of making taxable supplies .....

Accordingly, the taxpayer can claim input tax deductions on the full amount of the progress payments. She will have to make output tax adjustments once she begins to use the private accommodation.

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.

Discount for early payment of share capital is not interest

Rating: •

Case: TRA 94/27 and 94/28

Act: Income Tax Act 1976 - sections 64B(1), 65(2)(j)
(Income Tax Act 1994 - sections OB 1, CE 1(1)(a))

Keywords: *interest, variable principal debt instrument*

Summary: A discount credited to shareholders' "advance" accounts for paying outstanding share capital earlier than required was not assessable as interest income to the shareholders. Further, the "advance" accounts were not variable principal debt instruments.

Facts: The objectors were shareholders who held partly-paid shares in a company. There was an arrangement between the shareholders and the company whereby the shareholders paid outstanding share capital in advance on a monthly basis over a defined period of about three years. These sums were credited to each shareholder's "advance account" by the company.

The company got into financial difficulties and sought cash by persuading its shareholders to pay for share capital earlier than they otherwise would under the monthly programme. As an inducement, the company offered a "discount". Under the discount arrangement, the shareholders would pay about 20% less than they otherwise would have done in order to have their shares fully paid up. The discounts were credited to the advance accounts. The company claimed a deduction by way of interest for the discount.

The Commissioner argued that the discount was assessable to the shareholders as interest income under section 65(2)(j). As an alternative, the Commissioner argued that the advance account was a variable principal debt instrument and, in accordance with the accruals rules, the "discount" credited was assessable income.

Decision: Judge Barber found that the discount was not a payment of interest to the shareholders and, in fact, no payment was made at all. The definition of "interest" shows that interest is a payment made to one person by another in respect of or in relation to money lent. In this case, the facts did not disclose that the shareholders lent money to the company. The shareholders simply paid a lower amount for shares than the amount originally due. Judge Barber noted that, given there was no interest payment by the company, it seemed that the company was not entitled to a deduction for the discounts.

In relation to the alternative argument advanced by the Commissioner, Judge Barber found that the advance account was not a variable principal debt instrument. The credits to the accounts were not loans to the company but subscriptions of share capital. The advance account was not in fact an account or financial arrangement into which there were to be "advances" as required by the definition of "variable principal debt instrument".

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

Whether a body corporate is carrying on a taxable activity

Rating: • • •

Case: TRA No. 92/60

Act: Goods and Services Tax Act 1985 - sections 3(1)(ka), 6(1)(a), 6(3)(a), 6(3)(aa).

Keywords: *body corporate under the Unit Titles Act 1972, taxable activity, agent*

Summary: The taxpayer is a body corporate which operates a timeshare resort. The body corporate is a separate legal entity from its proprietors. It supplies services to the proprietors in carrying on the taxable activity of administering the timeshare resort.

Facts: The objector is a body corporate constituted under the Unit Titles Act 1972. It operates a timeshare resort which has 28 units which are owned by 850 proprietors. Each unit has an individual certificate of title issued for each week purchased by an owner. The objector is responsible for managing and maintaining the property. It collects annual levies from the proprietors and uses them to pay all the outgoings on the property. The objector keeps any surplus for future repairs and maintenance on the capital assets in the resort.

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Until 31 December 1987 a consultancy company had a contract with the objector to manage the timeshare. During this time the objector registered for GST. When the objector took over the role of managing the resort in December 1987 it sought permission to cease to be registered. The Commissioner advised that the objector's registration had ceased from 30 September 1987. However, two years later the Commissioner formed the view that the objector was in fact carrying on a taxable activity and that it must be registered.

Decision: Judge Barber held that the objector must register for GST. The body corporate is a legal entity which is distinct from the proprietors. It is not merely a nominee or agent of the proprietors. It is also not the same as a group of individuals who share a holiday home as they are not incorporated in any sense. The body corporate has been given a wide range of powers under the Unit Titles Act. These powers indicate that a body corporate is an entity which is distinct from its members in both law and fact. The objector carries on the taxable activity of administering the timeshare resort. It does not matter that the activity is not carried on for pecuniary profit. The activity involves supplying services to each proprietor and the proprietors as a group for consideration in the form of levies. It makes no difference that the payment may be for capital outgoings as GST is a transaction-based tax and the supply must be examined to determine whether or not GST is chargeable.

The activity is not excluded from the application of GST as a private recreational pursuit or hobby, nor is it exempt as the provision of a financial service under section 3(1)(ka). (This section is aimed at investments and equity securities). The proprietors do not have an equity security as they do not have an interest in or a right to a share in the capital of the objector. The objector has no corporate capital.

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

Whether land purchased for the purpose of erecting a dwellinghouse

Rating: • • •

Case: Unreported TRA 94/34

Act: Stamp and Cheque Duties Act 1971 - sections 24 and 54(2)

Keywords: *conveyance duty, dwellinghouse, land acquired*

Summary: On the facts Judge Willy held that the objector did not, at the time he made the certificate to the Commissioner, have a settled intention to build dwellinghouses on the vacant sections. He did not therefore qualify for an exemption from stamp duty.

Facts: The case concerned two vacant sections known as Lot 5 and Lot 7. Before taking possession of both lots in December 1990, the objector placed them both on the market in October 1990. In December 1990 the objector purchased both lots and in February 1991 sought a conveyance duty exemption under section 24. The objector certified to the Commissioner that the land had been acquired as residential land which was to have a dwellinghouse erected upon it, building to commence in approximately two years and to be completed within three months.

Both lots were placed on the market again in April 1991 with Lot 5 selling in October 1992 and Lot 7 selling in August 1992.

Issue: The two issues that arose for consideration were:

- Whether the Commissioner is able to reopen an assessment made under section 24 that no conveyance duty is payable on a transaction and
- Whether or not the expressions of fact and intention in the certificate given by the objector must be accepted at face value by the Commissioner as existing at the time the certificate is given, regardless of any subsequent change of mind or intention by the objector.

Decision: The objector claimed that when he acquired the properties, he firmly intended to build two unit type developments, in the hope of leasing one and having the use of the other. His long term intention was to resettle in the South Island, where the properties were situated. However, in the meantime the objector had successfully stood for local office in the North Island and this, together with the requirements of his business, meant that he had abandoned any such intention.

Judge Willy considered in detail the chain of events leading to the sale of both lots. In particular he looked at the objector's explanation as to why he had placed both lots on the market prior to actually purchasing them. The objector explained that he did this in order to ascertain whether the price he was paying for the properties was realistic. Judge Willy found this explanation difficult to believe, when measured against the evidence that the objector subsequently placed both lots on the market again in April 1991.

Judge Willy noted that it was up to the objector to prove that it was more probable that events occurred as he said, than not. He commented that in judging credibility in such cases it is always important to look carefully at the actions and statements of the witness at the time and in the context of the purposes for which such actions and statements were made. On the facts Judge Willy found that the objector had failed to reach the required standard of proof. His Honour found that at the time the objector made the certificate to the Commissioner, he had no settled intention in relation to the land. Building a dwelling was merely one of a number of options the objector had. On the evidence before him, Judge Willy found that at the time of making the certificate, the objector's primary intention was to dispose of the land and liquidate debt.

Judge Willy found the legislative history of section 24 helpful in interpreting the section. He held that Parliament had intended to widen the concession when it repealed the previous exemption in 1981. This exemption had only applied to conveyances of land on which a dwellinghouse was already erected or which was accompanied by the right to require a dwellinghouse to be erected on the land. Judge Willy noted that what was important was the objector's purpose at the time of the acquisition of the property and referred to the comments of Justice Blanchard in *Baillie v CIR* (1994) 16 NZTC 11405 at 11408. His Honour noted that it was a question of fact in each case and found on the facts of this case that the objector had not discharged the required onus of proof.

His Honour then referred to the objector's further submission that section 54(2) of the Act did not give the Commissioner the right or power to revisit the issue of exemption at a later date, unless the Commissioner can show that the factual information he was provided with for the purpose of the assessment was wrong. If a purchaser had the requisite purpose at the requisite time (i.e., at the time the certificate was provided to the Commissioner), and at a later date realises that he is unable to achieve that purpose, the Commissioner has no grounds to invoke section 54(2). In February 1991 the objector had the requisite purpose, but by April 1991 circumstances had changed and had brought about a change of purpose.

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While not categorically accepting the submission at face value, Judge Willy held that he was not satisfied on the evidence before him that the objector had demonstrated to the required standard that the factual information he had given to the Commissioner in the certificate was correct. The Commissioner had a statutory obligation to consider all information relevant to the transaction from whatever source, and to consider his position in light of that information. Judge Willy noted that the information which put the Commissioner on inquiry was the fact that the objector sold the properties within a relatively short time of acquiring them. This raised a doubt about the bona fides of the stated purpose in the certificate. His Honour held that the Commissioner performed no more and no less that his statutory duty in reassessing the transaction for conveyance duty.

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

GST input tax credit claimed on the purchase of a farm dwelling

Rating: • • • • •

Case: *CIR v Coveney, CIR v Dooley, CIR v Swain and Adams* CA 23/94

Act: Goods and Services Tax Act 1985 - sections 2(1), 5(14)and 10(18)

Keywords: *input tax, apportionment, single supply of secondhand goods*

Summary: The Court of Appeal rejected the Commissioner's interpretation of the definition of input tax. Where there is only one supply, not being a taxable supply, of a farm property including a dwelling there is no basis under the Act for apportioning the consideration. Where the property is acquired for the principal purpose of making taxable supplies an input tax deduction calculated on the whole consideration is available.

Facts: This was an appeal from three test cases heard together before the High Court. In each case the GST registered taxpayers had purchased a farm property, including a dwelling, from unregistered sellers. In each case the agreement provided for sale of the property as a single undivided unit, and for a single sum. The taxpayers claimed an input tax deduction calculated on the whole consideration.

The Commissioner disallowed the part of the claim that related to the value of the dwelling and curtilage. It did not relate to a good or service acquired for the principal purpose of making taxable supplies. The taxpayers objected.

The High Court found that in each case the purchase of the farm was one supply, and nothing in the Act provides for apportionment of input tax in this situation. The principal purpose of acquiring the whole property was the making of taxable supplies.

Decision: The Court of Appeal upheld the High Court decision. Although acknowledging that various provisions of the Act do contemplate apportionment, the Court was unconvinced that on the present facts apportionment was sustainable given the definition of input tax. The Court considered that there may be sound policy reasons for apportioning the consideration on the sale of farm property and other secondhand goods. However, it would be inconsistent with the scheme and language of the definition, particularly paragraph (c) and the proviso, to introduce apportionment in these circumstances.

Comment: Inland Revenue is not appealing this decision.

Share sales profits - assessability

Rating: • • • • •

Case: CIR v Rangatira Limited (1995) CA 184/94, 17 NZTC 12,182

Act: Income Tax Act 1976 - sections 65(2)(a), 65(2)(e), and 191(4A)(since repealed). (Income Tax Act 1994 - sections BB 4(a), BB 4(c))

Keywords: *assessability, dealing in shares, carrying on a business, business profits*

Summary: The Court of Appeal found that profits on the sale of the shares were business profits. The taxpayer sold the shares as part of its ordinary business or as an ordinary incident of its business.

Facts: The taxpayer was an unlisted public company which served as an investment vehicle. The company's main investments were shareholdings in public and private companies, which provided dividend returns as income to a number of charitable trusts. During the years 1986-1990, the company made substantial gains from the sale of shares.

The Commissioner assessed these gains for the 1986 income year under the second limb of section 65(2)(e), and for subsequent years until 1990, under sections 65(2)(a), 65(2)(e) and 191(4A). The Commissioner was precluded by the lapse of time from relying on section 65(2)(a) in the 1986 income year.

The High Court had found that the taxpayer was not engaged in business for the purposes of section 65(2)(a), nor did its activities amount to a business of dealing in property for the purposes of section 65(2)(e). However, some individual share sales were assessable under section 65(2)(e).

The Commissioner appealed against all findings that the gains were not assessable.

Decision: The Court of Appeal found that the taxpayer company was selling shares as part of its ordinary business, or as part of an ordinary incident of its business. The sales were not just a realisation or change of investment, but part of the carrying on of the business.

Factors that the Court took into account included:

- The acquisition of some shares for the acknowledged purpose of selling, which indicates that the selling of shares is part of the company's business;
- The company was not a passive investor;
- The importance of the share portfolio to the company's growth;
- The large number of share sales

Once the Court had reached this conclusion, it was unnecessary to consider the argument based on the three limbs of section 65(2)(e) and section 191(4A). The Court dismissed the Commissioner's appeal in relation to one transaction in the 1986 income year, and the gain on the share sale in that instance was not assessable. The Court allowed the deduction of losses on the sale of shares for the years in question.

Comment: The taxpayer is appealing this decision to the Privy Council.

Real estate agent's reimbursement - monetary remuneration?

Rating: • • • • •

Case: David Albert Norton v CIR, HC 143/93

Act: Income Tax Act 1976 - sections 65(2)(b) (Income Tax Act 1994 - section BB 4)

Keywords: *reimbursing allowance, monetary remuneration, real estate agent*

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Summary: The true nature of the payments made to the taxpayer, a real estate agent, were monetary remuneration and therefore were assessable income under section 65(2)(b).

Facts: The Commissioner ruled that from 1 April 1989 real estate agents were to be regarded as employees. This precluded the agents from deducting expenses incurred in producing assessable income. This policy was subsequently upheld by the High Court in a test case on point. On 30 March 1990 the taxpayer entered into a contract with the licensee which had effect from 5 January 1990. This allowed the taxpayer to be reimbursed for expenses incurred on behalf of the licensee.

During the year ended 31 March 1990 the taxpayer received a total of $43,370.07 from the licensee. The taxpayer treated $5,912.45 of that amount as a tax-free reimbursing allowance and returned the balance as part of his assessable income.

The Commissioner issued an amended assessment, adding the $5,912.45 to the declared assessable income. The appellant objected to the amended assessment and a case stated for determination by the Taxation Review Authority resulted. The Authority held that the Commissioner had acted correctly in issuing the amended assessment. The taxpayer appealed.

Decision: The High Court held that the effect of the agreement dated 30 March 1990 did not operate to take the amounts in question outside the category of assessable income under section 65(2)(b). The payments in question were “monetary remuneration” as defined in section 2 (OB 1).

Justice Henry said it is important to keep in mind that the labelling used by parties to a contract is not determinative. He accepted that parties cannot alter the true nature of a payment between them by giving a different label to the payment. The true nature of a payment is to be decided by reference to the particular circumstances, including the construction of the parties’ contractual rights and obligations as set out in the formal contract.

A further reason for holding that the payments were not genuine reimbursement of expenditure on behalf of the licensee was that the expenses were incurred personally by the taxpayer, not “on behalf of” the licensee. The fact that the expenses were incurred in fulfilling the taxpayer’s contractual obligations did not alter their character or convert them into the employer’s expenses.

It was unnecessary for Justice Henry to consider the retrospective provisions of the agreement dated 30 March 1990.

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

Apportioning GST input tax credits between zero-rated and exempt supplies

Rating: •

Case: TRA 94/57

Act: Goods and Services Tax Act 1985

Keywords: *onus of proof, GST input credits, apportionment.*

Summary: The case involves the taxpayer contesting the Commissioner’s reassessment that reduces the amount of GST input credits the taxpayer claimed.

The TRA upheld the Commissioner’s assessment as the taxpayer had not discharged the burden of proof to show that the Commissioner’s assessment was incorrect and by how much it was incorrect.

Facts: The taxpayer is a representative member of a group of companies who provided services in management, mercantile and consultancy, and debt collection. The group of companies was based in both Australia and New Zealand. They provided a mixture of exempt financial services and zero-rated services.

The Commissioner was of the view that the services the taxpayer provided in New Zealand were exempt supplies and not subject to GST output tax. Therefore, the taxpayer could not claim GST input credits for those supplies. However, the services supplied to the group in Australia were zero-rated and the Commissioner allowed the taxpayer to claim an input credit of 5% for those services. The taxpayer claimed that an accurate figure of the percentage of GST input credits relating to zero-rated services was between 35 - 40%. However, they lowered their claim to 23%.

The investigating accountant gave evidence on behalf of the Commissioner as to the basis of the assessment. All the taxpayer's records of the transactions for the period in question had been destroyed. The shareholders, directors, and executives of the taxpayer were not prepared to come to New Zealand to give evidence.

Decision: Judge Barber held that the taxpayer had failed to discharge the onus that the Commissioner's assessment was wrong and by how much it was wrong. He also held that the Commissioner had acted fairly in issuing the reassessments as the investigation had been carried out as thoroughly as possible under the circumstances of the case.

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

Upcoming TIB articles

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

Policy statements

- Individual claims for overseas travel expenses
- Pensions paid to former employees
- Recovery of tax arising after an estate is distributed
- Amounts received by way of insurance, indemnity, compensation, or damages for loss or damage to trading stock or consumable aids
- GST and the supply of casino chips
- GST and the supply of tokens, stamps, and vouchers
- GST and subdivisions - following the *Newman* Court of Appeal decision

Binding public rulings

- Associated non-profit bodies - income tax and RWT exemption
- GST tax invoice requirements where employee incurs expense on employer's behalf
- GST - sale of long-term residential rental properties by registered person in course or furtherance of taxable activity
- Non-resident film renters - income tax treatment

Booklets available from Inland Revenue

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.

General information

Binding rulings (IR 115G) - May 1995: *Explains binding rulings, which commit Inland Revenue to a particular interpretation of the tax law once given.*

Dealing with Inland Revenue (IR 256) - Apr 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.*

Inland Revenue audits (IR 297) - May 1995: *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.*

Koha (IR 278) - Aug 1991: *A guide to payments in the Maori community - income tax and GST consequences.*

New Zealand tax residence (IR 292) - Apr 1994: *An explanation of who is a New Zealand resident for tax purposes.*

Objection procedures (IR 266) - Mar 1994: *Explains how to make a formal objection to a tax assessment, and what further options are available if you disagree with Inland Revenue.*

Problem Resolution Service (IR 287) - Nov 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.*

Provisional tax (IR 289) - Jun 1995: *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.*

Rental income (IR 264) - Apr 1995: *An explanation of taxable income and deductible expenses for people who own rental property. This booklet is for people who own one or two rental properties, rather than larger property investors.*

Reordered Tax Acts (IR 299) - Apr 1995: *In 1994 the Income Tax Act 1976 and the Inland Revenue Department Act 1974 were restructured, and became the Income Tax Act 1994, the Tax Administration Act 1994 and the Taxation Review Authorities Act 1994. This leaflet explains the structure of the three new Acts.*

Self-employed or an employee? (IR 186) - Apr 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) - Jan 1995: *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 duty and gift duty (IR 665) - Mar 1995: *Explains what duty is payable on transfers of real estate and some other transactions, and on gifts. Written for individual people rather than solicitors and legal firms.*

Student Loan repayments (SL 2) - Jan 1995: *A guide to making student loan repayments.*

Superannuitants and surcharge (IR 259) - Jan 1995: *A guide to the surcharge for national superannuitants who also have other income.*

Tax facts for income-tested beneficiaries (IR 40C) - Sep 1992: *Vital information for anyone who receives an income-tested benefit and also has some other income.*

Taxes and Duties (IR 295) - May 1995: *A brief introduction to the various taxes and duties payable in New Zealand.*

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.*

Business and employers

ACC premium rates - Mar 1995: *There are two separate booklets, one for employer premium rates and one for self-employed premium rates. Each booklet covers the year ended 31 March 1995.*

Depreciation (IR 260) - Apr 1994: *Explains how to calculate tax deductions for depreciation on assets used to earn assessable income.*

Employers' guide (IR 184) - 1995: *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) - May 1995: *When businesses spend money on entertaining clients, they can generally only claim part of this expenditure as a tax deduction. This booklet fully explains the entertainment deduction rules.*

Fringe benefit tax guide (IR 409) - Nov 1994: *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.*

IR 56 taxpayer handbook (IR 56B) - Apr 1995: *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.*

PAYE deduction tables - 1996
- Weekly and fortnightly (IR 184X)
- Four-weekly and monthly (IR 184Y)
Tables that tell employers the correct amount of PAYE to deduct from their employees' wages.

Record keeping (IR 263) - Mar 1995: *A guide to record-keeping methods and requirements for anyone who has just started a business.*

Retiring allowances and redundancy payments (IR 277) - Jun 1994: *An explanation of the tax treatment of these types of payments.*

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.*

Resident withholding tax and NRWT

Approved issuer levy (IR 291A) - May 1995: *For taxpayers who pay interest to overseas lenders. Explains how you can pay interest to overseas lenders without having to deduct NRWT.*

Interest earnings and your IRD number (IR 283L) - Sep 1991: *Explains the requirement for giving to your IRD number to your bank or anyone else who pays you interest.*

Non-resident withholding tax guide (IR 291) - Mar 1995: *A guide for people or institutions who pay interest, dividends or royalties to people who are not resident in New Zealand.*

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) - Mar 1993: *A guide to RWT for people and institutions which pay interest.*

Resident withholding tax on investments (IR 279) - Apr 1993: *An explanation of RWT for people who receive interest or dividends.*

Non-profit bodies

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) - Jun 1993: *Explains the tax obligations which a club, society or other non-profit group must meet.*

Education centres (IR 253) - Jun 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) - Feb 1992: *An explanation of the duty which must be paid by groups which operate gaming machines.*

Grants and subsidies (IR 249) - Jun 1994: *An guide to the tax obligations of groups which receive a subsidy, either to help pay staff wages, or for some other purpose.*

Company and international issues

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

Controlled foreign companies (IR 275) - Nov 1994: *Information for NZ residents with interests in overseas companies. (More for larger investors, rather than those with minimal overseas investments)*

Foreign dividend withholding payments (IR 274A) - Mar 1995: *Information for NZ residents with interests in overseas companies. This booklet also deals with the attributed repatriation and underlying foreign tax credit rules. (More for larger investors, rather than those with minimal overseas investments)*

Foreign investment funds (IR 275B) - Oct 1994: *Information for taxpayers who have overseas investments. (More for larger investors, rather than those with minimal overseas investments).*

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

Qualifying companies (IR 4PB) Oct 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.*

Child Support booklets

Child Support - a guide for bankers (CS 66) - Aug 1992: *An explanation of the obligations that banks may have to deal with for Child Support.*

Child Support - a parent's guide (CS 1) - Mar 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) - Mar 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

August

5 Large employers: PAYE deductions and deduction schedules for period ended 31 July 1995 due. *(We will accept payments received on Monday 7 August as on time.)*

7 Provisional tax and/or Student Loan interim repayments: first 1996 instalment due for taxpayers with April balance dates.
Second 1996 instalment due for taxpayers with December balance dates.
Third 1995 instalment due for taxpayers with August balance dates.

Tax returns due for all non-IR 5 taxpayers with April balance dates.

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

Small employers: PAYE deductions and deduction schedules for period ended 31 July 1995 due.

Gaming machine duty return and payment for month ended 31 July 1995 due.

RWT on interest deducted during July 1995 due for monthly payers.

RWT on dividends deducted during July 1995 due.

Non-resident withholding tax (or approved issuer levy) deducted during July 1995 due.

(For all payments due on 20 August, we will accept payments received on Monday 21 August 1995 as on time.)

31 GST return and payment for period ended 31 July 1995 due.

September

5 Large employers: PAYE deductions and deduction schedules for period ended 31 August 1995 due.

7 Provisional tax and/or Student Loan interim repayments: first 1996 instalment due for taxpayers with May balance dates.
Second 1996 instalment due for taxpayers with January balance dates.
Third 1995 instalment due for taxpayers with September balance dates.

1995 end-of-year payment of income tax, Student Loans and earner/employer premium due for taxpayers with October balance dates.

Tax returns due for all non-IR 5 taxpayers with May balance dates.

QCET payments due for companies with October balance dates with elections effective from the 1996 income year.

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

Small employers: PAYE deductions and deduction schedules for period ended 31 August 1995 due.

Gaming machine duty return and payment for month ended 31 August 1995 due.

RWT on interest deducted during August 1995 due for monthly payers.

RWT on dividends deducted during August 1995 due.

Non-resident withholding tax (or approved issuer levy) deducted during August 1995 due.

29 GST return and payment for period ended 31 August 1995 due.

30 Non-resident student loan repayment: second 1996 instalment due. *(We will accept payments received on Monday 2 October as in time.)*

Public binding rulings: your chance to comment before we finalise them

This list shows the Public Binding Rulings that Inland Revenue is currently preparing. To give us your comments on any of these draft rulings, please tick the appropriate boxes, fill in your name and address, and return this page to us at the address below. We will send you a copy of the draft as soon as it's available.

In most cases the draft will be available on the date shown below. However, we will notify you if we are unable to supply it at that date for any reason.

We must receive your comments by the "Comment deadline" shown if we are to take them into account in the final ruling. Please send them ***in writing, to the address below***; as we don't have the facilities to deal with your comments over the phone or at our local offices.

Name ____

Address ____

____

____

	Ruling	*Date Available*	*Comment Deadline*
☐	**2442:** Deduction by companies for gifts of money	28/07/95	18/08/95
☐	**2539:** Lease duty on lease variations or renewals	28/07/95	18/08/95
☐	**2395:** GST: Secondhand goods input tax deduction and forestry rights	04/08/95	25/08/95
☐	**1628:** GST and Rates Apportionment	04/08/95	25/08/95
☐	**2898:** Conveyance Duty - Conveyance by direction of intermediary	11/08/95	01/09/95
☐	**1561:** Effective date of GST registration where taxpayer requests voluntary backdated registration	11/08/95	01/09/95
☐	**2886:** GST and supplies paid for in foreign currency	18/08/95	08/09/95
☐	**2690B:** FBT - Discounted or reduced premiums on life insurance policies sold to agent or associated person	18/08/95	08/09/95
☐	**3030:** NZ superannuitant surcharge - "Other income" and part-year benefit	18/08/95	08/09/95
☐	**1624A:** Financial Planning Fees - Income tax treatment	25/08/95	15/09/95
☐	**1624B:** Financial Planning Fees - GST treatment	25/08/95	15/09/95
☐	**2245A:** GST: Importers and input tax deductions	25/08/95	15/09/95
☐	**2245B:** GST: What constitutes an invoice?	25/08/95	15/09/95
☐	**2245C:** GST: Invoices and the time of supply	25/08/95	15/09/95

INLAND REVENUE
TE TARI TAAKE

No envelope needed - simply fold, tape shut, stamp and post.

Affix Stamp Here

Manager (Systems)
Rulings Directorate
National Office
Inland Revenue Department
P O Box 2198
WELLINGTON

Attention Public Rulings Consultation

Contents continued - questions and legal case notes

Questions we've been asked (pages 15-23)

Legal decisions - case notes (pages 24-31)

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