Income tax rates for 1995-96

Section BB 2, Income Tax Act 1994

The income tax rates for the 1994-95 income year will continue to apply for the 1995-96 income year.

Trust selling domestic dwelling

Section CD 1 (3)(b), Income Tax Act 1994

Introduction

Section CD 1 (3)(b) of the Income Tax Act 1994 has been amended to exempt from income tax the sale proceeds of trust-owned family homes in which trust beneficiaries reside.

Background

Section CD 1(3)(b) provides an exemption from the taxing of profits or gains from land transactions. The exemption applies to the sale of a dwelling house acquired, or erected, and occupied primarily as a residence for the taxpayer and family.

The amendment concerns the transfer of a family home to a family trust by a developer or builder. A consequence of the amendment to the definition of "associated persons" in section OD 8 (4) of the Income Tax Act 1994 was that in these situations the trustees of the family trust would be associated with the developer or builder, yet the exemption under section CD 1 (3)(b) would not apply. This would mean that the proceeds of sale of the family home by the trustees would be assessable. The amendment of section CD 1 (3)(b) to include family homes owned by trusts ensures that these proceeds are not subject to unwarranted tax exposure.

Key features

The amendment provides for an exemption when a dwelling house meets both of these conditions:

- It is acquired or erected by a trust, primarily and principally as a residence for the beneficiaries of the trust.
- It is occupied by some or all of the beneficiaries primarily and principally as a residence.

The provision of the exemption is subject to the already existing proviso under section CD 1 (3), that the exemption does not apply if a regular pattern of acquisition or erection and subsequent sale or disposition has emerged.

Application date

The amendment applies from 17 August 1995, the date of the bill's introduction.

Flat-owning companies

Section CF 2 (1) Income Tax Act 1994/Section 4(1)(e) Income Tax Act 1976

Introduction

The deemed dividend provisions have been amended so that shareholders in flat-owning companies will not be affected by a provision which deems the value of the use of company property by shareholders to be a dividend.

Section CF 2 (1)(e) of the Income Tax Act 1994 is amended to provide a specific exemption to these shareholders. An equivalent amendment has been made to section 4(1)(e) of the Income Tax Act 1976.

Background

Flat-owning companies are set up for non-business reasons. Shares in the company entitle the owners to the use of residential property, and the company is merely a vehicle for the ownership of the property.

There should, therefore, be no tax implications arising from the creation of a genuine flat-owning company.

Before the introduction of the qualifying company rules in 1992, the deemed dividend provision applied when a shareholder enjoyed a benefit from the use of company property if the making available of the property was virtually a distribution of a dividend. In practice, this provision was not applied to flat-owning companies unless they had revenue reserves (undistributed funds arising from taxable income derived by the company).

With the introduction of the qualifying company rules, the deemed dividend provision was redrafted. It applies where any company property is made available for the use of a shareholder, and the consideration provided by the shareholder is less than the value of the benefit enjoyed.

It was recognised when the deemed dividend provisions were redrafted that flat-owning companies would be affected by the change. The solution for flat-owning companies lay in their eligibility to become qualifying companies. As dividends from qualifying companies are either fully imputed or exempt in the shareholder's hands, no further tax liability would arise to shareholders in flat-owning companies in respect of any deemed dividends.

However, the compliance costs of becoming a qualifying company have proved to be a deterrent for flat-owning companies. Therefore a specific exemption is provided.

Key features

The exemption from the deemed dividend provision in section CF 2 (1)(e) will apply to shareholders of any company that meets both of these conditions:

- Its governing instrument provides for the entitlement for each shareholder to the use of residential property.
- Its assets are restricted to residential property and funds reserved for maintenance and other outgoings on the property.

Shareholders who are natural persons, trustees of trusts or limited liability companies can qualify for the exemption.

Application date

The amendment will apply retrospectively from 1 October 1988, the date of the last amendment to the deemed dividend provision before the introduction of the qualifying company regime.

Low-interest loans - taxable benefit for dividend purposes

Section CF 2 (11)(c), Income Tax Act 1994

Introduction

An amendment provides that the interest or income in each quarter from a low-interest loan is measured on an accruals basis for the purposes of calculating the taxable benefit for dividend purposes.

This amendment ensures consistency with the method used for fringe benefit tax (FBT) purposes.

Background

The taxable benefit from a low-interest loan is the difference between these two amounts:

- the amount that is payable as interest under the terms of the loan
- the amount that would be payable at the prescribed rate of interest.

The taxable benefit is determined on a quarterly basis.

While the same definition of loan is used for FBT and dividend purposes, the mechanism used to determine the amount payable under such loans for each quarter was technically different. Now the treatment has been aligned.

Key features

The amount deemed to accrue as interest under the terms of a low-interest loan for dividend purposes is determined on a quarterly basis.

The amount calculated will be one of these amounts:

- the amount of interest that has accrued during that period under the loan
- where appropriate, the amount of income that would have accrued during that period if the income from the loan (being a financial arrangement) were calculated using the yield to maturity basis.

Example

A company provides a loan of $10, 000 to a shareholder on 1 April 1996. The interest rate is 5% calculated on the daily balance of the loan, payable annually on 1 April.

The shareholder makes no repayments of principal during the 1996-97 year. The first interest payment, due on 1 April 1997, is therefore $500. Assume that the prescribed rate of interest for the year is 10%.

Under section CF 2(11), a dividend of $125 will arise in each quarter of the 1996-97 year.

Application date

The amendment applies with respect to dividends arising on or after 1 January 1996.

Statutory producer boards and co-operative companies - basis for making tax-free distributions, and notification requirements

Sections CF 3 (1)(i), (ia), (j), CF 3 (4), HF 1 (9), ME 30 (2), ME 30 (4), ME 33 (3)(b), I.T. Act 1994

Introduction

The basis on which tax-free cash distributions by statutory producer boards and co-operative companies are made has been clarified. Tax-free cash distributions in respect of notional distributions will be made on the basis of the trading activity that occurs in the year to which the cash distribution relates.

An amendment has also been made to align the time at which statutory producer boards notify the Commissioner of the payment of deemed dividends with the requirements applying to companies.

Background

Statutory producer boards may attach imputation credits to cash distributions paid to their members. They may also elect to attach imputation credits to notional distributions paid to their members. Cash distributions are analogous to dividends that are paid by an ordinary company, while notional distributions are analogous to the treatment of taxable bonus issues.

A board that makes a notional distribution is subsequently allowed to distribute a tax-free cash distribution based on the value of the notional amount.

These rules also apply to co-operative companies that make distributions to their shareholders based on each shareholder's produce activity.

The law was unclear whether a tax-free cash distribution had to be allocated to members or shareholders based on produce activity in the year to which that cash distribution related, or whether it had to be allocated on the basis of produce activity in the year to which the notional distribution related. This uncertainty is removed by the amendments.

Statutory producer boards were also only permitted to attach imputation credits to a cash distribution if they had notified the Commissioner that the distribution would be treated as non-deductible for tax purposes. This requirement has been amended to align the notification provision with that applying to companies distributing dividends.

Key features

Sections CF 3 (1)(i) and CF 3 (1)(j) have been amended to enable statutory producer boards and co-operative companies to allocate tax-free cash distributions on the basis of the current-year's trading activity with their members and shareholders.

Section ME 30 (2) has also been amended to enable statutory producer boards, when they file their income tax returns, to provide written notification to the Commissioner that deemed dividends have been paid out to their members.

Example

A statutory producer board has four members for the 1995 trading year. In 1995 it makes a taxable notional distribution to its members of $100,000, which is fully imputed. Members' shares of the distribution are based on their proportion of total produce activity with the board for the year.

The board subsequently distributes a tax-free cash distribution of $67,000 to its members (representing the net amount of the notional distribution) for the 1997 trading year.

That distribution must be allocated to its members based on their produce activity for that year, as shown in the table below.

	-------------1995 trading year-------------		-----1997 trading year-----	
Supplier	Produce activity	Notional distribution	Produce activity	Tax-free cash distribution
A	20 %	20,000	25 %	16,750
B	25 %	25,000	25 %	16, 750
C	25 %	25,000	25 %	16,750
D	30 %	30,000	25 %	16,750

Application date

The amendments will take effect from the 1995-96 income year.

Employee share purchases - reassessments

Section CH 2 (4), Income Tax Act 1994

Introduction

An amendment extends the grounds for reassessment if benefits from an employee share purchase agreement have been reduced or extinguished.

Background

When an employer provides shares to employees at less than market price the Commissioner values the difference between market price and consideration as a taxable benefit to those employees. Restrictive provisions often apply to the retention or ownership of the shares. Generally, those restrictions are taken into account when valuing the benefit to be assessed.

Section CH 2 (4) makes provision for a reassessment of the value of the benefit if certain conditions are met. To qualify for a reassessment, a taxpayer must have been assessed without the Commissioner having taken into account the restrictive provisions, have disposed of the shares during the restrictive period, and been adversely affected by the restrictive provisions.

This can be inequitable when a taxpayer has been assessed on a benefit that is subsequently reduced or extinguished, which could occur as a result of an employee terminating employment or retiring.

Key features

The amendment to section CH 2 (4) extends the Commissioner's powers to reassess reduced or extinguished benefits if either of the following apply:

- The employee must pay additional consideration to retain shares acquired under the share purchase agreement.
- The shares are reacquired by the employer for a consideration less than or equal to the original purchase price.

Application date

The amendment will apply to taxable benefits reduced or extinguished on or after 12 December 1995.

Superannuation contributions that are not subject to SSCWT

Section CL 1, Income Tax Act 1994/Section 226(9A), Income Tax Act 1976

Introduction

An amendment corrects an anomaly in the Income Tax Act 1994 which made employer contributions which were not subject to specified superannuation contribution withholding tax (SSCWT) subject to both income tax and fringe benefit tax.

Background

A 1991 amendment to the Income Tax Act 1976 trust rules had an inadvertent effect upon the taxation of superannuation schemes, exposing employer superannuation contributions which were not subject to SSCWT to double taxation. This has now been corrected.

Key issues

Section CL 1 of the Income Tax Act 1994 and section 226(9A) of the Income Tax Act 1976 have been amended to ensure that employer contributions which are not subject to SSCWT are subject only to fringe benefit tax.

Application date

The amendment applies from 31 March 1991, the date that the provision exposing the contributions to double taxation took effect.

Life insurance: value of actuarial reserves on transfer of business

Section CM 15 (1), Income Tax Act 1994

Introduction

The policyholder base formula has been amended to allow life insurance companies to take into account the value of their actuarial reserves at the date of transfer of a life insurance business. The value of the actuarial reserves at that date will form the closing and opening values of the reserves for the purposes of calculating policyholder income and losses for the transferor and transferee respectively.

Background

Life insurers are taxed on policyholder income as a proxy for policyholders. Section CM 15 (1) provides a formula for calculating the amount of policyholder base income or loss. The reserves are measured at the end of each income year, with the closing balance becoming the opening balance for the following income year. Changes in the actuarial reserves during the income year represent income or loss at the policyholder base.

Any increase or decrease in actuarial reserves is calculated as (v1 - v0) where:

v1 = aggregate of actuarial reserves at year end; and

v0 = aggregate actuarial reserves at the start of the year.

If a life insurance company transfers its life insurance business to another insurer during an income year then, under current rules, the value of the reserves at the end of the transferor's income year, v1, will be nil. The calculation (v1 -v0) gives rise to a loss of an amount equal to the opening value of those reserves.

At the end of the transferee's income year, the value of its reserves, v1, are increased by the amount of the reserves transferred. This gives income equal to the transferred reserves, rather than the amount of any change in the reserves from the date of acquisition of the business.

The policyholder loss arising to the transferor cannot be offset against other income of the transferor, even when the transfer occurs within the same group.

Correct treatment is achieved by requiring a valuation of the actuarial reserves at the time of transfer, with that value being used as the closing value for the transferor and opening value for the transferee. In practice, it is expected that any transfers would be done at the end of the transferor's income year, when the transferor is required to calculate the value of the actuarial reserves.

Note that these provision do not remove any income tax consequences arising on the realisation of any assets and liabilities transferred to the transferee.

Key features

The policyholder base formula in section CM 15 (1) has been amended to allow life insurance companies transferring 100% of a life insurance business within a wholly-owned group to take into account the value of their actuarial reserves at the date of transfer of the life insurance business.

This amendment will be subject to:

- 100% of the life insurance business being transferred within a wholly-owned group, or, if the transferor is not resident in New Zealand, all of the policies of life insurance offered or entered into in New Zealand that are held by the transferor;
- the Commissioner of Inland Revenue being satisfied that the transfer is being undertaken for genuine commercial reasons and that no undue tax advantage will arise either to the transferor or the transferee as a result of the transfer; and
- the Government Actuary being satisfied that 100% of the life insurance business has been transferred and that policyholders subject to the transfer will not be disadvantaged as a result of the transfer.

Application date

The amendment will apply from the date of enactment, 12 December 1995.

Life insurance: policyholder base losses on transfer of business

Section II 2, Income Tax Act 1994

Summary of proposed amendment

An amendment allows policyholder losses to be transferred to the transferee life insurer if a life insurance business is transferred.

Background

Previously, policyholder losses existing at the time of a transfer of a life insurance business would remain the transferor's losses and could only be used to offset policyholder income deemed to be derived by that insurer. This meant that to use these losses the transferor had to remain in business in New Zealand as a life insurer (or recommence such a business).

The policy intent is that policyholder income or losses should be either assessable income or allowable losses to those policyholders on whose behalf the income was derived or losses incurred, and should transfer with them, rather than being left with the transferor insurer. Therefore it is inappropriate that the transferor be able to use these losses, as they would then be used by a group of policyholders different from those in respect of whom the losses were incurred.

Key features

Section II 2 (1) has been amended to allow current year losses and losses carried forward to the current income year to be treated as a policyholder loss incurred by the transferee insurer.

This amendment will be subject to:

- 100% of the life insurance business being transferred within a wholly-owned group, or, if the transferor is not resident in New Zealand, all of the policies of life insurance offered or entered into in New Zealand that are held by the transferor;
- the Commissioner of Inland Revenue being satisfied that the transfer is being undertaken for genuine commercial reasons and that no undue tax advantage will arise either to the transferor or the transferee as a result of the transfer;
- the Government Actuary being satisfied that 100% of the life insurance business has been transferred and that policyholders subject to the transfer will not be disadvantaged as a result of the transfer.

If these conditions are met, the transferor life insurer is required to elect that the losses be transferred to the transferee life insurer. For this purpose the Commissioner will accept the election as being notified if appropriate entries are made in the relevant returns of income of the transferor and transferee that cover the income year of the transfer of the life insurance business.

Application date

The amendment applies from the date of enactment, 12 December 1995.

Life insurance: policyholder credit account balance and transfer of business

Sections ME 18, 19A and 23, Income Tax Act 1994

Summary

Amendments allow a credit balance in the policyholder credit account (PCA) of a transferor life insurer, at the date of transfer of the life insurer's life business, to be transferred to the transferee life insurer's PCA. They apply to both resident and non-resident insurers.

Background

All resident life insurers are required to maintain a PCA which records transfers of tax credits between the life and policyholder tax bases. Imputation credits can be transferred to the PCA and used to satisfy any tax liability arising in the policyholder tax base. Non-resident insurers cannot maintain an imputation credit account (ICA), but they can elect to maintain a PCA.

Rather than remain with the transferor when a life insurance business is transferred, any credits available in the insurer's PCA should be transferred to the transferee insurer's PCA. This is in keeping with policy intent that the credits remain available to the policyholders on whose behalf the tax that gave rise to the credits was paid.

Key features

Sections ME 18 and ME 23 have been amended and a new section ME 19A inserted, to allow any credit balance remaining in the PCA of a transferor life insurer to be transferred to the transferee life insurer on the transfer of a life insurance business.

Under section CM 15 (4), the amendments will be subject to:

- 100% of the life insurance business being transferred within a wholly-owned group, or, if the transferor is not resident in New Zealand, all of the policies of life insurance offered or entered into in New Zealand that are held by the transferor;
- the Commissioner of Inland Revenue being satisfied that the transfer is being undertaken for genuine commercial reasons and that no undue tax advantage would arise either to the transferor or the transferee as a result of the transfer;
- the Government Actuary being satisfied that 100% of the life insurance business has been transferred and that policyholders subject to the transfer will not be disadvantaged as a result of the transfer.

Application date

The amendment applies from the date of enactment, 12 December 1995.

Demutualisation: continuity of losses and tax credits

Section OD 5A, Income Tax Act 1994

Summary

An amendment deems the voting and market value interests held by shareholders in a company formed to take over the business of an existing mutual association to be held continuously throughout the period of demutualisation. The provision will apply only if at least 49% (for losses) or 66% (for imputation credits) of the voting and market value interests in the new company are held by persons who were policyholders immediately before the demutualisation process began.

Background

Special continuity rules have been developed for entities, such as life insurance funds, which do not issue shares. An entity is deemed to have issued shares, and the members (or appointed directors) of the entity are deemed to hold all the shares as though they were a single notional person.

Under the process of demutualisation, members generally exchange the rights they hold in the mutual association for rights as shareholders in a company. As soon as shares are issued, shareholding continuity for the carry forward of losses and imputation credits is breached because the shareholding changes from a single notional person to actual policyholders. Any losses and imputation credits existing at the date shares in the mutual association are issued, are lost.

Where there is merely an exchange of rights, there is no policy reason why losses and imputation credits should be forfeited upon demutualisation. Accordingly, this amendment allows losses and imputation credits of mutual associations undergoing demutualisation to be maintained in the new company, provided the minimum voting and market value tests are met.

When a demutualisation involves establishing a holding company and shares in the holding company are issued to former policyholders of the mutual, the provisions will apply to the indirect interests held by the former policyholder members. Where, under section OD 5 (5) a notional single person exists, the legislation will apply to the notional single person as though that person held interests in the mutual immediately prior to the demutualisation.

Key feature

A new section, OD 5A has been inserted into the Income Tax Act 1994 which provides for continuity of ownership of voting and market value interests of certain demutualisations. This will allow losses and imputation credits of certain mutual associations demutualising to be carried forward. This is subject to existing policyholders continuing to hold, directly or indirectly, the minimum voting and market value interest required for any company to carry forward losses or imputation credits.

Application date

The amendment applies from 1 August 1995.

Unit trusts and group investment funds - tax treatment

Sections CF 3, CZ 4, ME 41 and OB 1, Income Tax Act 1994

Introduction

These amendments introduce permanent rules for the taxation of the proceeds received on the redemption of units in widely-held unit trusts, and group investment funds to the extent they are taxed as companies.

References to unit trusts in this item refer both to unit trusts and group investment funds (GIFs) in respect of their category A income.

Background

Since 1960 unit trusts have been subject to tax as though they were companies. GIFs have been subject to tax as companies on their category A income only, from the income year beginning 1 April 1984.

Unlisted unit trusts differ from companies in the manner in which investors purchase and dispose of their units. Because there is no established market for units in an unlisted unit trust, the units are (in most cases) purchased and redeemed by the unit trust manager.

Previously, the redemption of a unit gave rise to a dividend to the extent that the amount distributed exceeded the returned capital amount or, following the changes made to the taxation of share repurchases which applied from 1 July 1994, the available subscribed capital per share. Therefore when the manager redeemed units purchased from investors, the manager would, in the absence of the inter-corporate dividend exemption, have received a taxable dividend.

When the inter-corporate dividend exemption was removed in 1991 section CZ 4 (1) (formerly section 63(2H)) was introduced to provide a temporary exemption from tax on dividends paid by unit trusts to the manager. Retaining the dividend exemption for unit trusts was an interim measure pending the outcome of discussions between the Investment Funds Association and the Government on the correct tax treatment of unit trusts. With the introduction of the permanent rules, the temporary dividend exemption in section CZ 4 (1) will lapse.

Key features

- Unit trusts continue to be taxed as companies.
- The temporary exemption for dividends paid to unit trust managers under section CZ 4 (1) will lapse.
- Unit redemptions may be funded first from available subscribed capital (the “ordering rule”), but unit trusts may also offer units which will be redeemed under the “slice rule”.
- Following the redemption of units by the manager, an amount equal to the greater of the imputation and withholding payment credits attached to dividends received by unit trust managers or the amount of income tax paid by the unit trust manager in relation to the dividends, will be debited to the manager’s imputation credit account.

Application date

The amendments will apply from 1 April 1996.

Detailed analysis

Redemption of units

Subject to the rules of the unit trust, investors holding units in a widely-held unit trust can dispose of their units by either directly redeeming the units with the trustee of the unit trust (provided the trust deed allows for this) or selling to the unit trust manager, who may then redeem the units with the trustee of the unit trust.

Under the previous rules, the amount distributed on the redemption of a unit was treated as coming proportionately from paid-up capital and other reserves that relate to the same class of unit as the unit being redeemed. This is commonly referred to as the "slice" rule.

In practical terms, if a unit trust manager elected to treat the units issued to each different unit holder as "shares of the same class" the returned capital amount on those units would equal the amount contributed for the purchase of the units.

Under the new rules unit trusts can issue units that can be redeemed under the "ordering" rule and/or units that can be redeemed under the "slice" rule. These rules have quite separate tax consequences as explained below.

The ordering rule

The ordering rule that will apply to unit trust redemptions is the same rule that applies to the redemptions of shares in ordinary companies. It provides that the proceeds of the redemption are taken first from the available subscribed capital of the particular class of units being redeemed. This means that, to the extent that there is sufficient available subscribed capital for the class of units being redeemed, the proceeds of the redemption will not be a taxable dividend.

In legislative terms, the ordering rule is provided for by section CF 3 (1)(b)(iv)(B) which states that the distribution will be excluded from the definition of a dividend to the extent to which the distribution does not exceed the *available subscribed capital per share cancelled*.

The *available subscribed capital per share cancelled* is defined in section OB 1 and is an amount calculated by dividing the available subscribed capital of a particular class by the number of shares of that class redeemed.

Example 1

This example illustrates the operation of the ordering rule when an investor disposes of units by selling to a unit trust manager.

On 1 September 1996 a unit trust is formed. The unit trust issues 100,000 units at $1 per unit. The units are taken up in equal shares by 200 investors, that is 500 units per investor. Entry to the unit trust is closed after this date. The unit trust does not issue any shares on such terms that their redemption is subject to section CF 3 (1)(b)(iv)(A) (the "slice" rule). On 18 May 1997 the units have risen in value to $1.75. On that day 50 investors notify the manager that they wish to sell their 500 units. The manager purchases the units from the investors and redeems them with the unit trust on that same day.

The available subscribed capital per share cancelled will be 100,000/25,000, which is $4 per unit. No dividend arises to the manager as the amount distributed to the investors ($1.75 per unit) does not exceed the available subscribed capital per share cancelled ($4 per unit). The available subscribed capital of the unit trust is now reduced to $56,250 ($100,000 - $43,750) as per item c of the definition of available subscribed capital in section OB 1.

If there is insufficient available subscribed capital a dividend will arise to the unit trust manager, as the following example illustrates.

Example 2

Continuing on from the example above, the fund performs extremely well and the value of the units rises to $2.50 per unit. An additional 100 unit holders decide to take their profits out of the unit trust. The available subscribed capital per share cancelled will be $56,250/50,000, which is $1.125 per unit.

Investors will each receive the full $2.50 for their units. However, the distribution is only excluded from the definition of a dividend to the extent of the available subscribed capital per share cancelled. In this case, the manager will derive a dividend of $1.375 per unit when the units are redeemed with the unit trust.

Subject to the maximum imputation credit ratio permitted and the benchmark imputation ratio rules, this dividend can be imputed as with any other dividend. The manager of the unit trust can use any imputation or withholding payment credits to offset its own tax liability on the dividend, but for no other purpose. This is discussed below.

The slice rule

Some investors may prefer to hold units subject to the slice rule.

The slice rule is achieved by section CF 3 (1)(b)(iv)(A), which excludes from tax that part of the distribution that does not exceed the "available subscribed capital per share", as distinguished from the "available subscribed capital per share cancelled" (see above).

Therefore, that portion of the redemption proceeds that exceeds the available subscribed capital per share will represent a taxable dividend which may be imputed.

If investors hold their units on revenue account there is the potential for double taxation. This is avoided by the operation of section CF 2 (15) which reduces the assessable proceeds received on redemption by the amount of the dividend. Imputation credits may then be available to shelter the tax on the dividend element, leaving only the balance of the redemption proceeds assessable.

The following example illustrates the operation of the slice rule when units are redeemed directly by an investor.

Example 3

On 1 July 1996 a unit trust is formed. The unit trust issued 20 million units at $2 per unit. The performance of the unit trust has been outstanding. The value of the units as at 30 September 1997, when the trust's financial results for the year were announced, was $5 per unit.

All units in the unit trust are issued on such terms that their redemption is subject to section CF 3 (1)(b)(iv)(A), that is, the slice rule.

A Co, having held units since the start of the unit trust, decides to redeem its unit holding of 2000 units. The units are redeemed directly with the trustee of the unit trust.

The available subscribed capital per share is $2 as all units issued at the time the trust was formed went into the one class in accordance with paragraph (c)(iii) of the definition of "shares of the same class"

Upon redemption A Co received $10, 000 which is comprised of available subscribed capital of $4,000 and a dividend of $6,000. The dividend was fully imputed and carried imputation credits of $2,940. Because A Co held the shares on revenue account, the profit on redemption is also assessable under section BB 4(c).

To avoid double taxation of the redemption proceeds section CF 2 (15) applies. A Co calculated the assessable income in relation to the redemption as follows.

Dividend	=	$6,000
Section BB 4(c) income, taking section CF 2(15) adjustment into account: ($10,000 - $6000) - $4000	=	$ 0
Total income	=	$6,000

Example 4

B Co purchased 10,000 units at a cost of $5.50 per unit in November 1997. Unit prices then fall to $3.50 per unit.

B Co decides to dispose of the units and redeems the entire holding. B Co, who is a dealer in equities, held the units on revenue account. Upon redemption B Co received $35,000. This amount is excluded from the definition of dividend by section CF 3 (1)(b)(iv)(A) as the amount returned upon redemption does not exceed the available subscribed capital per share. The loss of $20,000 will be determined in the usual way.

Note that, even though all units in the example are issued under the slice rule and assuming the rules of the unit trust permit, an investor in that unit trust could still have sold the slice rule units back to the unit trust manager. In that case the investor's tax liability would be determined by the rules applicable to the sale of personal property and the manager would have been responsible for any tax obligations arising on the redemption of the unit.

Imputation credits and manager redemptions

Most widely-held unit trusts will offer manager buy-back facilities. This means that investors can sell their units to the manager, rather than redeeming the units directly with the trustee of the unit trust. This transaction, from the investors' point of view, is merely a sale of an asset which will generally only be taxable if the units were held on revenue account.

The manager, having acquired the units, will either on-sell them, or redeem them. If the units are redeemed, the same rules apply to the manager as apply to other investors on redemption, so the manager may receive a taxable dividend if, for example, the unit trust has run out of available subscribed capital, or those units were redeemed under the slice rule.

The tax paid by the manager on, and any imputation credits attached to, dividends received from the unit trust give rise to a credit in the manager's imputation credit account. However, the manager of the unit trust should not be able pass those imputation credits on to other companies in the manager's group. Special rules have been developed for this purpose.

New section ME 41 provides for a debit to the ICA of the manager, or a consolidated group of which the manager is a member, if both of these conditions are met:

- The manager acquires units in the unit trust from unit holders.
- The manager acquires them in the ordinary course of the manager's activities in respect of the unit trust - that is, the purchasing and subsequent redemption of units in accordance with the terms upon which the units were offered to potential unit holders.

Continuity

Concessionary continuity provisions are contained in sections OD 5 (5) and OD 5 (6). Section OD 5 (8) removes the benefit of these concessions if the directors of a company that is listed on a recognised exchange know or could reasonably be expected to know that the continuity provisions would not have been satisfied but for those concessions.

Section OD 5 (8) acknowledges that it is not practicable for the directors of a listed company to follow all changes in shareholding. The same considerations apply in the case of widely held unit trusts. Therefore section

OD 5 (8)(b) has been amended so that the concessions are still available if the breach in continuity is solely due to the redemption of units in a widely-held unit trust, including redemptions by the manager in the normal course of the manager's activities in relation to that unit trust.

The amendment only extends to those widely-held unit trusts referred to in subparagraphs (b)(i) and (ii) of the definition of widely-held trust in section CF 3 (14). Subparagraph (iii) of the definition refers to unit trusts which are used as investment vehicles by other widely-held vehicles for direct investment. The same considerations do not arise for these unit trusts and therefore it is not appropriate to include them in the definition of widely-held trust for these purposes.

Note that section OD 5 (8)(b) specifically refers to unit trusts. GIFs are excluded from this amendment as they are special corporate entities which are not subject to the general continuity rules.

Brightline tests

A pro-rata cancellation (other than an on-market acquisition) on the repurchase of a share within certain thresholds is automatically treated as a dividend. These thresholds are known as the brightline tests, and they apply when a unit trust makes a pro rata cancellation of units.

Under the previous rules the brightline tests did not apply to unit trust redemptions. However, because unit trust redemptions are now taxed in a similar manner to company share repurchases, it is appropriate that the brightline tests apply to all unlisted unit trusts in respect of pro-rata cancellations. Section CF 3 (1)(b)(i)(D) has been amended accordingly.

For a full explanation of the brightline tests and pro-rata cancellations see TIB Volume Six, No. 6.

Transitional rules

All units in unlisted unit trusts are currently subject to the slice rule. For unit trusts intending to use the ordering rule some transitional rules have been put in place. The transitional rules are contained in new sections CZ 4 (3), (4) and (5).

Section CZ 4 (3) deems all units on issue on 1 April 1996 not to have been issued on terms such that their redemption will be subject to section CF 3 (1)(b)(iv)(A) (the slice rule). They will, therefore, all become subject to the ordering rule as from 1 April 1996.

Section CZ 4 (4) provides that if an election to treat any units as a separate class has been made under paragraph (c) of the definition of "shares of the same class", from 1 April 1996 those units are all collapsed into one class and will be subject to the ordering rule within that class.

Those investors wanting to retain the slice rule will be able to do so by notifying the manager of the relevant unit trust, who in turn will notify the Commissioner of Inland Revenue. In that case neither section CZ 4 (3) or CZ 4 (4) will apply. The Commissioner must receive this notification on or before 31 March 1996 (section CZ 4(5)).

Redemption of units in a unit trust that is not resident in New Zealand

Currently, section CF 3 (2)(c) provides that if a person has units in an unlisted widely-held trust and is unable to obtain sufficient information to calculate the available subscribed capital per share, it is deemed to equal the amount paid to the trust in respect of the units redeemed.

This rule has been preserved, by deeming the units to have been issued on the basis that they are to be redeemed under the slice rule. This provision does not apply to interests in a foreign investment fund. In that case the FIF rules apply.

Miscellaneous unit trust issues

Streaming of imputation credits

All company shareholders have in effect borne a share of the company's tax. Therefore imputation credits should ideally be allocated among the shareholders on a pro rata basis. Streaming of imputation credits occurs when companies attach imputation credits to dividends paid to those shareholders best able to utilise them in preference to other shareholders. For example, it would be more beneficial to taxpaying shareholders who are able to use them to receive imputation credits than it would to tax-exempt shareholders.

Section GC 22 is an anti-avoidance provision designed to attack arrangements to obtain an advantage from the use of imputation credits. Although the section is very broad in its application, the relevant part that is of concern for these purposes is section GC 22 (1)(b).

The holders of slice rule units will receive dividends and, therefore, imputation credits earlier than the holders of ordering rule units, who will not receive dividends (nor, therefore, imputation credits) until all available subscribed capital has run out. Inland Revenue considers that this in itself is not streaming. However, whether imputation credits have been streamed or not will depend on all the facts of each case, and although imputing the dividend element of any slice rule redemption proceeds will not necessarily constitute streaming, section GC 22 is not precluded from applying.

Any concerns about equity between those unit holders using the 'slice' rule and those using the 'ordering' rule would be met by the manager's fiduciary duties to unit holders. Thus if the pool of imputation credits were depleted as a result of redemptions to slice rule unit holders, the trust could meet its fiduciary obligations to other unit holders by imputing dividends paid to them at the same ratio. This would give rise to a debit to the ICA of the trust, and the trust would have to pay the required tax to meet that debit at the end of the relevant year.

Definition of unit trust

The unit trust definition is intended to include trusts used as investment vehicles for settlors, but is not intended to include family trust arrangements in which one family member settles property in trust for other family members who are not contributors to the corpus of the trust.

In public ruling BR Pub 95/5 published in TIB Volume Seven, No. 5 (November 1995), it was ruled that qualifying trusts (which would include most family trusts) that also meet the definition of a unit trust will be regarded as unit trusts.

Concern has been expressed that the definition of unit trust is too wide and that it could potentially catch family trust arrangements. The current definition of unit trust for tax purposes is found in section OB 1, which states:

> Unit trust means any scheme or arrangement, whether made before or after the commencement of this Act, that is made for the purpose or has the effect of providing facilities for the participation, as beneficiaries under a trust, by subscribers, purchasers, or contributors, in income and gains ... arising from the money, investments, and other property that are for the time being subject to the trust...

Thus the beneficiaries of a trust must participate as subscribers, purchasers or contributors before the trust is a unit trust for tax purposes. Inland Revenue believes that most family trusts can be distinguished in that the beneficiaries of a family trust would not, in most cases, initiate the investment into the trust. This view is consistent with the interpretation of the definition of unit trust set out in public ruling BR Pub 95/5.

However, there may be times when beneficiaries of a trust established within the family context contribute to the property of the trust in such a way that the trust is a unit trust. In this situation it will be a question of fact as to whether the trust is a unit trust or not.

Dividend stripping

Section GB 1 (3) applies, broadly, if a taxpayer disposes of shares in return for consideration, which consideration would have been a dividend had an avoidance arrangement (of the kind referred to in section BB 9) not been entered into.

The unit trust industry is concerned that the way units are “traded” by redemption through unit trust managers falls within the section. In other words, had the redemption been effected directly between the unitholder and the unit trust, instead of through the manager, a dividend may have arisen.

In TIB Volume One, No. 8, February 1990 (page 14 of Appendix C) it was stated that a precondition for the application of section GB 1 (3) is that the arrangement satisfy the criteria of section BB 9. As a result, the normal sale of shares (not having a tax avoidance purpose) will not be caught by the section.

The Commissioner continues to hold this view in relation to the sale of units to a unit trust manager and the subsequent redemption of those units by the manager. If the sale and subsequent redemption are made in the ordinary course of the manager’s activities as such, section GB 1 (3) will not apply. However, as stated in the policy statement quoted above, Inland Revenue reserves the right to rely on section GB 1 (3) when tax avoidance is involved.

Section CF 3 (1)(b)(iii) also contains a specific anti-dividend stripping test that must be met before any amount distributed on the cancellation of any shares is to be excluded from the dividend definition. The relevant factors to be taken into account in determining whether the cancellation was made in lieu of the payment of dividends are listed in subsubparagraphs (A) to (D) of that section.

Share dealing

Section FC 3 applies to purchases and sales of shares in circumstances in which any profit or loss on the sale of shares is taken into account for income tax purposes. That is, if the taxpayer is in the business of dealing in shares or has acquired shares for the purposes of selling or otherwise disposing of them.

One of the primary functions of the section was to stop taxpayers stripping taxable profits out of companies by way of dividends, if the tax payable on the dividend is sheltered by a deductible loss on the eventual sale of the shares. The unit trust industry is concerned that the section will apply in the case of normal day to day manager redemptions once the temporary dividend exemption in section CZ 4 lapses.

However, Inland Revenue’s view is that unless the unit trust manager is redeeming units in such a manner so as to strip reserves from the unit trust tax free in a manner contemplated by the provisions of section FC 3, the Commissioner will not be seeking to apply section FC 3 to redemption of units in the ordinary course of a manager’s day to day activities.

Outdated reference to category 1,2 and 3 superannuation schemes.

The outdated references to category 1, 2 and 3 superannuation schemes in sections HE 2 (3), HK 24 (3) and OE 4 (I) have been replaced.

The reference in section HE 2 (3) to category 1 and 2 superannuation schemes is replaced by reference to superannuation funds, which are defined in the 1994 Act (section OB 1) as any superannuation scheme which is registered under the Superannuation Schemes Act 1989. References in sections HK 24 (3) and OE 4 (1)(i) to category 1,2 and 3 superannuation schemes have been replaced by reference to superannuation schemes, which term is also defined in section OB 1 of the 1994 Act.

Inflation-indexed bonds

Sections EB 4 and EB 5, Income Tax Act 1994

Introduction

An amendment ensures that both the coupon and any inflation-indexed amount accruing on inflation-indexed bonds (IIBs) are taxed on an annual basis.

Background

Section CB 1 (1) was amended with effect from 1 April 1995 to remove the tax exemption for premiums payable upon the redemption of IIBs. Following this, a review of the tax treatment of IIBs generally was undertaken.

The Government announced on budget night that it would be issuing IIBs. Although these Government bonds are issued on such terms that they are already covered by existing legislation, legislation was considered necessary to deal with IIBs generally, since the Government does not have a monopoly on them.

Key features

- Sections EB 4 and EB 5 have been introduced into the Income Tax Act 1994.
- These sections apply when the taxpayer is a cash basis holder. Non-cash basis holders will be subject to the accrual rules. A new determination has been prepared for indexed bonds generally, and will be released in February 1996.
- Holders of IIBs are deemed to derive the inflation-indexed return annually.
- The inflation-indexed amount is subject to the resident withholding tax rules when it is deemed to be credited in account.

Resident withholding tax and income tax treatment of the inflation-indexed amount

For income tax purposes, the inflation-indexed return or premium on an IIB is interest. This is because it is a return on “money lent”.

Where the conditions in section EB 4 (2) are satisfied and the difference in the accrued indexed amount is an increase, section EB 4(3) treats the difference as having been *credited in account and capitalised by the borrower for the benefit of the lender* on the day following the day on which the level of the relevant index at the end of the current income year becomes public knowledge.

The wording of section EB 4 (3) relates back directly to the definitions of “paid” and the meaning of the term “derived”. This ensures that the inflation-indexed amount is subject to both resident withholding tax (RWT) and income tax.

Section EB 4(4) provides that if and to the extent that an amount on account of the increase has previously been paid to the lender or credited to the lender or otherwise dealt with in the lender’s interest, section EB 4 (3) will not apply to deem the increase to be credited. This will cover the situation when, for example in the case of Government IIBs, the inflation-indexed amount is actually credited during the income year. Section EB 4 (4) also applies when the money lent has previously been repaid. This covers the situation when all of the conditions in section EB 4 (2) are met, although an amount is actually credited after such time as the bond has been redeemed or otherwise disposed of. In that case a base price adjustment would calculate any balance of income or loss to be taken into account.

Increases in inflation-indexed amounts that represent recoveries of previous decreases

Section EB 4 (3) contains no provision in relation to losses corresponding to a reduction in the value of the inflation-indexed amount. This means that if, over a period, there is overall deflation, no loss will be allowable. Instead the taxpayer will have to wait until the bond is redeemed or otherwise disposed of and a base price adjustment is undertaken in terms of section EH 4. However, two provisions have been inserted which treat any increase in accrued indexed amount as not having been credited or deemed to be credited when the increase represents a recovery of a previous decrease. These are sections EB 4 (5) and EB 5.

Section EB 4 (5)

This section provides that an increase in an accrued indexed amount will not be treated as credited in account to the extent that, over a previous income year, there was a decrease in the accrued indexed amount, and the increase simply represents a recovery of that decrease.

Section EB 5

Section EB 5 (1) is a similar provision to section EB 4 (5) except that it applies when the amount that represents an increase in the indexed amount has been actually credited to the account of the lender by the borrower. This differs from the situation to which section EB 4 (5) applies, in which the increase in the indexed amount is (or would be, apart from that section) deemed to be credited by section EB 4 (3). Section EB 5 states that the amount of the increase actually credited will not be treated as an amount of income for the purposes of the Income Tax Act 1994.

Section EB 5 (2) clarifies the interpretation of the base price adjustment formula if an increase in the accrued indexed amount has been treated by section EB 5 (1) as not being income. In other words, for the purposes of the base price adjustment provisions, the inflation amount that represents a recovery of a prior decrease will still be income. However, it is not necessary to have a similar provision for section EB 4 (5) as in that case no income was either actually or deemed to be derived and, hence, there will be no confusion on this point when undertaking the base price adjustment.

Index not published at end of income year

Section EB 4 (6) is designed to ensure that section EB 4 still works if the level of the relevant index is not published as at the end of the year, but at a time during the income year. For example, if the index is published annually on 30 June and a taxpayer holding a bond indexed to that index has a balance date of 30 September, the level of the index as at 30 June will be appropriate to measure the inflation-indexed amount for the purposes of calculating the taxpayer's income tax on income derived to 30 September.

Application date

The amendments will apply to money lent on or after 1 October 1995.

Property transactions and the accrual rules

Sections EH 1, EH 8, EZ 10, OB 1 and OB 7, Income Tax Act 1994

Introduction

A series of amendments deals with issues raised by the recent *Dewavrin* case, in the area of agreements for the sale and purchase of property (ASAPs). They give effect to the Government's intention to align the law with the underlying policy intent of the accrual rules by providing that the tax treatment of financial arrangements throughout the life of the arrangement is aligned with the tax treatment on maturity. They also provide that in the case of foreign currency denominated ASAPs, exchange gains and losses are brought to tax from the time the ASAP is entered into.

The legislation provides two methods for converting the cost price of the foreign currency denominated transactions into New Zealand dollars, and gives the Commissioner of Inland Revenue the power to issue determinations to approve a different method in certain circumstances.

Background

The calculation of income and expenditure from financial arrangements for tax purposes is covered by the accrual rules. In the case of deferred settlement ASAPs, a lending or borrowing component exists when payment for the goods takes place some time after delivery. The intent of the rules was to treat any lending or borrowing component within the contract as a financial arrangement.

A deferred settlement ASAP denominated in a foreign currency is the economic equivalent of an ASAP denominated in New Zealand dollars plus two separate financial arrangements:

- A foreign exchange (FX) contract, in which one party agrees to exchange a foreign currency for New Zealand dollars at a future time. This is for the period between the date of entering into the ASAP and date of delivery of the property.
- A foreign currency denominated loan for the period between the date of delivery of the property and payment.

Therefore, the tax treatment of an ASAP denominated in a foreign currency should, as far as practical, be consistent with the tax treatment of these other financial arrangements.

In the *Dewavrin* case, the taxpayer made a foreign currency gain on the FX contract matched by a foreign currency loss on the ASAP. The Court of Appeal concluded that the foreign currency loss was deductible and the foreign currency gain on the FX contract was assessable. Issues dealt with by the Court were:

- The Court found that foreign exchange gains and losses on ASAPs start from the date the contract is signed.
- The Court accepted that changes in the underlying value of the property (the wool as valued in NZ currency in this case) before delivery were not included in the base price adjustment, which takes place on maturity of the financial arrangement. However, the Court held that the law required such changes to be accounted for during the life of the ASAP. This result goes against the policy intent of the rules and appears to require that taxpayers revalue to market price all unfilled orders at each balance date.
- The case has highlighted uncertainty as to the New Zealand dollar cost price of property if the ASAP is denominated in a foreign currency.

Key features

- **Consistency between interim and final calculations under the accrual rules:** Section EH 1 (1) clarifies the tax treatment of foreign currency exchange gains and losses. It achieves consistency with the final calculations on the treatment of changes in the value of the property subject to an ASAP, by now reflecting the language used in section EH 4. Thus items that are later "reversed out" in the base price adjustment will not be included as income over the life of the financial arrangement.
- **Determining the cost price:** A new section OB 7 provides two methods that may be used in the calculation of the cost price. These are:

- the forward exchange rate to delivery date; and
- the forward exchange rate to settlement date.

- **Determinations:** A new paragraph (k) of section 90(1) of the Tax Administration Act 1994 gives the Commissioner of Inland Revenue the power to issue determinations prescribing alternative methods in certain circumstances. It is proposed that a low compliance cost method will be available for taxpayers with gross income of less than $2.5 million, and that methods that are consistent with accounting standards will be available for ASAPs concerning certain trading stock items.
- **Gains and losses taxable from the date of contract:** A new section OB 7 requires the cost price to be determined using a rate set on the day on which the financial arrangement is entered into.
- **Acquisition price:** Section EH 8 (2) has been amended to clarify that the acquisition price, determined in accordance with the accrual rules, is the price at which the property is deemed to have been transferred for other purposes of the Act.

Determining the cost price

The acquisition price (called the "cost price") in an ASAP establishes the level of accrual income and expenditure for the purposes of the accrual rules, being the difference between the cost price, and the price in New Zealand dollars actually paid for the property. The cost price also establishes the basis for depreciation of capital property and the base for calculating the profit made on the sale of revenue property. The two methods which the legislation will allow are as follows:

The forward exchange rate to delivery date

Under this method the cost price is converted into New Zealand dollars at the forward rate to the expected delivery date prevailing at the time the contract was signed. This exchange rate is the market's best estimate, at the time the contract is signed, of the New Zealand dollar value that is equivalent to the foreign currency denominated price at the time of delivery.

The forward exchange rate to settlement date

Under this method the cost price is converted using the forward rate to the expected settlement date. This method uses information normally required for accounting purposes. An important advantage of this method is that it determines the foreign currency gain or loss on the ASAP by using the same rate as that used to determine the foreign currency gain or loss under the FX contract. This is because the gain or loss on a forward currency contract is also determined using the forward rate to settlement. If the full amount of the foreign exchange exposure is hedged, under this method there would be no foreign currency income or expenditure arising from exchange rate movements.

Methods proposed to be approved by determination

The amendment to section 90(1)(k) of the Tax Administration Act 1994 gives the Commissioner power to issue determinations prescribing alternative methods in certain circumstances. The Commissioner proposes that the following methods will be approved.

Low compliance cost method

A low compliance cost method will be available to taxpayers who are not "large" entities, that is, entities with gross income of less than $2.5 million. This method uses the spot rate at settlement date, and therefore does not include any foreign currency gain or loss that may be derived from the ASAP.

The Commissioner proposes that eligible taxpayers may elect to use the low compliance cost method on their foreign currency denominated ASAPs by making a tax return for that income year on that basis. Any ASAPs returned under the low compliance cost method would receive this treatment for the life of those contracts, regardless of whether or not the taxpayer remained eligible for this method in later income years.

Methods consistent with accounting standards

The Commissioner also proposes to issue a determination allowing a different method to be used if that method is consistent with accounting practice, and if the property which is the subject of the ASAP is trading stock of the taxpayer. For these purposes trading stock will not include land or excepted financial arrangements. New Zealand accounting standards currently allow the use of a spot rate at delivery date, and international accounting standards currently allow the spot rate at contract date to be used.

Application date

The amendments will apply to contracts entered into after the beginning of the 1996-97 income year. However, if in previous years a taxpayer has used a method that conforms with the new rules, and applied that method consistently to that financial arrangement, this will be accepted. This provision is contained in the new section EZ 10.

Amalgamations and land sales - transfer of land held on capital account

Section FE 6, Income Tax Act 1994

Introduction

An amendment has been made to prevent pre-amalgamation tax-free capital gains becoming potentially taxable.

Background

Section FE 6 (1) provides that land will be deemed to be acquired by the amalgamated company on the same date it was acquired by the amalgamating company and for consideration that is equal to that paid by the amalgamating company. This has potential for the amalgamated company to be taxed on pre-amalgamation tax free gains.

Key features

The amendment deals with land held on capital account by an amalgamating company, but subject to section CD 1 of the 1994 Act (section 67 of the 1976 Act) in the amalgamated company. It will deem land to be transferred on the qualifying amalgamation at market value, but the ten-year period will run from the date of the amalgamation.

Application date

The amendment applies from 1 July 1994 to coincide with the introduction of the recent company law reforms.

Amalgamations and land sales - application of ten year rule

Section FE 6, Income Tax Act 1994

Introduction

An amendment has been made to take account of the ten-year rule on amalgamation.

Background

Section FE 6 (3) provides that land which is "revenue account property" of the amalgamating company, but is not revenue account property of the amalgamated company, is transferred on amalgamation at market value. The land is deemed to have been acquired by the amalgamated company at the time of amalgamation. When land subject to the ten year rule is deemed to be disposed of at the time of amalgamation, and the amalgamation takes place before the expiry of the ten year period, the amalgamating company is taxed on the deemed disposition.

Key features

The amendment provides that the ten-year rule under section CD 1 of the 1994 Act (section 67 of the 1976 Act) which applies to the amalgamating company before amalgamation, continues to apply to the amalgamated company, notwithstanding the deemed disposition of the land on amalgamation by the amalgamating company. Consequently, when the ten-year rule applies to the amalgamating company it will not be subject to income tax only because of the deemed disposition of the land on amalgamation. However, it will be taxed on any subsequent disposition of the land if the land is sold within ten years of the amalgamating company's acquisition of the land.

Application date

The amendment applies from 1 July 1994 to coincide with the introduction of the recent company law reforms.

Qualifying companies - shareholder deductions

Section HG 9 (3), Income Tax Act 1994

Introduction

The qualifying company shareholder provisions of the Income Tax Act 1994 state that a shareholder of a qualifying company is denied a deduction for interest incurred on money borrowed to purchase shares in the company to the extent of the amount of any non-cash dividends received by the shareholder. An amendment has been made extending this rule to include non-cash dividends received by persons associated with the shareholder.

Background

Section HG 9 (3) of the Act ensures that a shareholder of a qualifying company cannot use the qualifying company rules to obtain a deduction for interest incurred on private or domestic expenditure. The amendment extends this provision to cover private or domestic expenditure incurred on behalf of a person associated with the shareholder.

Key features

Section HG 9 (3) has been amended to ensure that a shareholder of a qualifying company is denied a deduction for interest incurred on money borrowed to purchase shares in the company to the extent of the amount of any non-cash dividends received by persons associated with the shareholder.

The amendment also provides for apportionment when more than one shareholder is associated with the same person. The amount of any non-cash dividends received by the associated person is to be apportioned among the associated shareholders, in proportion to the effective interest in the company held by each of the associated shareholders in that income year. Each shareholder is denied a deduction to the extent of the amount apportioned to that shareholder.

Application date

The amendment applies from 17 August 1995, the date of the bill's introduction.

Government Superannuation Fund - consequential amendment

Section HJ 1

Introduction

A consequential amendment replaces references to the "Board" of the Government Superannuation Fund with references to the "custodian" in the Income Tax Act 1994. The equivalent amendment in the Income Tax Act 1976 has been repealed.

Background

The Government Superannuation Fund Amendment Act 1995 (GSFA) changed the role and structure of the Government Superannuation Fund and, in particular, transferred the control of the Fund from the Board to a custodian. A consequential amendment was made to the 1976 Act which replaced references to the Board with references to the custodian. No equivalent amendment was made to the 1994 Act.

Key feature

Section HJ 1 has been amended to duplicate the change in the 1994 Act. The amendment to the 1976 Act has been repealed.

Application date

The amendment to the 1994 Act will apply from 1 October 1995, the application date of the Government Superannuation Fund Amendment Act 1995.

As the amendment to the 1994 Act will apply from 1 October 1995 and the 1994 Act applies to the income tax year commencing 1 April 1995, the GSFA amendment to the 1976 Act has been repealed, as from the date of enactment.

Charitable organisations - addition

Section KC 5 (1), Income Tax Act 1994

The Nelson Mandela Trust (New Zealand) has been granted charitable donee status.

From the 1996-97 income year, donations made to the Trust entitle individual taxpayers to a rebate of 33 $^{1}/_{3}$ percent of the amount donated. The maximum rebate for all donations is $500 per annum. A company (other than a closely held company) is entitled to a deduction from assessable income up to the amounts prescribed by section DJ 4.

Guaranteed minimum family income

Section KD 7, Income Tax Act 1994

Introduction

The amendment is designed to assist beneficiaries leave the benefit system by allowing their guaranteed minimum family income (GMFI) to be backdated to the date that their main benefit ceased.

When beneficiaries move into the workforce there can be a gap of several weeks before they receive their first GMFI payment. This gap has meant that some beneficiaries could not afford to move off the benefit.

Background

The change arises from an Employment Task Force recommendation and is designed to assist beneficiaries to move off income-tested benefits. It follows a similar change made from 10 April 1995 which ensures continuity in the payment of Family Support for beneficiaries moving off an income-tested benefit. The details of that change are set out in Tax Information Bulletin Volume Six, No. 12, page 20.

Key features

Inland Revenue will be able to pay arrears of GMFI back to the date that the Department of Social Welfare ceases payment of a beneficiary's main benefit.

Application date

The change applies from the date of assent, 12 December 1995.

Overpaid tax applied to other tax liabilities - implications for imputation, consolidation and DWP rules

Various sections, Income tax Act 1994 and Tax Administration Act 1994

Introduction

The imputation, consolidation and dividend withholding payment (DWP) rules have been amended to provide for situations when the Commissioner does not refund overpaid tax to corporate taxpayers but applies it to other tax liabilities.

Background

When tax is overpaid, that tax can either be refunded to a taxpayer or credited by the Commissioner towards another tax liability of the taxpayer. In the case of corporate taxpayers, if a refund is made, a debit arises in the memorandum account.

However, the imputation, consolidation, and DWP rules previously allowed an extra "windfall" credit to arise when the Commissioner applied overpaid income tax or foreign dividend withholding payments in satisfaction of other tax liabilities, rather than refunding them.

There are three sets of circumstances in which this situation can typically arise:

- when overpaid income tax cannot be refunded to a corporate taxpayer because of an insufficient credit balance in its memorandum account (section MD 2(1))
- when the income tax has been applied by the Commissioner towards other outstanding tax liabilities of the corporate taxpayer that were due and payable (section MD 1)
- when the taxpayer has asked the Commissioner to retain tax that is refundable and apply it towards an expected tax liability.

To ensure that the rules are robust, the amendments provide that windfall credits will not be available when income tax is overpaid and subsequently applied to satisfy either of the following:

- other income tax liabilities
- tax liabilities (apart from income tax).

The relevant sections affected by these amendments are:

- sections MD 4, ME 5 (1)(l), (m), (n), ME 5 (2)(k), ME 12 (1)(l), (m), ME 12 (2)(k), MG 5 (1)(k), MG 5 (2)(i), MG 15 (1)(l), MG 15 (2)(j), MZ 1, MZ 2, MZ 3 (Income Tax Act 1994);
- sections 180(1)(c), 181(1)(c) (Tax Administration Act 1994);
- sections 191SB(1)(l), (m), 191SB(2)(k), 191UB(1)(l), 191UB(2)(j), 394E(1)(k), (l), (m), 394E(2)(j), 394ZJA, 394ZJB, 394ZW(1)(h), 394ZW(2)(h) (Income Tax Act 1976).

Key features

The imputation rules have been amended to ensure that:

- A windfall credit will not arise in a company's memorandum account when the Commissioner applies overpaid income tax in satisfaction of other income tax liabilities.
- A debit will arise when the Commissioner applies overpaid income tax in satisfaction of tax liabilities other than income tax, (unless the company previously experienced a breach in shareholder continuity).
- A debit will also arise when the Commissioner applies overpaid income tax towards outstanding income tax

liabilities that arose before the imputation rules came into force (unless the company previously experienced a breach in shareholder continuity).

- The Commissioner will also be able to remit imputation penalty tax and DWP penalty tax in prescribed circumstances.

Identical amendments have been made to the DWP rules to ensure that the same result occurs in the case of overpaid DWP.

These amendments apply to companies or consolidated groups that operate either imputation credit or DWP accounts.

Application date

The amendments apply from 1 April 1988. However, they will not apply to companies that have done either of the following before 17 August 1995:

- recorded windfall credits in their accounts and neutralised those credits before 17 August 1995
- recorded credits in their accounts for payments of income tax or DWP, and with the approval of the Commissioner, treated their account as debited when the payment was applied to another income tax or DWP liability respectively.

For the purposes of determining whether windfall credits have been neutralised before 17 August 1995, the amendments include an ordering rule that requires credits to have been neutralised in the order in which they arose.

These same points apply to windfall credits recorded in a company's ICA that were transferred from that company's DWP account.

Detailed analysis

***Example** - windfall credit will not arise*

X Ltd - ICA

Imputation Year	Transaction	ICA Entry
1995	Provisional tax payment	$12,000 Cr
	ICA credits attached to dividends	$12,000 Dr
1995	Closing Balance	$ 0
1996	X Ltd in tax loss position and eligible for tax refund.	
	No credit balance in the ICA. Tax cannot be refunded.	
	Commissioner retains the payment for application to future income tax liabilities.	No credit entry

For imputation purposes, the application of overpaid provisional tax towards a future income tax liability will not give rise to another credit in X Ltd's ICA.

***Example** - debit to arise*

Y Ltd - ICA

Imputation Year	Transaction	ICA Entry
1995	1994 reassessment - $,1000 income tax overpaid	$1,000 Cr (1994 entry)
	GST liability pending.	
	Y Ltd requests application of overpaid income tax to GST.	$1,000 Dr
1995	Closing balance	$ 0

Application by the Commissioner (at the request of Y Ltd) of an overpayment of income tax towards a non-income tax liability will give rise to a debit in Y Ltd's ICA.

Intervening shareholder continuity breaches

Under the imputation and DWP rules, if shareholding in a company changes by more than the threshold specified in the shareholder continuity rules, credits that arose before the change and have not been utilised will be neutralised by a debit.

However, corporate taxpayers in this situation who have overpaid their tax will not be subject to another debit if the overpayment is applied to either pre-imputation income tax liabilities, or non-income tax liabilities. This is because the taxpayer will have already lost the credit in its account as a result of the breach in shareholder continuity.

Example

Z Ltd - ICA

Imputation Year	Transaction	ICA Entry
1995	End of year tax payment	$12,000 Cr
	Shareholder continuity breached	$12,000 Dr
	1994 Reassessment - $500 income tax overpaid.	
	GST liability outstanding ($500)	
	Commissioner offsets income tax overpayment against GST.	No debit entry
1995	End of year tax payment	$ 0

A debit will not arise in Z Ltd's ICA when the overpaid income tax is applied towards the GST liability. This is because the credits that arose from the overpayment of tax were cancelled when shareholder continuity was breached.

Remission of imputation and DWP penalties

Corporate taxpayers that carry debit balances in either their ICAs or DWP accounts at the end of the imputation year (31 March) are subject to a liability for further income tax (FIT) equal to the debit balance (section

ME 9). Imputation penalty tax set at 10% of the FIT liability is also payable by the taxpayers (section 153 of the Tax Administration Act 1994).

Now that a debit arises when the Commissioner applies overpaid income tax against non-income tax liabilities, there is a potential for taxpayers to be subject to tax penalties.

This would particularly happen if the following sequence occurs:

1. A corporate taxpayer overpays its income tax.
2. The taxpayer credits its ICA and subsequently attaches the credit to a dividend payment (thus debiting the account).
3. The Commissioner subsequently credits the overpayment against other tax liabilities close to the end of the imputation year.
4. As a result of the Commissioner's action, the taxpayer is required to make a debit entry in the ICA.
5. The taxpayer does not have sufficient time to clear the debit balance before the end of the year, and is thus subject to FIT and imputation penalty tax for failing to clear the account.

Section 180 of the Tax Administration Act has been amended to provide that the liability for FIT will be remitted when the Commissioner is satisfied that these two conditions are met:

- Liability for imputation penalty tax arose because the Commissioner applied income tax towards non-income tax or pre-imputation penalty tax liabilities.
- The taxpayer did not become aware in sufficient time that the debit arose to its ICA to allow it to clear the debit balance before the end of the imputation year.

Section 181 of that Act has also been amended to remit DWP penalty tax in similar situations for corporate taxpayers that maintain DWP accounts.

Qualifying companies and further income tax

Sections ME 9 (1), ME 9 (3) and ME 9 (7), Income Tax Act 1994

Introduction

The qualifying company (QC) rules contain an anti-credit streaming rule that deems companies to have attached imputation credits to dividends paid during an imputation year to the fullest extent possible in accordance with credits in their imputation credit accounts (ICAs).

Strict compliance with this rule has created further tax burdens and penalties for companies receiving a refund in a subsequent year. The tax refund can give rise to a debit balance in a company's account which, if left uncleared at the end of the year, would subject the company to further income tax (FIT) obligations and penalties.

These amendments relieve QCs from the liability to pay FIT in respect of a debit balance that remains uncleared at the end of an imputation year if the debit balance is attributable to refunds of income tax.

Background

Refunds of overpaid income tax can be paid to QCs regardless of the credit balance existing in their ICAs unless the tax was overpaid as part of an arrangement to obtain a tax advantage (section MD 2 (7)).

Combined with the anti-credit streaming rule, this provision creates further tax burdens and penalties for companies which are in an overall loss position or are just breaking even.

The further tax burden and associated penalties arise when the following sequence occurs:

1. Tax (for example, provisional tax or resident withholding tax) has been paid during an imputation year, giving rise to credits in a QC's ICA.
2. At the end of the imputation year, all credits in the QC's ICA are deemed to have been imputed to dividends paid during that year, thus either reducing or eliminating the credit balance.
3. In a subsequent imputation year the QC receives a refund for the tax previously paid, thus causing its ICA to move into debit balance.

The debit balance would need to be removed by way of the company making a voluntary tax payment by the end of the imputation year, or a FIT liability would be imposed to balance the ICA.

Imputation penalty tax set at 10% of the FIT liability would also be imposed on the company.

Key features

The imputation regime has been amended so that:

- QCs with debit balances in their ICAs created by income tax refunds will not be subject to the imposition of FIT at the end of the imputation year, and
- debit balances that are attributable to tax refunds will remain in the ICA and be carried over into future imputation years to be offset by credits that arise in the account as the company meets its future tax obligations.

Application date

These amendments apply to any income tax refund paid to a QC during the imputation year beginning on 1 April 1995 or any subsequent year.

Detailed analysis

FIT liability neutralised

The relief from imposition of FIT is achieved by application of the formula:

a - b

In this formula:

a is the sum of all such income tax refunds paid to the QC on or before the date on which the relevant debit balance giving rise to the liability for FIT is determined.

b is the sum of any credits arising in accordance with sections ME 3 (2)(b)(i) and ME 4 (1) in the company's ICA during the imputation year in which the amount of any such refund first arose as a debit and during any subsequent imputation year.

QCs that are found to have debit balances in their accounts at the end of an imputation year will be able to aggregate the following amounts from the time the relevant debit balance is determined:

- all debits arising from refunds of income tax (variable "a")
- all credits that arose in the QC's ICA during the year in which the debits associated with refunds of income tax first arose and subsequent years (variable "b").

Under this formula, any amount of FIT liability arising from an end of year debit balance will be offset by an amount equal to the debits that remain in excess of the credits.

The debit balance will not be cancelled by the formula but will continue to roll-over into subsequent imputation years until the debits are offset by credits that arise in the QC's account.

This formula is identical to the formula previously contained in section 394L(4A) of the Income Tax Act 1976 (see Tax Information Bulletin Volume Seven, No. 4 (October 1995)).

Example 1

QC X Ltd - ICA

Imputation Year	Transaction	ICA Entry
1995	Provisional tax payment	$4,000 Cr
	Allocation to dividends	$4,000 Dr
1995	Closing Balance	$ 0
1996	Tax refund (QC in loss)	$4,000 Dr
	No tax payments	$ 0
1996	Closing Balance	$4,000 Dr

Under section ME 9(1), a FIT liability would ordinarily arise at the end of the 1996 imputation year. However, under section ME 9 (7), the FIT liability will be reduced by the formula a - b, in which:

a is $4,000
b is nil.

Therefore the FIT liability of $4000 arising on the QC's debit balance would be reduced by $4000 ((a) - (b)).

However, the actual debit balance will remain in the company's account and continue to roll-over into future years.

Example 2

QC Y Ltd - ICA

Imputation Year	Transaction	ICA Entry
1998	Debit (tax refunds rolled over from previous years)	$10,000 Dr
	Provisional tax payment	$ 3,000 Cr
1998	Closing Balance	$ 7,000 Dr

The FIT liability of $7000 would be reduced by the formula a - b, in which:

a is $10,000

b is $3,000.

Therefore at the end of the imputation year, the FIT liability of $7,000 arising from the QC's debit balance would be reduced by $7,000 ((a) - (b)).

The actual debit balance will remain in the company's account and continue to roll-over into future years.

Qualifying Companies that cease to be ICA companies

Section ME 9 (3) has been amended to relieve a QC that ceases to be an ICA company from the obligation to pay FIT if the debit balance in its ICA is attributable to refunds of income tax. The obligation to pay FIT under section ME 9 (3) will be cancelled through the application of the formula discussed above.

Example

QC Z Ltd - ICA

Imputation Year	Transaction	ICA Entry
1997	Opening balance (tax refunds rolled-over from previous years)	$20,000 Dr
	No tax payments	$ 0 Cr
14 Aug 1997	QC Z Ltd ceases to be an ICA company	$20,000 Dr

Under section ME 9 (3), a liability for FIT of $20,000 would ordinarily arise . However, liability under this provision is subject to the operation of the formula in section ME 9 (7). Therefore the FIT liability of $20,000 will be reduced by $20,000 ((a) - (b)) to nil.

QC Z Ltd will not be subject to an FIT liability when it ceases to be an ICA company.

Aligning BETA provisions - consolidated groups

Sections ME 11, ME 12, MF 8, MF 9 and MF 10, Income Tax Act 1994
Sections 191SA, 191SB, 191VA, 191VB and 191VC, Income Tax Act 1976

Introduction

Amendments align the branch equivalent tax account (BETA) provisions of the Income Tax Act 1994 which apply to consolidated companies with those applying to individual companies.

Background

During the reorganisation of the Income Tax Acts it was found that a number of required amendments to the consolidated group BETA provisions were not made when the BETA rules were amended in 1993. These amendments have now been made.

Key features

The amendments modify the various BETA rules for consolidated groups to achieve these results:

- Credit balances may satisfy foreign dividend withholding payment liabilities.
- Debit balances may satisfy controlled foreign company income tax liabilities.
- Controlled foreign company income tax liabilities will credit a BETA account.
- Foreign dividend withholding payment liabilities will debit the BETA account.

Application date

The amendments apply from 28 September 1993, the date the BETA rules were amended.

NRWT integration into FIRST computer system

Sections NG 11, NG 13, NG 16, NG 16A and OB 1 Income Tax Act 1994
Section 49, Tax Administration Act 1994

Introduction

Amendments have been made to the non-resident withholding tax (NRWT) provisions in the Income Tax Act 1994 and the Tax Administration Act 1994, in order to facilitate the integration of the NRWT system into Inland Revenue's FIRST computer system.

Background

The NRWT system was integrated into Inland Revenue's FIRST system from 1 April 1995. The amendments facilitate this integration, and also provide for changes that reduce compliance costs, such as the change from monthly statements to annual reconciliation, bi-annual payments in certain circumstances and simplified refund procedures.

Key features

- Payers of non-resident withholding income now only have to file a NRWT reconciliation statement annually, instead of filing monthly statements.
- NRWT payers can make payments bi-annually if their total deductions are less than $500 per annum.
- There are new procedures for collecting and refunding NRWT.
- There are requirements concerning non-resident withholding income payers' obligations to file a reconciliation when they stop a taxable activity in relation to which NRWT deductions have been made.

Application date

The amendments apply from the date of the bill's enactment, 12 December 1995

Depreciation review

Sections OB 1, EG 11, EG 17, EG 19 and Schedule 17, Income Tax Act 1994
Sections 107A, 108J, 111, 117 and Schedule 22, Income Tax Act 1976

Introduction

Several amendments have been made to the depreciation rules. The amendments arise out of the post-implementation review of the depreciation legislation and therefore focus on remedying defects identified in the legislation.

Background

As part of its Generic Tax Policy Process, the Government will conduct a review of legislation after enactment to ensure that the legislation is effective, given the intents and objectives of the policy. The depreciation regime, which came into effect in the 1993-94 income year, is the first legislation to be reviewed in this way. The Government has received submissions outlining defects in the legislation, or suggesting improvements to it. The review is continuing and it may result in further amendments in the future.

Key features

- The depreciation rules have been amended to exclude primary sector land improvements purchased by a taxpayer if the costs of making the improvements were immediately deductible to a previous owner. This applies from the 1993-94 income year except in relation to depreciation claimed before 19 July 1995.
- A limitation has been made on the amount of assessable income derived on the sale of assets in a pool that consists only of assets previously depreciated under the globo method. This applies from the date of enactment of the legislation, 12 December 1995.
- Schedule 17 (which lists intangible depreciable property) has been expanded to include the following items:
  - management and licence rightsissued under the Radiocommunications Act 1989, and acquired after 1 April 1993;
  - fixed-life consents granted, in or after the 1996-97 income year, under the Resource Management Act 1991.
- An amendment has been made to the associated persons provision (section EG 17) to ensure that when intangible depreciable property is transferred to an associate, and the proceeds of sale are not assessable to the transferor, the property is transferred at the lesser of cost to the vendor or consideration paid by the purchaser.
- Several minor technical amendments have also been made.

Detailed analysis

Deductible primary sector land improvements

The definition of "depreciable property" in section OB 1 has been amended to correct a technical error in relation to the depreciation of primary sector land improvements purchased since 1993. The new depreciation rules were not intended to apply to primary sector land improvements as the Act contains specific provisions that provide for the deduction and amortisation of expenditure on such improvements (sections DL 2, DO 3, DO 4 and DO 5). However, arguably the legislation did not reflect that intent and certain primary sector land improvements that are listed in Schedule 16 and that were immediately deductible to one farmer may have been depreciable to a subsequent owner of the farm.

The amendment corrects this. If expenditure on a land improvement is now, or was prior to 1987, immediately deductible to a farmer, forester or aquaculturalist and that taxpayer sells the property, the new owner will not be able to depreciate the land improvement. As there is no clawback of the expenditure on sale of the property, to permit the new owner to depreciate the improvement allows a double deduction of the expenditure.

Application date

The amendment will generally apply from the 1993-94 income year. The amendment is retroactive not only because it achieves the policy intent of the legislation, but also because those in the primary sector who have purchased improvements since 1993 have not in general claimed depreciation on such land improvements under Schedule 16. As it is now mandatory to claim depreciation, a prospective application date would require those taxpayers to value the improvements, claim depreciation on them and recalculate their tax for the 1993-94 and 1994-95 years.

However, section 5(4) of the Income Tax Amendment Act (No 3) 1976 provides that the amendment will not apply retrospectively to depreciation deductions already claimed by taxpayers in tax returns filed for the 1993-94 and 1994-95 years by 18 July 1995 (the date on which the Minister announced the proposed amendment). If taxpayers have claimed depreciation by that date, section EG 19, which provides for clawback of depreciation and loss on sale on the disposal of property, will not apply on sale of the land improvement. This is effected by excluding the land improvements from the definition of depreciable property from the 1993-94 income year so that there is no disposal of depreciable property to which section EG 19 can apply.

Sale of pooled assets previously depreciated under the globo method

Section EG 11 has been amended to provide that assessable income arising on the sale of assets in a pool that consists only of assets that were previously depreciated under the globo method will be limited to:

- depreciation claimed in relation to the pool (including depreciation claimed under the globo method), less
- any amounts of depreciation previously recovered.

The amendment addresses a problem faced by electricity and gas distribution industries which became liable to tax from 1 April 1987. The asset records kept by those entities were limited and, in many cases, although they knew the total cost of assets, they could not practically identify when an individual asset was acquired nor its cost price. Therefore, when these entities became taxable the Commissioner allowed them to use the globo method in order to calculate depreciation. The globo method was similar to the pooling method that is currently available but did not tax capital gains on sale.

When the new depreciation provisions were introduced, the globo method was replaced with the pool method of depreciation. Under that method, when pooled property is sold, sale proceeds are debited against the pool balance, and if the balance becomes negative, the negative balance is deemed to be assessable income. This taxes any capital gains that might arise on the sale of pooled assets. This was considered to be an acceptable cost compared to the benefits of pooling, and generally taxpayers who consider that capital gains would be derived on the sale of certain assets can exclude them from a pool.

Although generally pooled property must have a value of $2,000 or less, an exception was made for property depreciated under globo - it has no maximum. Therefore the energy distribution industries pooled property the market value of which amounted to millions of dollars. The market value of the pooled assets is significantly higher than their historical cost. Therefore, when the whole of the assets are to be disposed of, the difference between the adjusted tax value of the pool and its market value will be assessable income. This is of concern to those companies in view of the current interest in mergers, amalgamations and takeovers in the industry.

The amendment will limit assessable income to depreciation claimed, including depreciation allowed while the assets were depreciated under the globo method, less depreciation previously recovered.

Example

Energy Co has a pool of assets with a market value of $20 million. The assets were previously depreciated under the globo method. The adjusted tax value of the pool is $5 million, with $10 million in depreciation claimed since 1987 - either under globo or under pool.

Energy Co sells one half of its pool for $10 million. This reduces the adjusted tax value to negative $5 million, all of which is assessable income to the company. Under section EG 11 (4) the adjusted tax value of the pool is then deemed to be nil. Shortly after, the balance of the pool is sold for $10 million, reducing the adjusted tax value to negative $10 million. Assessable income is limited to $5 million, being depreciation claimed less depreciation previously recovered.

This amendment only applies if all assets in the pool were previously depreciated using the globo method. Inland Revenue is not aware of any companies that have added other assets to an ex globo pool. However, if it transpires that taxpayers have done so, this issue may be revisited with a view to considering whether it is feasible to permit a one-off removal of such assets into a separate pool. If such a mechanism is required and feasible, Inland Revenue would consider recommending to Government an amendment retrospective to the date of enactment of the substantive provision.

Application date

The amendment will apply from the date of enactment of the legislation, 12 December 1995.

Additions to Schedule 17

Schedule 17 lists intangible property that is depreciable. To be added to Schedule 17, an item must have these two properties:

- It must have a finite useful life that can be estimated with a reasonable degree of certainty on the date of its creation or acquisition.
- It must have a low risk of being used in tax avoidance schemes.

Two new items have been added to Schedule 17; radiospectrum rights granted under the Radiocommunications Act 1989 and fixed-life resource management consents.

Radiospectrum management and licence rights

A management right is primarily the right to issue licences to transmit radio waves on frequencies under the manager's control. The Crown has retained certain management rights, while others have been sold for a fixed period of a maximum of 20 years. The principal licence right is the right to transmit radio waves on a specified frequency. Licence rights in relation to a frequency are issued by the holder of the management right for that frequency for a fixed term within the life of the management right.

At present a company to whom management rights are granted generally issues licences to itself or associates, although they may be issued to third parties. The manager may charge whatever is considered appropriate (including nothing) for issue of the licence. The Government is concerned to ensure that taxpayers holding a management right in relation to a frequency cannot inflate the depreciation deductions available by issuing licences to an associate (which would be depreciable to it) for a lump sum cost. Presumably, the management rightholder would do this only if there were some argument to be made that the proceeds of issue would be non-assessable.

Example

A Co buys the management right for certain frequencies for $10 million. The management right will be depreciable.

A Co issues a licence to B Co (its subsidiary) to transmit on a frequency for a $2 million lump sum which it considers is not assessable. Depreciation would be claimable on a cost of $12 million, yet the economic cost of the radiospectrum rights to the group is $10 million.

As noted above, this is a problem only if the licence is issued for a lump sum and there is some argument to be made that the payment is not assessable income to the management rightholder. Presumably, if that lump sum is assessable, the licence will be issued at no cost, or for a regular, deductible, payment made by the licence holder (which will be assessable to the management rightholder).

Section EG 17 has been amended to provide that, for the purposes of the depreciation provisions, the cost of a licence is nil if the licence is issued to a taxpayer by an associate holding the management right in relation to the frequencies allocated in the licence.

Radiospectrum rights will be depreciable if they are acquired after 1 April 1993.

Resource management consents

The following resource management consents have a fixed legal life of a maximum of 35 years and are added to Schedule 17:

- coastal permits (except for reclamation)
- land use consents that relate to the bed of a river or lake (except for reclamation)
- water permits
- discharge permits.

These consents are depreciable if they were granted in or after the 1996-97 income year.

Section 122 of the Resource Management Act states that a resource consent is neither real nor personal property. Therefore the definition of "property" in section OB 1 has been amended to include, for the purposes of the depreciation provisions, resource consents.

Intangible assets transferred between associates

Section EG 17 limits the depreciation deductions that may be claimed by a taxpayer on purchase of property from an associate. Although the provision is poorly drafted, its intent is to ensure that, for depreciation purposes, property is transferred at the lesser of the cost to the transferor or price paid by the transferee. Subsection (2) provides that the limitation does not apply if the Commissioner considers that depreciation should be based on the actual price paid.

The section has been amended to remove the Commissioner's discretion in relation to the transfer of intangible property, when the proceeds of the sale of the property are not assessable to the vendor.

The amendment reflects the Government's concern about the transfer of intangible assets between associated taxpayers in order to increase depreciation deductions. First, to the extent that such assets are difficult to value, there is an opportunity to transfer them to an associate at an inflated value. This exposes the tax base to some risk and is likely to give rise to IRD/taxpayer disputes. Secondly, the market value of an intangible asset, in particular, may well exceed the adjusted tax value of the asset - because, for instance, the costs of creating the asset have in part been deducted.

Sale of intangible assets to third party

Section EG 19 (7) requires the Commissioner to deem property transferred to have been disposed of for market value, or if that cannot be ascertained, for a consideration specified by the Commissioner. In the case of intangible assets which may be difficult to value, this power may be used to deem transfer to occur at adjusted tax value. Although it makes no substantive difference, section EG 19 (7) has been amended to refer specifically to the Commissioner's ability to deem transfer of property to occur at adjusted tax value if no market value can be established.

Amendment to item 2, Schedule 17

Item 2 of Schedule 17 enables depreciation of "the right to use a design or model, plan, secret formula or process, or other like property right". The bill inserts the word "or" between "property" and "right". Item 2 is taken from paragraph (a) of the royalty definition and the word was omitted in error. The amendment takes effect from the 1993-94 income year.

Maximum pooling value is GST exclusive

The word "consideration" in the definition of "poolable property" in section OB 1 has been replaced by "cost". This provides a link to section ED 4(4) (which deals with the relationship between GST and income tax) and clarifies that the $2,000 maximum pooling value excludes GST for a GST registered person. The amendment applies from the 1993-94 income year.

Transfer of assets into a pool

Section EG 11 has been amended to provide that, when an asset that has previously been depreciated separately by a taxpayer is transferred into a pool, the value of the asset is included in the opening value of the pool for the year in which the transfer occurs. In this way the taxpayer receives the full 12 months' depreciation claim on the asset for that year. The taxpayer cannot receive more than this by transferring property into a pool mid-year because an asset can be depreciated in any income year under only one method - straight line, diminishing value or pool. The amendment applies from the 1993-94 income year.

In specie distributions

The definition of "disposal" in section EG 19 has been amended to include the distribution of property. It is intended that in specie distributions of property to a shareholder be disposals. The amendment takes effect from the 1993-94 income year.

Income tax - associated persons

Sections OB 1, OD 8 (1) and OD 8 (4), Income Tax Act 1994

Introduction

The "associated persons" and "relative" definitions in the Income Tax Act 1994 have been amended to include certain trustee-beneficiary relationships.

Background

One of the Act's "associated persons" definitions, and the definition of "relative", referred to a trustee-beneficiary relationship in terms of a person being a "trustee for" another. Another of the "associated persons" definitions referred to "a trustee of a trust and a beneficiary of that trust". These were not sufficient where the beneficiary was a discretionary beneficiary only. Following the case of *D H Cook Ltd v CIR* (1973) 1 NZTC 61,104, a person was not a trustee "for" another person where there were other persons who may also have been discretionary beneficiaries. The amendments ensure that discretionary beneficiaries are included in the definitions.

Key features

The amendments have changed the associated persons definitions in subsections (1) and (4) of section OD 8, and the definition of "relative" in section OB 1, to ensure that discretionary beneficiaries are included within these provisions.

The amendment to subsection (1) of section OD 8 provides that any two persons are associated for the purposes of that subsection, when one is the trustee of a trust under which the other has benefited or is eligible to benefit.

The amendment to subsection (4) of section OD 8 provides that a company and a person (other than a company) are associated for the purposes of that subsection, when a trustee of a trust under which that person or that person's spouse or infant child has benefited or is eligible to benefit, has a voting interest in the company equal to or exceeding 25% or, in any case where a market value circumstance exists in respect of that company, a market value interest in the company equal to or exceeding 25%.

The amendment to subsection (4) of section OD 8 also provides that any two persons are associated for the purposes of that subsection, when one is the trustee of a trust under which the spouse or infant child of the other has benefited or is eligible to benefit.

The amendment to the definition of "relative" in section OB 1 provides that "relative" includes a trustee of a trust under which a relative has benefited or is eligible to benefit.

A person is "eligible to benefit" when he or she is either:

- named by the trust deed as a potential beneficiary; or
- designated as a member of a class of potential beneficiaries, for example, "the children of ...".

When trustees have a general power of appointment, persons not already appointed as beneficiaries under the power are excluded from the definition.

Application date

The amendments apply from 17 August 1995, the date of the bill's introduction.

In relation to the amendments' application to section CD 1 of the Income Tax Act 1994, which deals with the taxation of profits or gains from land transactions, the amendments apply to acquisitions of land on or after 17 August 1995.

Livestock adverse event income equalisation scheme - calculation of maximum deposit

Section OB 1, Income Tax Act 1994

Introduction

An amendment clarifies how to calculate the maximum amount that can be deposited into the adverse event income equalisation scheme in circumstances which previously caused difficulty.

Background

The adverse event income equalisation scheme allows farmers who are forced to sell livestock because of an adverse event to deposit the assessable income from the forced sale into the scheme. The amount deposited will not become taxable until the year in which it is withdrawn.

The "maximum deposit" into the scheme is determined by subtracting the "cost" of the stock sold from the livestock sale proceeds. The cost is deemed to be the preceding year's livestock value of the class the livestock sold would have been at the end of the current year had it not been sold. A problem arises if a farmer did not have such livestock on hand at the end of the previous year. In these cases, there will be no cost value attributable to the livestock sold.

Key features

An amendment to the definition of maximum deposit in section OB 1 clarifies what to do when this problem arises. Under the amended legislation the cost of livestock sold will be:

- if all livestock of the class sold were on hand at the beginning of the year, the opening book value (determined as if section EL 5(2) did not apply) of that livestock in the income year of sale;
- if all livestock of the class sold were purchased in the same year, the average purchase price of the livestock purchased before the forced sale;
- if livestock of the class sold were both on hand at the beginning of the year and purchased during the year, the weighted average of the opening book value (determined as if section EL 5(2) did not apply) in the income year of sale and the average purchase price of livestock of that class purchased before the forced sale.

Example

At the end of the 1995-96 year a farmer has rising one-year steers on hand which are sold as a result of an adverse event in the 1996-97 year. As the cattle would have been rising two-year steers at the end of the 1996-97 year, the farmer must apply the 1995-96 rising two-year value to the number of steers sold to determine their cost. However, if the farmer did not have rising two-year steers at the end of the 1995-96 year there will be no cost value to attribute to the livestock sold.

The amendment prescribes the method to be used to determine cost in this eventuality. Assume that the farmer has 10 steers of a class at the beginning of a year with an opening value per head of $180, and purchases a further 20 at $400 per head before the adverse event occurred. The farmer then sells 10 steers of this class because of the adverse event. On a weighted average basis, the cost of the stock sold would be $327 per head for the purposes of determining the maximum deposit.

Application date

The amendment will apply from the date of enactment, 12 December 1995.

Definition amendments - shares of the same class

Section OB 1, Income Tax Act 1994

Introduction

An amendment deletes the term “specified class” in the “available subscribed capital per share cancelled” and “transitional capital amount” definitions and replaces it with references to “shares of the same class as the share”.

It also extends the application of the definition “shares of the same class” to section OB 1 itself.

Background

As a result of the reordering of the Income Tax Act 1976 the term “specified class” was left undefined in the “available subscribed capital per share cancelled” and “transitional capital amount” definitions.

The term “shares of the same class” is defined in section OB 1 for the purposes of sections CF 2 to CF 5 and FC 4. However, it is also used in the definition of “available subscribed capital per share” in section OB 1.

Key features

The term “specified class” in the “available subscribed capital per share cancelled” and “transitional capital amount” definitions has been deleted and replaced with the phrase “shares of the same class as the share”.

The application of the “shares of the same class” definition has been extended to section OB 1 itself.

Application date

These amendments apply retrospectively from the enactment date of the Income Tax Act 1994, 1 April 1995.

Qualifying companies - trustee shareholders

Section OB 3, Income Tax Act 1994/Section 393B, Income Tax Act 1976

Introduction

An amendment provides that a qualifying company will not lose its qualifying company status if all dividend income is not vested or paid as beneficiary income.

Background

The intention of the qualifying company rules is to treat small, closely-held companies in a similar way as partnerships. The main effects are:

- Capital gains can be distributed tax-free.
- Losses incurred by a qualifying company can be passed through to shareholders, as long as certain conditions are met.

To ensure that the rules are open only to closely-held companies, entry is limited to companies with five or fewer shareholders, with family members being counted as one shareholder.

If a trustee of a trust owns shares in a qualifying company, it is the beneficiaries of the trust, not the trustees, which "count" as shareholders when determining whether the company has five or fewer shareholders. The mechanism used for ensuring the qualifying company rules are not undermined is the requirement that any trustee shareholder pays or vests dividends received from the qualifying company as beneficiary income. Beneficiaries receiving that beneficiary income are then deemed to be shareholders of the qualifying company.

The Government recently became aware of cases where a company having already gained qualifying company status can lose that status because a trustee shareholder is unable under general trust law to vest or pay dividend income as beneficiary income. The amendment addresses this difficulty.

Key features

Changes have been made to the qualifying company rules so that:

- qualifying companies, subject to the rule below, will not be excluded from the rules if the trust pays or vests as much of the dividend income as is allowed under general trust law; and
- the dispensation will apply only if dividends have been paid or vested as beneficiary income since the company became a qualifying company.

Under the new rules, circumstances may arise where no dividends are paid or vested as beneficiary income. In those cases, dividends vested or paid as beneficiary income in previous years will be the base for determining the shareholder count for the company. No amendment is required to achieve this treatment.

If dividend income is retained by the trustee because it cannot be distributed under general trust law (for example, when the trust has losses to carry forward) those dividends will be either fully imputed or exempt - in line with normal qualifying company rules. No amendment is required to achieve this treatment.

The amendment does not relax the "entry" requirement for qualifying companies. In other words, it will not allow companies to become qualifying companies if a trustee shareholder is unable to meet the paying or vesting of income requirements.

Application date

The amendment applies from the 1992-93 income year, the year the qualifying company rules were introduced, and to the extent that any dividend or amount is paid by a qualifying company to a person in that person's 1991-92 income year, the 1991-92 income year.

Provisional tax: consistent treatment of provisional taxpayers

Section MB 2 (3)(c), Income Tax Act 1994

Introduction

An amendment ensures that provisional taxpayers benefiting from an extension of time for filing their income tax returns through an agent (and who do not estimate their provisional tax) are required to pay their third instalment of provisional tax based on 105% of the residual income tax for the immediately preceding income year. This applies whether or not that tax return has been filed by the due date of that instalment.

Background

Taxpayers who have not estimated and have not filed a tax return for the immediately preceding income year can pay their first two provisional tax instalments based on 110% of the residual income tax for the income year before the immediately preceding income year.

However, they must base their third instalment of provisional tax on their previous year's income (plus the 105% uplift factor), whether or not the tax return for that income year has been filed by the due date for the third provisional tax instalment. This has always been the policy intent, but it was not correctly reflected in the law.

Previously, this requirement only applied to cases when taxpayers were required to file income tax returns "on or before the relevant instalment date". It did not apply to cases where taxpayers were entitled to file income tax returns after the "relevant instalment date" because of extension of time arrangements a taxpayer's agent may have. The amendment ensures that the third provisional tax instalment is based on 105 percent of the taxpayer's residual income tax for the immediately preceding income year. If no return is filed at that date, the taxpayer should make an estimate of the amount due on that date and pay on that basis.

Key features

Section MB 2 (3)(c) of the Income Tax Act 1994 has been repealed and substituted with a new section MB 2 (3)(c). The new section makes it clear that if a taxpayer has not filed a tax return for the immediately preceding income year on or before the due date for the third instalment of provisional tax, whether by reason of an extension of time or failure to file, the third provisional tax instalment is to be based on 105% of the residual income tax of the immediately preceding income year.

Application date

The amendment applies from the date of enactment, 12 December 1995.

Provisional tax: treatment of natural person trustees

Section 121(4), Tax Administration Act

Introduction

An amendment clarifies that natural person trustees with residual income tax of less than $30,000 are required to pay use of money interest from their third provisional tax instalment date.

Background

Use of money interest is paid by:

- all provisional taxpayers who are not natural persons;
- all provisional taxpayers who are natural persons whose residual income tax is greater than $30,000, or who have estimated their income for provisional tax purposes or held a resident withholding tax certificate of exemption at any time during the income year;
- any natural person in that person's capacity as a trustee, but only in respect of trustee income.

For provisional tax purposes, natural person trustees, in respect of trustee income, are treated in the same way as corporate trustees.

Subsections 121(3) and (4) of the Tax Administration Act 1994 provide the dates from which use of money interest is payable for each category of provisional taxpayer. Section 121(4) does not mention natural person trustees. This effectively omits natural person trustees from the use of money interest rules if the residual income tax payable on the trustee income is less than $30,000 and they have paid on the basis of the previous year's residual income tax.

Key features

Section 121(4) of the Tax Administration Act 1994 has been amended to specifically refer to natural person trustees whose residual income tax is equal to or less than $30,000. A corresponding amendment has been made to section 398A of the Income Tax Act 1976.

Application date

The amendment first applies to tax on income derived in the 1994-95 income year and subsequent years.

Provisional tax: remission provisions

Section 121(7), Tax Administration Act 1994

Introduction

An amendment clarifies the provisional tax use of money interest remission provisions to ensure they cannot be used to provide relief from any changes in the use of money interest rates.

Background

Under section 121(7) the Commissioner of Inland Revenue is in some instances required to remit provisional tax use of money interest. This applies to interest payable from a provisional tax due date if that interest is attributable to any Amendment Act, Order in Council or change in a public ruling by the Commissioner "relating to income tax" that takes effect on or after the first day of the month preceding the month in which an instalment of provisional is due.

This provision was designed to provide specific relief from use of money interest if an increase in the underlying tax liability could not reasonably have been foreseen by the taxpayer before the instalment was due. It was not designed to provide relief from increases in the rate of use of money interest (authorised by an Order in Council) if the rate change is introduced in the month immediately prior to the month in which an instalment of provisional tax is due.

Key features

Section 121(7) has been amended to exclude the application of any Order in Council promulgated under section 121(10) of the Tax Administration Act (which relates to provisional tax use of money interest rates and the threshold at which interest is paid).

Application date

The amendment from the date of enactment, 12 December 1995.

Provisional tax- reference corrections

Section HG 12 (1)(a), Income Tax Act 1994

Section HG 12 (1)(a) of the Income Tax Act 1994 links the due date for paying qualifying company election tax with the due date for paying terminal tax.

Sections MC 1 (2) and MC 2 (2) provide the due dates for paying terminal tax. Section HG 12 (1)(a) incorrectly refers to sections MB 10 (2) and MC 2 (2) instead of sections MC 1 (2) and MC 2 (2).

Section HG 12 (1)(a) has been amended to correctly refer to section MC 1 (2).

Application date

The amendment applies from the date of enactment, 12 December 1995.

Section 121, Tax Administration Act 1994

Section 121 of the Tax Administration Act 1994 charges provisional tax use of money interest. Section 121(2) refers to the amount of income tax "due and payable under this section". Income tax is imposed by section BB 1 of the Income Tax Act 1994 and is paid in accordance with Part M of that Act, not under section 121 of the Tax Administration Act.

Section 121 has been amended to refer to the amount of income tax treated as due and payable for the purposes of section 121. A corresponding amendment has been made to section 398A of the Income Tax Act 1976.

Application date

The amendment first applies with respect to tax on income derived in the 1994-95 income year and subsequent years.

Section 178(4), Tax Administration Act 1994

Section 144 of the Tax Administration Act 1994 imposes additional tax for underestimation. Taxpayers seeking relief from the underestimation penalty must qualify under section 178.

Because specific remission provisions are provided in section 178, taxpayers are precluded from using the general remission provisions of section 182. Although section 178(4) attempted to do this, it refers to additional tax payable "under this section", when it is clearly payable under section 144.

Section 178(4) and been repealed. Section 144(3) has been repealed and substituted with a new section which correctly reflects the policy. Corresponding amendments have been made to sections 385 and 386 of the Income Tax Act 1976

Application date

The amendment first applies with respect to provisional tax payable on income derived in the 1994-95 income year and subsequent years.

Section 121(10), Tax Administration Act 1994

Section 121(10) of the Tax Administration Act 1994 contains the authority to promulgate regulations for the purposes of setting provisional tax use of money interest rates and determining thresholds for whether or not use of money interest is payable.

Section 121(10)(b) contains incorrect cross-references. It has been amended so that it applies for the purposes of sections 121 and 122 of the Tax Administration Act generally.

Application date

The amendment applies from the date of enactment, 12 December 1995.

International tax rules - excluded countries

Schedule 3, Income Tax Act 1994

Introduction

Norway has been added to Part A of Schedule 3 (the "grey list"), which lists countries not subject to the provisions of the international tax rules. Canadian non-resident owned investment corporations have been added to Part B of Schedule 3, which sets out disqualifying features of the taxation law of grey list countries.

Background

The grey list exempts New Zealand residents from the controlled foreign company (CFC) and foreign investment fund (FIF) rules in respect of income earned from companies resident in a grey list country. A country is placed on the grey list if it imposes taxes of a similar amount that would be imposed if the income was derived in New Zealand.

The Government announced in the 1992 Budget that a country would be included on the grey list if it met the following criteria:

- It must have strong anti-avoidance rules, such as its own CFC rules.
- It must impose on companies resident therein an average effective tax rate on their income that is not less than 85% of the average effective tax rate that is intended to be imposed by New Zealand tax law on New Zealand resident companies in any income year.
- It must have a tax treaty with New Zealand.
- It must have a tax base similar to that of New Zealand.
- Its income and expense recognition rules should be no more favourable than that of New Zealand.
- It should have few or no tax incentives, other than those that may be specified in Part B of Schedule 3.

The Government has added Norway to the list as it now meets the criteria above.

Part B of Schedule 3 lists preferences of countries on the "grey list". If a CFC uses these preferences its New Zealand shareholders will be required to attribute income or loss of the CFC on a current basis, even though the CFC is located in a grey list country.

The Government reviewed the tax rules of the countries currently on the grey list and decided that Canadian non-resident investment companies should be added to Part B of Schedule 3, as they offer a concessionary treatment for income derived in Canada. Taxpayers who have interests in these Canadian companies will not have the benefit of the grey list exemption.

Key features

Norway has been added to Part A of Schedule 3 (the "grey list").

Canadian non-resident owned investment corporations have been added to Part B of Schedule 3.

Application date

The amendments take effect from the beginning of the 1996-97 income year.

Western Samoa tax credits now claimable in NZ

Schedule 6, Income Tax Act 1994/Schedule 17A, Income Tax Act 1976

Introduction

Western Samoa has been removed from Schedule 6, thereby allowing tax paid in Western Samoa to be claimed as a credit against New Zealand tax.

Background

In March 1993 the Government took action to stop New Zealand taxpayers taking advantage of a tax arrangement which was permitted under legislation which the Western Samoa Parliament had passed.

Legislation was enacted in New Zealand with effect from 9 March 1993, which disallowed foreign tax credits for taxes paid in Western Samoa, other than tax credits relating to wages and salaries earned by New Zealand residents in Western Samoa.

As a result of the New Zealand Government's action, Western Samoa did not implement the arrangement. Now that Western Samoa has withdrawn the legislation New Zealand is removing Western Samoa from Schedule 6 to prevent innocent taxpayers being denied credits for tax they have paid in Western Samoa.

Key features

Western Samoa has been removed from Schedule 6 of the Income Tax Act 1994 (and Schedule 17A of the Income Tax Act 1976). Schedule 6 specifies countries and taxes paid on types of income from those countries for which no tax may be claimed as a credit in New Zealand. Removing Western Samoa from Schedule 6 allows tax paid in Western Samoa to be claimed as a credit against New Zealand tax.

Application date

The amendment applies from 9 March 1993, the date Western Samoa was inserted in Schedule 17A of the Income Tax Act 1976 (now Schedule 6 of the Income Tax Act 1994).

GST - double dipping

Section 2(1), Goods and Services Tax Act 1985

Introduction

A loophole in the Goods and Services Tax Act 1985 that permits two input tax deductions to be claimed in respect of the same goods has been closed. If goods are supplied by an unregistered non-resident to a registered person (for the principal purpose of making taxable supplies), and the registered person enters the goods for home consumption, the only GST deduction allowable will be for the GST charged by New Zealand Customs on importation.

Background

The GST Act previously allowed two input tax deductions to be claimed in respect of the same goods. This occurred when goods were supplied by a non-resident (who had not registered for GST purposes) to a registered person, and at the time of importation the goods were owned by the non-resident. On importation, New Zealand Customs charges GST on the importer. If the importer is a registered person who has acquired the goods for the principal purpose of making taxable supplies, the GST charged by Customs is allowable as an input tax deduction to that person. A second input tax deduction arose if the non-resident subsequently sold the goods, the second supply being the supply of secondhand goods situated in New Zealand.

Key features

Paragraph (c) of the definition of "input tax" has been amended to exclude secondhand goods that have previously been supplied by a non-resident to a registered person who entered the goods for home consumption under the Customs Act 1966.

Application date

The change applies to supplies made on or after 21 June 1995, the date of the Minister of Revenue's announcement. It also applies to supplies made before that date if the registered person had not filed a return before 21 June 1995 in which a claim had been made. Claims will be allowed if a registered person entered into an unconditional contract before 21 June 1995, if the return for the taxable period in which the unconditional contract was entered into had not, as at that date, been filed.

GST - associated persons

Section 2(1)(a), Goods and Services Tax Act 1985

Introduction

The "associated persons" definition in the Goods and Services Tax Act 1985 has been extended to include a trustee-beneficiary relationship.

Background

The definition of "associated persons" in the Act referred to a trustee-beneficiary relationship in terms of a person being a "trustee for" another. This was not sufficient when that other person was a discretionary beneficiary only. Following the case of *D H Cook Ltd v CIR* (1973) 1 NZTC 61,104, a person was not a trustee "for" another person when there were other persons who may also have been discretionary beneficiaries. This meant that taxable supplies involving discretionary trusts were not always subject to the usual rules concerning the amount of consideration that the Act deems to have been paid on supplies between associated persons. The amendment ensures that discretionary beneficiaries are included in the definition.

Key features

The amendment provides that any two persons are associated when one is the trustee of a trust under which the other has benefited or is eligible to benefit. A person is "eligible to benefit" when he or she is either:

- named by the trust deed as a potential beneficiary; or
- designated as a member of a class of potential beneficiaries (for example, "the children of ...").

When trustees have a general power of appointment, persons not already appointed as beneficiaries under the power are excluded from the definition.

The amendment is structured to provide that the associated persons definition does not apply to supplies from charities and non-profit bodies to their beneficiaries, if the charities and non-profit bodies have wholly or principally charitable, benevolent, philanthropic or cultural purposes, and the supplies are being made in the carrying out of those purposes. This is to prevent these charities and non-profit bodies from having to account for output tax on supplies made to beneficiaries based upon the open market value of those supplies, even though they are made for no, or nominal, consideration.

Application date

The amendment applies to supplies made on or after 17 August 1995, the date of the bill's introduction.

GST - input tax credits for dwellings

Sections 5, 10 and 21, Goods and Services Tax Act 1985

Introduction

An amendment ensures that an input tax deduction is not allowable for any dwelling acquired by a registered person principally for a private or exempt activity purpose.

Background

The amendment is a result of the Court of Appeal decision in *CIR v Coveney and others* that overturned Inland Revenue's long-standing policy that the supply of a dwelling does not give rise to an input tax deduction unless the dwelling itself had been acquired for the principal purpose of making taxable supplies.

The *Coveney* cases involved farm land acquired from a non-registered person; that is, the claims were for a secondhand goods input tax credit. The Court of Appeal agreed with the High Court that there was one supply of secondhand goods and that the definition of "input tax" does not allow for apportionment of the consideration for that supply. Because the land on which the dwelling was situated was acquired for the principal purpose of making taxable supplies, a secondhand goods input tax credit was allowable in respect of the full purchase price.

Key features

Section 5 of the Goods and Services Tax Act 1985 has been amended so that when a supply of real property is of more than just a dwelling, the dwelling will be deemed to be supplied separately from the rest of the property. Although not specified in the Act, any land necessary for the use and enjoyment of the dwelling will be treated as included in the supply of the dwelling.

The amendment applies to all supplies that include a dwelling, and not just to dwellings situated on farm land, as was the situation in the *Coveney* cases.

Subject to a transitional measure, and a measure to ensure that double taxation cannot occur, which are discussed below, if an input tax deduction has been claimed for a dwelling, any future supply of that dwelling (or part thereof) will be a taxable supply. If an input tax deduction has only been claimed for a proportion of the dwelling, only that proportion will be a taxable supply when the dwelling is sold or otherwise supplied.

A transitional measure has been enacted that allows registered persons who have claimed an input tax deduction for a dwelling which is being used predominantly as a place of residence or abode of an individual to repay that deduction. Registered persons who wish to use this opportunity must apply in writing before 1 August 1996 to do so. Unless registered persons use this opportunity, any future supply of the dwelling will be a taxable supply. The consideration in money for the supply in these cases is deemed to be equal to the cost of the dwelling, including any input tax deduction claimed. (There have been consequential changes to sections 10(8)(a) and 21(5)(a) to ensure that similar wording is used in these sections.)

The legislation deems any future supply of a dwelling to be a taxable supply. This could result in double taxation if a registered person who acquired a dwelling for the principal purpose of making taxable supplies subsequently applies that dwelling exclusively to making exempt supplies or for private purposes and makes a one-off adjustment under section 21 of the Act and, at some future time, sells or otherwise supplies the dwelling. In such situations, provided there has been no subsequent re-application of the dwelling to the principal purpose of making taxable supplies, the supply of the dwelling will not be a taxable supply.

Application date

The change applies to:

- supplies made on or after 11 August 1995, the date of the Minister of Revenue's announcement:
- supplies made before 11 August 1995, if the registered person had not filed a return before the date in which a claim had been made:
- supplies made before 11 August 1995, if the registered person had made a claim which the Commissioner had disallowed and, as at that date, the person did not have a live objection or appeal in respect of the disallowed claim.

Claims will be allowed if a registered person entered into an unconditional contract before 11 August 1995, if the return for the taxable period in which the unconditional contract was entered into had not, as at that date, been filed.

GST - zero-rating of going concerns

Section 78E, Goods and Services Tax Act 1985

Introduction

Section 78E of the Goods and Services Tax Act 1985 has been redrafted to ensure that it achieves the purpose for which it was introduced.

Background

The Goods and Services Tax Amendment Act 1995 contained changes in relation to the zero-rating of going concerns. One of these changes was the addition of section 78E, which was designed to cover the situation when a supplier and recipient have treated the supply as that of a going concern and the Commissioner subsequently charges GST on the supply.

The details of the changes to the zero-rating provisions are set out in Tax Information Bulletin Volume Six, No. 12, at page 31.

Key issues

A registered person who has zero-rated the supply of a taxable activity (on the understanding that it was a going concern) will be able to increase the sale price by the standard rate of GST (currently 12.5 percent) if both of these conditions are met:

- The supply was *not* of a taxable activity as a going concern.
- The contract is silent on the issue of any change to the consideration, or if the contract does not allow GST charged at zero percent to be increased to the standard rate.

The provision does not apply if the contract has been entered into on a GST inclusive basis.

Application date

The amendment applies from the date the original section 78E was enacted, 10 April 1995.

GST returns - electronic filing

Sections 3(1), 36 and 110(2), Tax Administration Act 1994

An amendment extends electronic filing of returns to GST returns. Electronic filing of GST returns will come into effect when approved by the Commissioner of Inland Revenue.

The change applies from the date of assent, 12 December 1995.

Stamp and Cheque Duties Act- minor remedial amendments

Sections 11(2)(d), 13(1)(da) and 14(1)(da)

Paragraph 11(2)(d) of the Stamp and Cheque Duties Act 1971 referred to the repealed Rural Housing Act 1939. Paragraphs 13(1)(da) and 14(1)(da) referred to the repealed Liquid Fuels Trust Act 1978. An amendment has been made repealing these redundant references.

Application date

The amendment applies from the date of enactment, 12 December 1995.

Section 17

Section 17 of the Stamp and Cheque Duties Act 1971 has been amended by adding paragraph (g). Paragraph (g) provides an exemption from conveyance duty for any instrument creating a right, privilege, or license entitling the grantee to enter on land, to use land, or to take timber, minerals, or other profit from land.

The amendment clarifies a recent amendment to the Stamp and Cheque Duties Act which was intended to exempt from stamp duty any instrument creating a right, privilege, or license entitling the grantee to enter on land, to use land, or to take timber, minerals, or other profit from land. The amendment exempted such instruments from lease duty but arguably not conveyance duty.

Application date

The amendment will apply to all instruments executed on or after 1 July 1994.

Totalisator duty on betting profits - calculation

Sections 3, 4 and 5, Gaming Duties Act 1971

Introduction

The basis on which totalisator duty is calculated in relation to race betting and betting on sporting events provided by racing clubs and the Totalisator Agency Board (TAB) has been changed. Totalisator duty is now calculated on betting profits, which effectively reduces the tax on betting profits.

Background

Totalisator duty was previously payable at these rates:

- For race meetings conducted by a totalisator club: at 5.5% of the gross investments;
- For race meetings conducted by a restricted totalisator club: at the rate of 5% of the amount (if any) by which the gross investments on a day's races exceeded $300,000; and
- All special investments: at the rate of 5.5%.

A totalisator club was entitled to claim a deduction equal to 2.5 percent of the first $100,000 of gross investment each year. The previous duty was a tax on the turnover from racing.

Following a review of the taxation of racing the Government decided that the taxation burden on racing should be reduced. The racing industry was concerned by what it saw as the heavy tax burden it bore in comparison with that of some other forms of gambling which are also subject to gaming duty.

Key features

Totalisator duty is now imposed at the rate of 20% of the betting profits.

The previous exemption provided to restricted totalisator clubs has been removed.

The rebate provided to totalisator clubs has also been removed.

Application date

The changes apply to races held or a combination of races begun on or after 1 January 1996. They also apply to sporting events held or a combination of sporting events begun on or after 1 January 1996 following the enactment of sports betting provisions in the Racing Amendment Act.

Detailed analysis

The key amendment is to section 4 of the Gaming Duties Act 1971. Consequential amendments have also been made to sections 3 and 5.

The amendments have introduced a 20% tax on "betting profits". In general terms, betting profits equal the amount bet less the amount paid in dividends. However, two different methods have been prescribed in the legislation to arrive at the betting profits figure because of the difference in the way the Racing Act 1971 prescribes the calculation of dividends between totalisator race betting on the one hand, and fixed-odds race betting and all sports betting on the other.

Totalisator race betting

In relation to totalisator race betting, the Racing Act prescribes that the pool available for distribution as dividends be the residual after subtracting totalisator duty, levies and commissions (payable to the New Zealand Racing Industry Board, the racing clubs and the TAB, as the case may be) from the total investment. In this situation the betting profit is computed as being the aggregate of these deductions.

The betting profits of a racing club in respect of gross investments on a race or a combination of races will be an amount equal to the aggregate of the deductions (totalisator duty, levies and commissions) set out in sections 42(1)(a) to (g), 42(2)(a) to (g) and 61G(1)(a) to (h) of the Racing Act.

The betting profits of the TAB in respect of special investments that are off-course betting, to which Part V of the Racing Act applies, will be an amount equal to the aggregate of the deductions set out in section 97(1)(a) to (f) of the Racing Act.

If the betting profit is the aggregate of the deductions, the calculation requires the amount of totalisator duty payable to be taken into account. An alternative method for calculating the duty payable in this situation is to take 25 percent of deductions, exclusive of totalisator duty. This equates with 20% of the deductions, inclusive of totalisator duty.

Fixed-odds betting and sports betting

In relation to fixed-odds betting and sports betting, the Racing Act prescribes that the dividends payable should be deducted from the total investments, and the remaining profits distributed in accordance with the Act. In this situation the betting profit is computed by deducting the amount of dividends paid from the total investment.

These are the amounts of the TAB's betting profits from special investments:

- For fixed-odds betting to which Part VA of the Racing Act applies, an amount (not being less than zero) equal to the total special investments less the dividends paid out.
- For a sporting event or combination of sporting events, an amount (not being less than zero) equal to the total special investments less the dividends paid.

For fixed-odds race betting and fixed-odds sports betting, the TAB is able to carry forward losses that may arise from such betting. The losses are able to be offset against future fixed-odds race betting profits or fixed-odds sports betting profits as the case may be.

Removal of exemptions and rebate

The deductions included in the calculation of totalisator duty in section 4 have not been retained in the conversion to a tax on betting profits. The Government considered that the deductions were inconsistent with a betting profits tax, and unnecessarily complicated the tax legislation and the calculation of the tax.

Other minor amendments

The return filing requirement to deal with the introduction of sports betting has also been amended.

The amendments do not affect the taxation of gaming machine operators, lotteries or casinos.

Racing - minor consequential amendments

Sections CB 4 (1)(I), OB 1, Income Tax Act 1994

Consequential amendments have been made to the Income Tax Act 1994 following the passage of the Racing Amendment Act 1995.

The names of the New Zealand Racing Authority and New Zealand Trotting Conference have been changed to the New Zealand Racing Industry Board and Harness Racing New Zealand respectively. Both bodies' income is tax exempt under section CB 4 (1)(i).

The definition of "excepted financial arrangement" in section OB 1 has been amended to include a bet on any sporting event under a sports-betting system established under Part VB of the Racing Act 1971.

Application date

The amendments apply from the date of assent of the Racing Amendment Act 1995, 15 December 1995.

Sections 5(8), 5(8)(b), 10 (12) and 10(12A), Goods and Services Tax Act 1985

Consequential amendments have been made to the Goods and Services Tax Act 1985 following passage of the Racing Amendment Act 1995.

The definition of "supply" has been amended to include bets on any sporting event on any sports betting system under Part VB of the Racing Act 1971, as inserted by the Racing Amendment Act 1995.

The value of supply of goods and services has been amended to include consideration given for fixed-odds race betting and sports betting.

Application date

The amendments apply from the date of assent of the Racing Amendment Act 1995, 15 December 1995.

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.*

Overseas Social Security Pensions (IR 258) - Sep 1995: *Explains how to account for income tax in New Zealand if you receive a social security pension from overseas.*

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 Loans - how to get one and how to pay one (SL 5) - Jan 1995: *We've published this booklet jointly with the Ministry of Education, to tell students everything they need to know about getting a loan and paying it back.*

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.*

Trusts and Estates - (IR 288) - May 1995: *An explanation of how estates and different types of trusts are taxed in New Zealand.*

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.*

Taxes and the taxi industry (IR 272) Feb 1996: *An explanation of how income tax and GST apply to taxi owners, drivers, and owner-operators.*

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 custodian's guide (CS 71B) - Nov 1995: *Information for parents who take care of children for whom Child Support is payable.*

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 liable parent's guide (CS 71A) - Nov 1995: *Information for parents who live apart from their children.*

Child Support administrative reviews (CS 69A) - Jul 1994: *How to apply for a review of the amount of Child Support you receive or pay, if you think it should be changed.*

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 - how the formula works (CS 68) - 1996: *Explains the components of the formula and gives up-to-date rates.*

What to do if you have a problem when you're dealing with us (CS 287) - May 1995: *Explains how our Problem Resolution Service can help if our normal services haven't resolved your Child Support problems.*

Due dates reminder

March 1996

5 Large employers: PAYE deductions and deduction schedules for period ended 29 February 1996 due.

7 Provisional tax and/or Student Loan interim repayments: first 1997 instalment due for taxpayers with November balance dates.
Second 1996 instalment due for taxpayers with July balance dates.
Third 1996 instalment due for taxpayers with March balance dates.

20 Large employers: PAYE deductions and deduction schedules for period ended 15 March 1996 due.

Small employers: PAYE deductions and deduction schedules for period ended 29 February 1996 due.

Gaming machine duty return and payment for month ended 29 February 1996 due.

RWT on interest deducted during February 1996 due for monthly payers.

RWT on dividends deducted during February 1996 due.

Non-resident withholding tax (or approved issuer levy) deducted during February 1996 due.

29 GST return and payment for period ended 29 February 1996 due.

31 Fourth instalment of 1996 Student Loan non-resident assessment due.

(We will accept payments received on Monday 1 April as in time for 31 March 1996.)

April 1996

5 Large employers: PAYE deductions and deduction schedules for period ended 31 March 1996 due.

7 Provisional tax and/or Student Loan interim repayments: first 1997 instalment due for taxpayers with December balance dates.
Second 1996 instalment due for taxpayers with August balance dates.
Third 1996 instalment due for taxpayers with April balance dates.

(We will accept payments received on Monday 8 April as in time for 7 April.)

20 Large employers: PAYE deductions and deduction schedules for period ended 15 April 1996 due.

Small employers: PAYE deductions and deduction schedules for period ended 31 March 1996 due.

Employers: yellow copies of IR 12 and IR 13 certificates for year ended 31 March 1996 to be given to employees.

FBT return and payment due for quarter ended 31 March 1996.

Gaming machine duty return and payment for month ended 31 March 1996 due.

RWT on interest deducted during March 1996 due for monthly payers.

RWT on interest deducted 1 October 1995 to 31 March 1996 due for six-monthly payers.

RWT on dividends deducted during March 1996 due.

Non-resident withholding tax (or approved issuer levy) deducted during March 1996 due.

30 GST return and payment for period ended 31 March 1996 due.

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The Taxation (Miscellaneous Issues) Bill was introduced in August 1995. It resulted in the enactment of these Amendment Acts on 12 December 1995:

- Income Tax Act 1994 Amendment Act (No 4) 1995 [No 73]
- Income Tax Act 1976 Amendment Act (No 3) 1995 [No 74]
- Goods and Services Tax Amendment Act (No 2) 1995 [No 75]
- Stamp and Cheque Duties Amendment Act 1995 [No 76]
- Tax Administration Amendment Act (No 3) 1995 [No 77]

The Gaming Duties Amendment Bill was introduced in October 1995, and resulted in the Gaming Duties Amendment Act 1995 [No 93], which was enacted on 19 December 1995.

The Racing Amendment Bill was introduced in December 1994, and resulted in the 15 December 1995 enactment of several Amendment Acts, of which the following are tax-related:

- Income Tax Act (No 5) Amendment Act 1995 [No 79]
- Goods and Services Tax Amendment Act (No 3) 1995 [No 80]
- Income Tax Act (No 6) Amendment Act 1995 [No 82]
- Goods and Services Tax Amendment Act (No 4) 1995 [No 83].

This Tax Information Bulletin deals with the legislation contained in these Acts. There is a full list of contents on the inside front cover.

This TIB has no appendix

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