Binding rulings

This section of the TIB contains binding rulings that the Commissioner of Inland Revenue has issued recently.

The Commissioner can issue binding rulings in certain situations. Inland Revenue is bound to follow such a ruling if a taxpayer to whom the ruling applies calculates tax liability based on it.

For full details of how binding rulings work, see our information booklet "Binding Rulings" (IR 115G) or the article on page 1 of TIB Volume Six, No.12 (May 1995) or Volume Seven, No.2 (August 1995). You can order these publications free of charge from any Inland Revenue office.

Licensed premises operators and entertainment

Public ruling - BR Pub 96/5

This is a public ruling made under section 91D of the Tax Administration Act 1994.

Taxation law

This ruling applies in respect of section DG 1 and Schedule 6A of the Income Tax Act 1994.

Arrangements to which this ruling applies

This ruling applies to any person who carries on business as a licensed premises operator ("licensee") and who, in the ordinary course of that business:

- Incurs expenditure on food or beverages and makes special offers of that food or beverages in arm's length transactions with members of the general public. The special offers of food or beverages to which this ruling applies include:
  - Happy hours - where a licensee offers drinks at reduced prices during a particular time period:
  - Offers of free drinks to certain members of the public on certain days or at certain times:
  - Two meals for the price of one:
  - "Toss the boss" competitions - for every drink purchased, the customer can toss a coin and has the chance to win a free drink; or
- Allocates an allowance to an employee (such as a bar manager) to cover the costs of the employee providing free drinks to customers.

The period for which this ruling applies

This ruling applies to:

- Any expenditure on food or beverages provided in a special offer to which this ruling applies; and
- The payment of any allowance to which this ruling applies,

within the period 1 April 1996 to 31 March 1999.

The ruling

When a licensee makes a special offer of food or beverages (of the type to which this ruling applies) to members of the general public, the expenditure on that food or beverages is not limited to a 50% deduction under section DG 1.

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When a licensee allocates an allowance to an employee to cover the costs of the employee providing free drinks to customers, and the employee provides the free drinks to the customers during the ordinary course of business and not at a party or similar social function, the expenditure on that allowance is not limited to a 50% deduction under section DG 1.

In either case, the expenditure is fully deductible to the licensee if it is incurred in gaining or producing the licensee's assessable income for any income year or if it is incurred in carrying on a business for the purpose of gaining or producing assessable income for any income year.

This ruling is signed by me on the 19th day of March 1996.

Martin Smith
General Manager (Adjudication & Rulings)

Analysis of public ruling BR Pub 96/5

This analysis of the ruling does not form part of the ruling.

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

All references to a "licensee" are to any person who carries on business as a licensed premises operator.

Background

From 1 April 1993 certain business expenditure (on food, beverages, recreation, and related accommodation and transportation) became 50% (rather than fully) deductible under the business entertainment deductibility rules. The Government subsequently modified these rules to take account of compliance cost concerns. With effect from 1 April 1995, the rules were replaced with a Schedule of expenditure which is limited to 50% deductibility.

Deductible expenditure or loss on a "specified type of entertainment", set out in Part A of Schedule 6A, is 50% deductible unless the entertainment or benefit is "excluded entertainment" in Part B of the Schedule. If the entertainment or benefit is excluded entertainment in Part B of the Schedule, the expenditure or loss is fully deductible if it is incurred in gaining or producing the taxpayer's assessable income for any income year or if it is incurred in carrying on a business for the purpose of gaining or producing assessable income for any income year.

Legislation

Cross-reference table

Income Tax Act 1994	Income Tax Act 1976
DG 1	106G
Schedule 6A	new

Section DG 1 states:

(1) This section and Schedule 6A are intended to reduce, by 50%, the deduction otherwise available for expenditure or loss incurred on certain types of entertainment, being entertainment that generally involves a significant element of private benefit (but subject always to the express provisions of this section and Schedule 6A).

(2) If a taxpayer incurs expenditure or loss on a type of entertainment or benefit (whether consumed or enjoyed by the taxpayer or anyone else) specified in Part A of Schedule 6A then, unless and to the extent that the entertainment or benefit is specified as excluded entertainment in Part B of that Schedule, the deduction allowed for that expenditure or loss in calculating the taxpayer's assessable income will be limited to 50% of the amount that would be deductible but for this section.

Part A of Schedule 6A lists "specified types of entertainment". These are:

- Corporate boxes.
- Holiday accommodation.
- Pleasure craft.
- Food or beverages:
  - Provided or consumed as an incidence of the above types of entertainment; or
  - Provided or consumed off the business premises of the taxpayer; or
  - Provided or consumed on the business premises of the taxpayer:
    - (At a party, reception, celebration meal, or other similar social function; or
    - (In an area of the premises, such as a boardroom or an executive or client dining room, reserved for use at the time only by those at a certain level of seniority and their guests and not open to all employees working on the premises.

The Schedule defines "Business premises" as:

(a) The normal business premises; or

(b) A temporary workplace, -

of the taxpayer or of an associated person (not being premises or a workplace established principally for the purposes of enjoying entertainment).

Part B of the Schedule specifies excluded entertainment (i.e., entertainment which is not "a specified type of entertainment" for the purposes of Part A of the Schedule). It includes:

9. Entertainment that is provided by the taxpayer for market value (or otherwise in an arm's length transaction) in the ordinary course of the taxpayer's business which consists of providing one or more specified types of entertainment.

Application of legislation

Special offers of food or beverages to the public

When a licensee makes a special offer of food or beverages to the public, the expenditure on that food or beverages is not a specified type of entertainment under Part A of the Schedule because:

- The licensed premises where the offer occurs is the licensee's "business premises" as it is the normal business premises of the licensee. The definition of "business premises" excludes "premises or a workplace established principally for the purposes of enjoying entertainment". It is arguable that a licensed premises is established principally for the purposes of enjoying entertainment and so is not the licensee's "business premises". However, from the licensee's perspective, the licensed premises is established principally for the purpose of running a business, and not for the purposes of enjoying entertainment, and so is the licensee's business premises (note that, for the purposes of the definition of "business premises", a licensed premises is not a temporary workplace of a person who merely conducts a business meeting at the licensed premises because, from that person's perspective, the licensed premises is a workplace established principally for the purposes of enjoying entertainment).

  Food or beverages which are provided or consumed on the business premises (apart from food or beverages consumed in a corporate box, holiday accommodation, or a pleasure craft) are only included as a specified type of entertainment where the food or beverages are consumed at a party or similar social function or in an exclusive dining facility. In some cases, food and beverages consumed at a licensed premises are consumed at a party or similar social function or in an exclusive area. However, special offers of food and beverages to the public by the licensee during ordinary opening hours of the licensed premises are not consumed at a social function or in an exclusive area. The costs of food and beverages provided in such circumstances are fully deductible.

- Clause 9 of Part B of the Schedule specifies excluded entertainment (i.e., entertainment which is not "a specified type of entertainment" for the purposes of Part A of the Schedule). It includes expenditure on entertainment which is provided at market value, or otherwise in an arm's length transaction, in the ordinary course of the taxpayer's business which consists of providing one or more of the specified types of entertainment. Expenditure on such excluded entertainment is, therefore, excluded from the rules, and is fully deductible, if the entertainment is provided by a business at market value or in an arm's length transaction.

  It follows that clause 9 of Part B of the Schedule excludes special offers of food or beverages made by a licensee to members of the public where the food or beverages are provided either at market value, or are otherwise provided in an arm's length transaction in the course of the licensee's business. In particular:

  - Happy hours (where drinks are provided to members of the general public for reduced prices) are the provision of drinks by the licensee for either market value (if the market value of the drinks during the happy hour is the reduced "happy hour" price) or otherwise in an arm's length transaction in the ordinary course of the licensee's business. The cost of the drinks is fully deductible.
  - The cost of free drinks provided to certain members of the public on certain days or at certain times is fully deductible when the provision of the free drinks occurs in an arm's length transaction in the ordinary course of the licensee's business.
  - The cost of meals which are offered in a "two meals for the price of one" deal is fully deductible when the meals are provided in an arm's length transaction in the ordinary course of the licensee's business.
  - The cost of drinks provided in "toss the boss" competitions is also fully deductible when the competitor and the licensee have an arm's length relationship. If this is the case, the free drink prizes are provided in an arm's length transaction in the ordinary course of business.

Allowances for free drinks for customers

A licensee may allocate a hospitality allowance to an employee, such as a bar manager, to cover the costs of providing free drinks to customers in the ordinary course of business. The expenditure on such an allowance is not restricted to 50% deductibility. This is because the expenditure is on beverages provided or consumed on the licensee's business premises but that are not provided or consumed at a party or similar social function or in an exclusive area of the premises. The allowance is fully deductible if it is incurred in gaining or producing the licensee's assessable income for any income year or if it is incurred in carrying on a business for the purpose of gaining or producing assessable income for any income year.

Examples

The following examples do not form part of the ruling.

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Example 1

A licensee offers half price drinks on Saint Patrick's day to all patrons who wear a green hat. All other drinks are provided at full price.

As the half price drinks are provided to the green hat wearers in arm's length transactions in the ordinary course of the licensee's business, the expenditure on the drinks is excluded from Part A of the Schedule and is fully deductible to the licensee.

Example 2

A licensee invites staff members to a work Christmas function. At the function, free drinks are provided to the staff members.

These drinks are provided at a party or similar social function and so are a specified type of entertainment for the purposes of Part A of the Schedule. The drinks are only 50% deductible to the licensee. The drinks are provided for less than any price at which drinks are offered to the public at that time (i.e., less than market value) and are not provided in arm's length transactions. Expenditure on the drinks is not excluded from the entertainment regime by clause 9 of Part B of the Schedule.

If the free drinks were a fringe benefit to which fringe benefit tax applies, the expenditure on the drinks would be excluded from the entertainment regime by clause 14 of Part B of the Schedule. However, in this case, the free drinks are not a fringe benefit to which fringe benefit tax applies, because the employees cannot choose when to consume or enjoy the benefit - the free drinks are provided at a time chosen by the licensee.

Example 3

A licensee holds a Christmas function and invites brewery representatives. The licensee holds the function in a function room on the licensed premises. All food and drinks are provided to the brewery representatives at no cost.

The food and drinks are a specified type of entertainment for the purposes of Part A of the Schedule as they are food or beverages provided on the licensee's business premises at a party or similar social function. The free food and drinks are not excluded entertainment under Part B of the Schedule, and so the expenditure is only 50% deductible to the licensee.

Definition of "transitional capital amount"

Public ruling - BR Pub 96/6

This is a public ruling made under section 91D of the Tax Administration Act 1994.

Taxation law

This ruling applies to the definition of factor "j" in the formula within the definition of "transitional capital amount" in section OB 1 of the Income Tax Act 1994.

Arrangements to which this ruling applies

This ruling applies to companies that liquidate on or after 1 July 1994 and distribute to shareholders the same class of capital that the company has, prior to 1 July 1994, written off against its losses.

The period for which this ruling applies

This ruling applies to liquidations (as defined in section OB 1) during the period 1 July 1994 to 31 March 1998 and to distributions arising from such liquidations during the period 1 July 1994 to 31 March 1998.

The ruling

The "aggregate amount of capital paid up before 1 July 1994" in factor "j" of the formula within the definition of "transitional capital amount" includes all paid-up capital that has been, prior to 1 July 1994, written off against losses incurred by the company.

This ruling is signed by me on the 19th day of March 1996.

Martin Smith
General Manager (Adjudication & Rulings)

Analysis of public ruling BR Pub 96/6

This analysis of the ruling and the example do not form part of the ruling.

Background

The Companies Act 1993 enacted major reforms in the company law area. One of the most significant was the removal of the concept of "paid-up capital". Consequently the Income Tax Amendment Act 1994 was enacted to accommodate the changes to company law. In particular, the Income Tax Amendment Act 1994 introduced, with application from 1 July 1994, a definition of "available subscribed capital" for tax purposes.

The Income Tax Amendment Act 1994 also repealed section 4A(1)(h) of the Income Tax Act 1976. Section 4A(1)(h) allowed the Commissioner to exclude from dividends such amount distributed to a shareholder of the company as the Commissioner considered just and reasonable where:

- The company had reduced the amount of the paid-up capital of the shareholder by writing off with High Court approval, losses incurred by the company; and
- The company was subsequently wound up; and
- Upon the winding up of the company, an amount (whether in money or money's worth) was distributed to the shareholder in excess of the amount paid up on the shares of the shareholder.

Taxpayers wish to know the effect of the repeal, and in particular whether or not it results in a reduction of the "available subscribed capital" of a company when the company has, prior to 1 July 1994, written off losses against paid-up capital. To calculate the available subscribed capital for companies existing prior to 1 July 1994, the "transitional capital amount" must be determined.

The terms "available subscribed capital" and "transitional capital amount" are discussed in more detail in TIB Volume Six, No. 6 - Company Law Reform (December 1994).

Legislation

Cross-reference table

Income Tax Act 1994	Income Tax Act 1976
Repealed	4A(1)(h)
OB 1 "transitional capital amount"	New

Section OB 1 states:

"Transitional capital amount", in relation to a share in a company at any relevant time, means the amount calculated in accordance with the following formula:

$$\frac{j + k}{l} \times m$$

where -

j is the **aggregate amount of capital paid up before 1 July 1994** in respect of shares of the specified class (whenever issued), not being-...[Emphasis added.]

k is the aggregate of qualifying share premium paid to the company before 1 July 1994...

l is the number of shares in the specified class ever issued before the close of 30 June 1994; and

m is the number of shares in the specified class on issue at the close of 30 June 1994.

Application of legislation

The "aggregate amount of capital paid up before 1 July 1994" in factor "j" of the definition of "transitional capital amount" includes all paid-up capital that has been, prior to 1 July 1994, written off against losses incurred by the company. This allows a company to restore the written-off capital upon liquidation, without the distribution being treated as a dividend to the shareholders.

Example

1990 M Ltd issues 1,000 fully paid-up shares at $1 each.

1992 Pursuant to High Court approval, M Ltd writes off $500 (50 cents per share) of paid-up capital from its accumulated losses.

1994 Paid-up capital at 30 June 1994 is $500.

1995 Shareholders decide to liquidate M Ltd. There have been no movements in the capital of M Ltd since the capital reduction in 1992. After the sale of assets the distribution per share will be 75c.

Because M Ltd existed before 1 July 1994, its "available subscribed capital" is determined by calculating its "transitional capital amount". To calculate M's transitional capital amount, the following formula is used:

$$\frac{j + k}{l} \times m$$

where-

j	is paid-up capital at the close of 30 June 1994	$ 500
	add back capital reduction	$ 500
	aggregate capital paid up before 1 July 1994 as defined in the ruling	$1,000
k	qualifying share premium	assume is 0
l	number of shares ever issued before 1 July 1994	1,000
m	shares on issue at 1 July 1994	1,000

$$\frac{\$1,000 + 0}{1,000} \times 1,000 = \$1,000$$ transitional capital amount

The available subscribed capital per share cancelled equals $1,000/1,000 = $1 per share. The $0.75 per share distributed is not treated as a dividend as it does not exceed the available subscribed capital per share.

GST - when the supply of leasehold land is an exempt supply

Public ruling - BR Pub 96/7

This is a public ruling made under section 91D of the Tax Administration Act 1994.

Taxation law

This ruling applies in respect of section 14(ca) of the Goods and Services Tax Act 1985.

Arrangements to which this ruling applies

This ruling applies to the supply of leasehold land by way of rental by a GST registered person.

The period for which this ruling applies

This ruling applies to a supply of leasehold land by way of rental when the time of supply occurs between 1 July 1996 and 30 June 1999.

The ruling

A supply of leasehold land by way of rental is only exempt from GST to the extent that the leasehold land is used for the principal purpose of accommodation in a dwelling erected on that land. When that land and any building erected on that land are used in part for the principal purpose of accommodation in a dwelling and in part for commercial or other non-exempt purposes, the ground lease is exempt to the extent that it relates to the supply of accommodation in a dwelling. In determining whether the principal purpose of part of that land or any building erected on that land is for accommodation in a dwelling, it is necessary to identify that part of the land or building which is a dwelling. When the principal purpose of the dwelling is for accommodation, the lease rental is exempt to the extent that it relates to the supply of that dwelling.

When apportionment is necessary under section 14(ca), the lease rental is apportioned on an area basis. In cases when the lease rental is expressly calculated with reference to the level of rental derived by the head lessee from the different uses of the land, or the improved value of the land, the lease rental is apportioned on a pro-rata basis with reference to the method used to calculate the lease rental.

The words “not being a grant or sale of the lease of that land” in section 14(ca) refer to any payment made for:

- The creation of a leasehold interest in that land, other than a payment of rent; or
- The sale of the leasehold interest in the land.

This ruling is signed by me on the 25th day of March 1996.

Martin Smith
General Manager (Adjudication & Rulings)

Analysis of public ruling BR Pub 96/7

This analysis of the ruling does not form part of the ruling.

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

Background

Section 14(ca) exempts from GST the supply of leasehold land by way of rental, to the extent that that land is used for the principal purpose of accommodation in a

dwelling erected on that land. It expressly excludes from that exemption any grant or sale of the lease of that land.

Section 14(ca) applies to the supply of leasehold land by way of rental when it is supplied separately from any buildings or other improvements to that land. This form of lease is commonly known as a "ground lease". Under a ground lease the rental is generally based on the unimproved value of the land. In such cases the head lessor owns the land, and the head lessee usually owns the buildings and any other improvements to the land. Common examples of ground leases are those supplied by local authorities, port companies, Crown health enterprises, trust boards, and Maori authorities.

Section 14(ca) was inserted into the Act by section 12(1) of the Goods and Services Tax Amendment Act 1986. Prior to its enactment, residential owners of leasehold properties had to pay GST on their ground lease rental payments. This was seen as inequitable when compared with residential owners of freehold properties and lessees of residential accommodation. Section 14(ca) is intended to provide an extension to the exemption for rental of accommodation in any dwelling under section 14(c).

There is some uncertainty regarding the scope and effect of the section 14(ca) exemption. In particular, uncertainty may arise when there is a supply of leasehold land used for both commercial and residential purposes. Doubt has also arisen regarding the meaning of the words "not being a grant or sale of the lease of that land" in section 14(ca).

Legislation

Section 14 exempts certain supplies from GST. Section 14(ca) exempts:

The supply of leasehold land by way of rental (not being a grant or sale of the lease of that land) to the extent that that land is used for the principal purpose of accommodation in a dwelling erected on that land:

Section 14(c) exempts:

The supply of accommodation in any dwelling by way of -

(i) Hire; or
(ii) A service occupancy agreement; or
(iii) A licence to occupy:

Section 2 defines "dwelling" as meaning:

any building, premises, structure, or other place, or any part thereof, used predominantly as a place of residence or abode of any individual, together with any appurtenances belonging thereto and enjoyed with it; but does not include a commercial dwelling:

Section 2 defines "commercial dwelling" as meaning:

(a) Any hotel, motel, inn, hostel, or boardinghouse; or
(b) Any camping ground; or
(c) Any convalescent home, nursing home, rest home, or hospice; or
(d) Any establishment similar to any of the kinds referred to in paragraphs (a) to (c) of this definition; -

but does not include -

(e) A hospital except to the extent that that hospital is a residential establishment:
(f) A dwelling situated within a retirement village or within a rest home, where the consideration paid or payable for the supply of accommodation in that dwelling is for the right to occupy that dwelling:

Section 10(18) states:

Where a taxable supply is not the only matter to which a consideration relates, the supply shall be deemed to be for such part of the consideration as is properly attributable to it.

Application of legislation

Section 14(ca) exempts the supply of leasehold land by way of rental to the extent that that land is used for the principal purpose of accommodation in a dwelling erected on it. In applying section 14(ca) to any ground lease, the use of the land from time to time must be considered. When all the land and any building erected on that land are used for the principal purpose of accommodation in a dwelling, the ground lease is exempt from GST. When all the land and any building erected on that land are used for commercial or other non-exempt purposes, the ground lease is subject to GST.

When leasehold land and any building erected on that land are used in part for the principal purpose of accommodation in a dwelling and in part for commercial or other non-exempt purposes, the ground lease is exempt to the extent that it relates to the supply of accommodation in a dwelling. This involves apportioning the ground lease rental, and imposing GST only on that part of the rental that relates to the non-exempt purposes. Section 10(18) values the consideration for the supply. Determining the part of the consideration for the supply of the leasehold land that is properly attributable to the non-exempt use of that land generally involves apportioning the rental on an area basis.

In each case an assessment of the degree to which the land is being used for the supply of accommodation in a dwelling, compared with its commercial or other uses, needs to be made. For example:

- A six-storey building erected on leasehold land is used on an area basis as to 60% for offices, 20% for a restaurant, and 20% for residential apartments. The residential apartments are used for the principal purpose of private accommodation. 20% of the ground lease rental is exempt from GST. (The parts of the leasehold land and buildings used in common by residential and other occupants e.g., entrances, foyers, lifts and stairwells, should be apportioned between those uses on a pro-rata basis.)
- A leasehold property is used on an area basis as to 90% for grazing and 10% for a dwelling. The dwelling is used for the principal purpose of private accommodation. 10% of the ground lease rental is exempt from GST.

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In some cases the ground lease rental may be expressly calculated with reference to the lease rentals derived by the head lessee from the different uses of the land. If this is the case, under section 10(18), the consideration properly attributable to the non-exempt use of the leasehold land is that part of the ground lease rental which relates to the rentals derived from that use of the land. In such circumstances, apportioning the ground lease rental simply on an area basis does not determine the part of the consideration for the supply of the leasehold land that is properly attributable to the non-exempt use of that land. For example, a six-storey building erected on leasehold land is used on an area basis as to 50% for offices, and 50% for residential apartments. The ground lease rental is set at 5% of rentals derived from the building. The rent of office space amounts to 75% of the total rent derived from the building. 25% of the ground lease rental is exempt from GST.

Similarly, where the ground lease rental is expressly calculated with reference to the valuation of the improved value of the land, the apportionment of the ground lease rentals will be based on the pro-rata values of the different uses of that land. This reflects the consideration properly attributable to the supply of the leasehold land for those different uses.

The examples set out below illustrate how the above principles apply to particular fact situations.

Alternative interpretations

It is acknowledged that there are alternative interpretations of section 14(ca). For example, it is arguable that the section does not permit apportionment due to the inclusion of the words “principal purpose”. However, such an approach ignores the inclusion of the words “to the extent that”. These words appear in other parts of the Act and are interpreted as requiring apportionment.

It is also arguable that section 14(ca) only exempts the supply of leasehold land when all the land is used for the principal purpose, i.e., more than 50%, of accommodation in a dwelling. The exemption then only applies to the extent that the land is so used. For example, the ground lease rental of land on which a building is situated that is used as to 75% for accommodation and 25% for offices, is exempt from GST as to 75%. However, the ground lease rental of land on which a building is situated that is used as to 25% for accommodation and 75% for offices, is not exempt from GST. This interpretation creates a unique approach to apportionment under the Act. Given that there are alternative interpretations of the section, including the interpretation under this ruling, it is reasonable to assume that Parliament did not intend to create a new basis of apportionment under the Act.

A grant or sale of the lease of that land

The words “not being a grant or sale of the lease of that land” create an exception to the exemption under the main body of section 14(ca). The words in section 14(ca) “not being a grant or sale of the lease of that land” refer to any payment made for:

- The creation of a leasehold interest in that land, other than a payment of rent; or
- The sale of the leasehold interest in the land.

Any grant or sale by the head lessor (owner of the land) of a ground lease of that land, where the ground lease is exempt from GST to the extent that it is used for the principal purpose of supplying accommodation in a dwelling, is not exempt from GST. Whether GST is payable on the sale or grant depends on whether the sale or grant is made in the course or furtherance of a taxable activity carried on by the head lessor.

Comments on technical submissions received

Submissions were received to the effect that section 14(ca) not only applies to the supply of leasehold land, but also to the supply of leasehold land and improvements. This is because under general land law the lease of a building is the lease of the building and the lessor’s interest in the land on which the building is erected. This distinction is important when considering whether the section applies to subleases of buildings situated on leasehold land.

The section only refers to the supply of leasehold land. It applies to the extent that that supply of land involves accommodation in a dwelling. A distinction is drawn between the land and any dwellings erected on that land. This suggests that the supply of leasehold land refers only to situations where the land is supplied without improvements i.e., a ground lease.

In addition, section 14(d) supports the interpretation of section 14(ca) as only applying to supplies of ground leases. Section 14(d) refers to “leasehold land” and refers back to section 14(ca). Section 14(d) exempts the supply of the reversionary interest in the fee simple estate of any leasehold land. This is where the leasehold land has been used by a registered person for a period of five years or more before the date of the supply exclusively for the making of any supply or supplies under section 14(c) or 14(ca). Section 14(d) is dealing with the leasehold interest created by the head lessor. The reference to supplies under section 14(c) and section 14(ca) indicates that section 14(c) applies when a head lessor supplies land and buildings; whereas section 14(ca) applies when only land is supplied.

In addition, the legislative background to the enactment of section 14(ca) supports interpreting the reference to leasehold land as being to the supply of ground leases.

Examples

The following examples do not form part of the ruling.

Example 1

A property investment company owns a commercial site. It leases the land by way of ground lease to a commercial property company. The commercial property company owns a three-storey commercial

building on the property. An earlier lessee erected the building. The commercial property company altered part of the building to include a two bed-room flat to provide residential accommodation. It has leased half the building, including the flat, to a butchery business. The lease expressly refers to the commercial and residential uses of the premises. The butchery business leases the flat to an unrelated individual for residential accommodation.

A company which carries on a bakery business leases the other half of the building from the commercial property company. The bakery company has made alterations to its half of the building, including a small studio flat that it sub-lets, for no consideration, to one of its staff who works an early shift. The bakery company's lease with the commercial property company does not refer to the residential use.

- The supply of the ground lease between the property investment company and the commercial property company is subject to apportionment under section 14(ca). That part of the land used for residential purposes, i.e., the two bedroom flat, and the studio flat, is exempt. The supply of the balance of the land is subject to GST. It is not used for the principal purpose of accommodation in a dwelling. Section 10(18) applies to apportion the consideration on an area basis.
- The supply of the lease between the commercial property company and the butchery business is subject to apportionment. It is not exempt from GST under section 14(ca) because it is not the supply of leasehold land by way of rental. However, the supply of residential accommodation is exempt under section 14(c). The supply of commercial premises is subject to GST. Section 10(18) applies to apportion the consideration for the supply of the lease on an area basis.
- The supply of the lease between the commercial property company and the bakery company is subject to GST. It is not exempt from GST under section 14(ca) because it is not the supply of leasehold land by way of rental. It is the supply of a leasehold interest in a building situated on that land. Section 14(c) does not apply to that part of the building being used as a studio flat because it is the bakery company, and not the commercial property company, that is supplying the residential accommodation.
- The supply of the lease between the butchery business and the unrelated individual is exempt from GST under section 14(c). This is because it is the supply of accommodation in a dwelling by way of hire.
- The supply of the studio flat by the bakery company to its staff member is exempt from GST under section 14(c). This is because it is a supply of accommodation in a dwelling under a service occupancy agreement.

Example 2

A local authority ("the Authority") owns certain commercial land. It currently leases the land by way of ground lease to a property development company. The property development company owns an office block situated on the property that it built and, until recently, let. The building is now empty. The property development company intends to refurbish the building and turn it into city residential apartments. It intends to lease the apartments. It is considering retaining the two ground floor units and leasing one to a retailer. It intends to use the other unit as its office.

- When the building situated on the land was used as offices, the supply of the ground lease by the Authority to the property development company was subject to GST. From the time the land is used in part for the principal purpose of supplying accommodation in a dwelling, the supply of the ground lease will be subject to apportionment under section 14(ca). That part of the land used for residential purposes, i.e., the apartments, is exempt. The supply of the balance of the land, i.e., the ground floor, is subject to GST. It is not used for the principal purpose of accommodation in a dwelling. Section 10(18) applies to apportion the consideration.

  The property development company will need to approach the Authority and inform it of the partial change in use of the building situated on the land. The apportionment of lease rental under section 14(ca) applies as and when each residential apartment is let. Until each apartment is let, that part of the building is not used for the principal purpose of accommodation in a dwelling. A dwelling is a building or part of a building used predominantly as a place of residence by any individual.
- The supply of any lease between the property development company and a retailer will be subject to GST. It is not exempt from GST under section 14(c) or section 14(ca).

Example 3

A trust board ("the Board") owns prime land on the outskirts of a city. The Board subdivides the land into 30 lots. It has decided not to sell the lots outright, but rather to retain ownership and create leasehold interests. It grants individual leases of the subdivided lots. It grants these leasehold interests to private lessees to build houses on the land. The Board intends to charge an average of $10,000 for entering into the lease. The average annual ground rental for the on-going supply of the leasehold land will be $2,000.

- The initial grants of the leasehold land are subject to GST, as the Board is making the grants in the course of its taxable activity of land development. The exception to the exemption under section

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14(ca) for the grant or sale of a lease applies, because consideration has been paid, i.e., the charge, for the initial grant of the leasehold interest.

- The on-going supply of the leasehold land by way of rental will be exempt from GST under section 14(ca).

Example 4

A local, GST registered council ("the Council") owns a residential section. It leases the land by way of ground lease to an individual who owns, and lives in, a house situated on the property. An earlier lessee built the house some years ago. The Council intends to sell all its inner city leasehold land, including this section, to a third party.

- The supply of the ground lease to the individual is exempt from GST under section 14(ca).
- The sale of the property, including the Council's leasehold interest in the land, is potentially subject to GST. This is because the Council will be making the sale in the course of its taxable activity. Section 14(ca) does not apply to exempt the sale. This is because the exception to the exemption under section 14(ca), for the grant or sale of a lease, applies to the sale. However, provided that at the time of sale the Council has leased the land for a period of five years or more exclusively for the principal purpose of accommodation in a dwelling erected on that land, the exemption under section 14(d) will apply.

Fletcher Challenge Ltd's share capital reorganisation

Product ruling - BR Prd 96/3

This is a product ruling made under section 91F of the Tax Administration Act 1994.

All legislative references are to the Income Tax Act 1994 unless otherwise stated.

Taxation law

This ruling applies in respect of sections BB 4, BB 7, and the definition of "available subscribed capital" and "transitional capital amount" in section OB 1 of the Income Tax Act 1994.

Arrangement to which this ruling applies

The arrangement is the proposed reorganisation ("the reorganisation") of the share capital of Fletcher Challenge Limited ("the company") involving the consolidation, subdivision, and reclassification of four Ordinary Division Shares into:

- Two Fletcher Challenge Paper Shares; and
- One Fletcher Challenge Energy Share; and
- One Fletcher Challenge Building Share,

- together the "New Division Shares".

Other facts of the arrangement and relevant information are as set out in the Information Memorandum to shareholders dated 28 February 1996 (being in the same form as previously supplied to Inland Revenue on 27 February 1996) and Board Resolutions dated 28 February 1996 (being in the same form as previously provided to Inland Revenue under cover of a letter dated 26 February 1996) and letters and enclosures provided to Inland Revenue dated 25 January, 5, 7, 20, and 22 February 1996 and the company's application for a private binding ruling dated 26 January 1996 and the company's application for a product binding ruling dated 20 February 1996.

Assumptions

This ruling is based on the assumption that the reorganisation proceeds and that the facts will be as described in the aforementioned documentation.

Ruling

Subject to the assumption stated above being correct:

A. Assessable income/expenditure or loss

The reorganisation does not give rise to any assessable income to shareholders of the company under section BB 4, nor any expenditure or loss under section BB 7.

B. Dividend

The reorganisation does not give rise to any dividend under section CF 2 (1).

C. Cost base

For the purposes of sections BB 4 (a), (c), and (d), and BB 7 the cost base of each New Division Share immediately after the reorganisation shall be a proportionate share of the aggregate cost of the four Ordinary Division Shares from which it has been subdivided and reclassified.

For this purpose the cost base of each New Division Share shall be apportioned on the basis of the relative market values of each class of New Division Shares on the day they are first traded on the New Zealand Stock Exchange. The method used to establish the market value of each class of New Division Share on the first day of trading must be consistently applied to all New Division Shares.

D. Available Subscribed Capital

(i) The aggregate available subscribed capital ("ASC"), as defined in section OB 1, of the company is unaltered by the reorganisation.

(ii) Immediately following the reorganisation, the ASC of each class of New Division Share will be:

- In the case of the Fletcher Challenge Paper Shares, one half of the ASC of the Ordinary Division Shares, immediately prior to the reorganisation:
- In the case of the Fletcher Challenge Energy Shares, one quarter of the ASC of the Ordinary Division Shares, immediately prior to the reorganisation:
- In the case of the Fletcher Challenge Building Shares, one quarter of the ASC of the Ordinary Division Shares, immediately prior to the reorganisation.

E. Transitional Capital Amount

The reorganisation does not involve any cancellation of shares for the purposes of subparagraph (i)(A) of item "j" of the definition of "transitional capital amount" in section OB 1.

The period for which this ruling applies

This ruling applies for the period 28 February 1996 to 28 February 2001.

Signed

Martin Smith
General Manager (Adjudication & Rulings)

Farmers Mutual Group - formation of holding company

Product ruling - BR Prd 96/5

This is a product ruling made under section 91F of the Tax Administration Act 1994.

Taxation law

This ruling applies in respect of section 63 and the definitions of "gift" and "disposition of property" in section 2(2), of the Estate and Gift Duties Act 1968.

Arrangement to which this ruling applies

The proposed arrangement is:

1. The Farmers Mutual Group consists of the Farmers Mutual Insurance Association (referred to in this ruling as the "Association") and its subsidiaries and other investments. The Association is a mutual insurance association which operates under the Mutual Insurance Act 1955. The Association has members, being its customers, although it has not issued shares.
2. The current members of the Association are intending to bring the Association under the Companies Act 1993. They propose to do this by way of a Private Act of Parliament to be called the Farmers Mutual Group Act 1995 (referred to in this ruling as the "Private Act"). A member is any person who, immediately prior to the "appointed day" (as defined in section 2 of the Private Act), is a "member" (as defined in section 2 of the Private Act) of the Association. Under the Private Act:
   - A holding company will be incorporated under the Companies Act 1993. This holding company will be called Farmers Mutual Group Limited (referred to in this ruling as the "Holding Company"). The Holding Company will have capital which will be represented by shares held by its foundation shareholders (see 4. below). The Holding Company will be incorporated in New Zealand.
   - The character of the Association will be changed on the appointed day from that of a mutual company operating under the Mutual Insurance Act 1955 to a limited liability company established under the Companies Act 1993 called Farmers' Mutual Insurance Limited (referred to in this ruling as the "General Insurance Company"). The General Insurance Company is incorporated in New Zealand.
   - The General Insurance Company will have capital which will be represented by shares deemed to be issued to the Holding company. The General Insurance Company will become a wholly owned subsidiary of the Holding Company.
3. The members will cease to have a direct ownership interest in the Association and, instead, will hold shares in the Holding Company.
4. The foundation shareholders of the Holding Company, which in turn will own the General Insurance Company, will consist of two groups:
   - The current members of the Association; and
   - A shareholding trust which will be called Farmers Mutual Group Trust (referred to in this ruling as the "Shareholding Trust"). The Shareholding Trust will be established for the benefit of the rural communities in which members of the Association live. The Shareholding Trust will be established by the directors of the Association as settlors to hold shares in the

Holding Company. The Shareholding Trust is not a charitable trust for the purposes of section 73(1) of the Estate and Gift Duties Act 1968.

5. There are approximately 40,000 existing members of the Association. It is proposed that each member will have 100 shares in the Holding Company as an acknowledgment of their existing ownership interest in the Association. The deemed issue price will be $1.00 per share. The balance of the shares in the Holding Company will be held by the Shareholding Trust. The deemed issue price for these shares will also be $1.00 per share.

6. It is proposed that the Holding Company will be established with initial capital of $20 million.

7. The shareholding in the Holding Company therefore will be:

   - Approximately 4,000,000 $1.00 shares held by existing members of the Association; and

   - Approximately 16,000,000 $1.00 shares held by the Shareholding Trust.

8. The steps to give effect to the reorganisation are provided for in the Private Act. Section 9 provides that on the appointed day the Association will be reconstituted to become the General Insurance Company. Section 10 (a) and (b) deems the General Insurance Company to have subscribed capital of $20 million to be represented by ordinary voting shares that shall be deemed to have been issued to the Holding Company.

9. Section 11 of the Private Act deals with the establishment of the Holding Company. On incorporation, the subscribed capital of the Holding Company will be $20 million represented by $1.00 shares to be held by the members of the Association and the Shareholding Trust in the proportions specified in section 11. Sections 10 and 11 will operate simultaneously, on the appointed day referred to in these sections.

10. The reorganisation contemplated by sections 10 and 11 of the Private Act is subject to certain preliminary requirements, as provided for in section 7 of the Private Act. In particular, the Association is required to advise members of the proposed reorganisation and to invite members to call for a meeting to vote on the proposed reorganisation. If more than 10% of the members request a meeting, then the Association is required to convene a meeting of members to have a vote on the proposal. Accordingly, the members can be seen to be either acquiescing to the proposal, if less than 10% of the members call for a meeting, or approving the proposal by way of a vote, if a meeting is held.

11. Section 10 (g) of the Private Act also provides that, as part of the reorganisation, the Association's shares in each of its subsidiaries shall vest in the Holding Company, so that the subsidiaries may become direct subsidiaries of the Holding Company. Section 10 (h) provides that the vesting shall be deemed to be for a consideration equal to the cost of the shares as recorded in the books of account of the Association immediately before the appointed day. Accordingly, it is conceivable that the shares will be transferred for an amount which is less than their true value.

12. Section 15 of the Private Act provides that the name of the company Farmers Mutual Insurance Limited (being a subsidiary of the Association) will be changed on the appointed day to Former FMI Ltd. Section 15 also provides that all of the engagements, assets and liabilities (other than the residual life insurance engagements, assets and liabilities) of Former FMI Ltd will be deemed to have vested in the General Insurance Company (subsection (3)). Section 15(5) provides that except for the purposes of the Income Tax Act

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1994, the consideration for the vesting shall be equal to the net book value of the engagements, assets and liabilities. It is assumed that the net book value of the engagements, assets and liabilities of Former FMI Ltd is less than their current market value. Therefore, Former FMI Ltd will be vesting these engagements, assets and liabilities at an undervalue to its parent company: the General Insurance Company.

Assumptions

This ruling is based on the assumptions that:

- The proposed demutualisation proceeds in a manner that is not materially different to that described above.
- The demutualisation proposal document(s) which the members receive and will either acquiesce, or agree to, does not in itself release, discharge, surrender, forfeit, or abandon the members' voting rights in the Association.
- The members of the Association are not involved in arranging or effecting the proposed demutualisation other than by acquiesing to or voting on the proposal (this depending on whether 10% or more of the members request a meeting).

The ruling

The extinguishment of a member's voting rights and other ownership or proprietary rights in the Association, as a consequence of the passing of the Private Act and the Association becoming a limited liability company under the Companies Act 1993, will not be a "disposition of property" under section 2(2) of the Estate and Gift Duties Act 1968. Therefore the extinguishment is not a "gift" under section 2(2) of the Estate and Gift Duties Act 1968 and cannot be a dutiable gift by the member to any person under section 63 of the Estate and Gift Duties Act 1968.

The period for which the ruling applies

This ruling applies for the period 7 March 1996 to the end of the income year in which the "appointed day" occurs or to 7 March 1999 (whichever occurs first).

Martin Smith
General Manager (Adjudication & Rulings)

Analysis of product ruling BR Prd 96/5

This analysis of the ruling does not form part of the ruling.

All legislative references are to the Estate and Gift Duties Act 1968 unless otherwise stated.

Background

The Commissioner has been asked to rule on an issue relating to the proposed demutualisation of Farmers Mutual. In essence, the issue concerns whether the members of Farmers Mutual, by agreeing or acquiescing to the demutualisation proposal, are making a gift which is liable for gift duty.

The directors of Farmers Mutual are proposing, and will advise members of, the demutualisation. The demutualisation will proceed without any action by the members, unless 10% of the members request a meeting, in which case the members will be asked to approve the demutualisation proposal by way of vote.

Nature of members' interest in Farmers Mutual

The members of Farmers Mutual have two proprietary rights. These rights are conferred by statute under the Mutual Insurance Act 1955. The first is a right to vote. Section 29 provides that every member present at the annual general meeting shall have one vote. The second

is a contingent right to share in the reserves if Farmers Mutual were liquidated. A recent amendment to the Mutual Insurance Act recognises the existence of reserves. Section 43 of the Mutual Insurance Act provides that Part VI of the Companies Act 1993 shall apply in the event of a liquidation with such modifications as may be necessary to the Association as if it were a company formed and registered under the Companies Act. Section 313 of the Companies Act governs the distribution of the surplus assets of a company in liquidation.

These proprietary rights:

- Are not represented by a separate chose in action, such as a share; and
- Are embedded in the insurance policies which the members hold; and
- Cannot be separately traded by the members.

The proprietary rights are dependent on certain conditions, such as the member continuing to maintain an insurance contract with the association. If the conditions are not satisfied the rights cease to apply.

Under the demutualisation procedure, the members' proprietary rights will cease as the Mutual Insurance Act 1955 will be repealed.

Legislation

Section 63(1) states:

Subject to this Act, a dutiable gift shall include and consist of -

(a) All the property, wherever situated, comprised in any gift made by any donor to any donee, where the donor is domiciled in New Zealand at the date of the gift, or is a body corporate incorporated in New Zealand:

(b) All the property, situated in New Zealand, comprised in any gift made by any donor to any donee, where the donor is domiciled out of New Zealand at the date of the gift, or is a body corporate incorporated out of New Zealand.

"Gift" is defined in section 2(2):

"Gift" means any disposition of property, wherever and howsoever made, otherwise than by will, without fully adequate consideration in money or money's worth passing to the person making the disposition:

Provided that where the consideration in money or money's worth is inadequate, the disposition shall be deemed to be a gift to the extent of that inadequacy only:

"Disposition of property" is defined in section 2(2) as:

"Disposition of property" means any conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity; and, without limiting the generality of the foregoing provisions of this definition, includes -

(a) The issue of shares in a company:

(b) The creation of a trust:

(c) The grant or creation of any lease, mortgage, charge, servitude, licence, power, or other right, estate, or interest in or over any property:

(d) The release, discharge, surrender, forfeiture, or abandonment of any debt, contract, or thing in action, or of any right, power, estate, or interest in or over any property; and for this purpose a debt, or any other right, estate, or interest, shall be deemed to have been released or surrendered when it has become irrecoverable or unenforceable by action through the lapse of time:

(e) The exercise of a general power of appointment in favour of any person other than the holder of the power:

(f) Any transaction or series of related or connected transactions entered into by any person with intent thereby to diminish, directly or indirectly, the value of his own estate and to increase the value of the estate of any other person; and for this purpose the passing by a company of a resolution which, by the extinguishment or alteration of the rights attaching to any shares or debentures of the company, results, directly or indirectly, in the estate of any shareholder or debenture holder of the company being increased in value at the expense of the estate of any other shareholder or debenture holder shall be deemed to be a transaction entered into by that other shareholder or debenture holder if he could have prevented the passing of the resolution by voting against it or otherwise;-

but does not include a disclaimer of an interest under a disposition made *inter vivos* or by will or of an interest under an intestacy:

Discussion

The definition of "gift" in section 2(2) requires that there be a disposition of property.

The opening words of the definition of "disposition of property" in section 2(2) refer to any "conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property". Clearly in this case there is no conveyance, transfer, assignment, settlement, delivery or payment of the proprietary rights held by the members. Nor is there any alienation of these rights. Alienation implies a change of ownership or a passing of property. In this case, the ownership of the proprietary rights of the members does not change or pass: rather, they cease to exist.

Notwithstanding this, the definition of "disposition of property" also includes a number of specific actions in paragraphs (a) to (f). The members clearly do not undertake any of the actions in paragraphs (a), (b), (c), or (e). Paragraphs (d) and (f) are considered below.

Paragraph (d)

The first limb of paragraph (d) includes as a disposition of property "the release, discharge, surrender, forfeiture, or abandonment of any debt, contract, or thing in action, or of any right, power, estate, or interest in or over any property;..."

The members will either acquiesce to the proposal (where the members do not request a meeting) or will request a meeting and vote for the proposal. However, neither the acquiescence nor the voting will in itself constitute a release, discharge, surrender, forfeiture or abandonment of the voting rights. The proprietary

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rights of the members will continue after the members have acquiesced to or voted on the proposal. The rights of the members will cease to exist as a consequence of Farmers Mutual ceasing to be subject to the Mutual Insurance Act. This will happen by the passing of the proposed Farmers Mutual Group Act. It is only by force of that Act of Parliament that the members' rights will be extinguished. Therefore the members will not release, discharge, etc., their rights: the rights will be extinguished by an Act of Parliament which repeals the Mutual Insurance Act.

Paragraph (f)

The first limb of paragraph (f) includes within the definition of "disposition of property" any transaction or series of related or connected transactions entered into by a person with the specified intent.

As already mentioned, the members will either acquiesce to the proposal or approve the proposal by way of vote (depending on whether 10% of members request a meeting to vote on the proposal).

In neither case can it be said that the members are entering into a transaction (or series of related or connected transactions). Even if the members take some "positive" action by 10% of the members requesting a meeting to vote on the proposal, case law indicates that the mere act of voting for the proposal will not amount to "entering into a transaction".

In *Grimwade v Federal Commissioner of Taxation* (1949) 78 CLR 199 it was contended that Grimwade, by voting or failing to vote for resolutions to reduce the share capital of a company, had entered into a transaction with the intent to diminish the value of his own property and increase the value of the property of other persons. Latham CJ and Webb J in the High Court of Australia stated on page 219-220:

> There may be a "transaction" with respect to the casting of a vote. It may be an illegal transaction, as when an elector takes a bribe in return for his vote at a parliamentary election. It may be a legal transaction, as when a shareholder ... agrees to vote in particular way for a consideration, e.g. if other shareholders will exercise their votes in a particular way. ... The commissioner did not allege that there was any agreement between E. N. Grimwade and his sons as to voting for the resolutions. But when a shareholder makes up his mind to vote in a particular way and casts his vote accordingly he cannot be said to be "entering into a transaction". A transaction by a person must be a transaction *with* some other person. In the circumstances mentioned there is no transaction with any person. ...
>
> It was suggested that even to abstain from voting against a resolution beneficial to a class of shareholders amounted to entering a transaction within par. (f). All these contentions interpret the words "enter into a transaction" as if they had the same meaning as "do an act or abstain from doing an act." Such an interpretation gives no real effect to the words "enter" and transaction."

Cooke J in the Supreme Court decision in *Carmody v CIR* (1974) 1 NZTC 61,219, 61224 has also stated that:

> in the ordinary and natural use of language a shareholder does not enter into a transaction by merely casting a vote.

If less than 10% of the members of Farmers Mutual call for a meeting, then no meeting will be held and the demutualisation will proceed. In this case, the members are not entering into a transaction (or series of transactions). Rather, they are merely accepting (knowingly or otherwise) the demutualisation proposed by the directors.

If 10% or more of the members call for a meeting, then a meeting will be held and members will vote on the demutualisation. However, even in this case *Grimwade* and *Carmody* support the view that the members are not entering into a transaction or series of transactions by voting for the proposal.

Notwithstanding this, it is noted that in some circumstances, a vote accompanied by other actions may mean that a transaction is entered into. This was the case in *Robertson v CIR* [1959] NZLR 492 where a director of and shareholder in a company initiated a series of events or actions (which included, but was not limited to, voting to increase the capital of a private company) designed to decrease the value of the estate of the shareholders and increase the value of another person's estate. In these circumstances, McCarthy J in the Supreme Court held that the role played by the shareholder/director in arranging and executing the entire plan meant the shareholder/director had entered into a transaction. *Robertson* can be contrasted with the Farmers Mutual demutualisation proposal where the proposal has been initiated by the directors (and not its members) and the members have no involvement in the demutualisation other than by merely voting for the proposal, and then only in the possible event of 10% of members calling for a meeting.

Accordingly, the members are not entering into a transaction (or series of transactions) by either acquiescing to or voting on the proposal. Therefore, there is no disposition of property within the first limb of paragraph (f).

The second limb of paragraph (f) applies to the passing of a resolution by a company which, by the extinguishment or alteration of the rights attaching to any shares or debentures of the company, results, directly or indirectly, in the estate of any shareholder or debentureholder of the company being increased in value at the expense of the estate of any other shareholder or debentureholder. Because the Association does not have share capital and has not issued shares, the members are not shareholders and the rights held by the members are not rights attaching to shares. It follows that the second limb of paragraph (f) will also not apply.

Wrightson Limited's co-branded charge card

Product ruling - BR Prd 96/7

This is a product ruling made under section 91F of the Tax Administration Act 1994.

All legislative references are to the Income Tax Act 1994.

Taxation law

This ruling applies in respect of section BB 4 of the Income Tax Act 1994.

Arrangement to which this ruling applies

Wrightson Limited is shortly to introduce a co-branded charge card (the Card) to the market. This card will be co-branded with American Express Inc. The Card will have a loyalty programme attached to it to encourage cardholders to use the Card at certain outlets.

The cardholder will accumulate loyalty points in two ways:

1. Points per dollar spent on the Card; and
2. Bonus points for shopping at particular retailers.

Points are able to be accumulated and carried forward, but may expire after a certain period of time. Once certain levels of points are attained the cardholder can claim a reward under the scheme. It is expected that cardholders will be entitled to rewards irregularly. The rewards will be prizes from a catalogue. Wrightson will not give cardholders cash in lieu of prizes. However, the prizes may be of a type not convertible to money (that is, non-transferable and non-assignable) while some will be of a type convertible to money (that is, transferable and assignable).

Other facts are set out in the application and annexure dated 23 January 1996.

Assumptions

The ruling is based on the assumptions that all cardholders are New Zealand resident individuals, and that the arrangement will be implemented in the manner set out in the application.

It is also assumed that the individual reward levels will not be easy to achieve and the timing between redemptions under the programme will be long-term periods, if they are repeated at all.

The ruling

No income arises under section BB 4 for Wrightson cardholders when they accumulate or redeem points for rewards under the Wrightson Card Loyalty Programme.

The period for which this ruling applies

This ruling applies for the period from 4 April 1996 to 31 March 1999.

Signed

Martin Smith
General Manager (Adjudication & Rulings)

Analysis of product ruling BR Prd 96/7

The analysis of the ruling does not form part of the ruling.

All legislative references are to the Income Tax Act 1994.

Background

A ruling has been sought on whether prizes received by cardholders of the Card are assessable income to the cardholders.

Legislation

Section BB 4 states:

> Without in any way limiting the meaning of the term, the assessable income of any person shall for the purposes of this Act be deemed to include, save so far as express provision is made in this Act to the contrary,-
>
> (a) All profits or gains derived from any business (including any increase in the value of stock in hand at the time of the transfer or sale of the business, or on the reconstruction of a company):
>
> ...
>
> (d) Income derived from any other source.

Loyalty programme

Non-business expenditure giving rise to points

The receipt of prizes from points earned by using the Card for non-business expenditure will not be income under section BB 4 (d). The leading case on the predecessor to section BB 4 (d) (section 65(2)(l)) is *Reid v CIR* (1985) 7 NZTC 5,176 (CA). That decision creates three tests for "income":

- It must be something that "comes in"; and
- It must be periodic, recurrent, and regular; and
- It must be tested in the hands of the recipient.

The second and third tests are discussed in *Reid* by Richardson J, at page 5,183:

> The major determinant [of income] in many cases is the periodic nature of a payment...If it has that quality of regularity or recurrence then the payments become part of the receipts upon which the recipient may depend for his living expenses, just as in the case of a salary or wage earner, annuitant or welfare beneficiary. But that in itself is not enough and consideration must be given to the relationship between payer and payee and to the purpose of the payment, in order to determine the quality of the payment in the hands of the payee.
>
> The sums in question were regular periodical payments made to the appellant to defray his expenses while attending teachers' college full time as a teacher trainee.

Applying the second test, it is unlikely that the rewards under the programme will be regular.

The third test focuses on the quality of the receipt of a prize in the hands of the cardholder. Unlike *Reid*, where the bursary was used to defray the taxpayer's personal expenses and was paid in respect of his training at the teachers college, a prize from use of the card is a bonus to the cardholder, and is not relied on for living expenses.

Business expenditure giving rise to points

The receipt of prizes from points earned by using the Card for business expenditure will not be income under section BB 4 (a), assuming the receipt of the prizes is irregular. As irregular receipts, as discussed above, the prizes do not have the appearance of income sufficient to trigger section BB 4 (a). However, if business use of the card gave rise to the regular receipt of prizes there would be a strong argument for finding that those prizes were income in the normal course of the business and subject to income tax under section BB 4 (a).

Inconvertibility

Inconvertibility is a further reason why receipt of prizes will not be assessable income of the cardholder.

The inconvertibility principle requires that to be income the receipt must be money or money's worth. If the receipt is not convertible to money it cannot be income. Thus benefits that are non-transferable and non-assignable cannot be income. An example is air tickets that are given to a person on condition that they are used personally, and if they are not so used the person cannot receive money or money's worth in replacement, and cannot assign the benefit to a third party.

The New Zealand case of *Stagg v IRC* [1959] NZLR 1252 is an example of the inconvertibility principle. In that case non-transferable and non-assignable air tickets for the taxpayer and his wife were not income. In the Australian decision of *FCT v Cooke & Sherden* 80 ATC 4140, free travel and accommodation provided to franchisees for meeting sales quotas were not assessable income as they could not be assigned or converted into cash.

Therefore, independently of the above reasons, no income arises under section BB 4 for Wrightson cardholders under the Wrightson Card Loyalty Programme when they accumulate, or redeem points for rewards, and the prizes gained are inconvertible to money. This is so even if the prizes are received regularly as a result of points gained from business expenses. That is, inconvertibility will make income that may be assessable under section BB 4 (a), non-assessable: see *Cooke & Sherden* at page 4,149.

HomeOFFICE Software Ltd's IR 5 Tax Wizard

Product ruling - BR Prd 96/8

This is a product ruling made under section 91F of the Tax Administration Act 1994.

All legislative references are to the Income Tax Act 1994 unless otherwise stated.

Taxation law

This ruling applies in respect of section DJ 5 (1)(a) of the Income Tax Act 1994.

Arrangement to which this ruling applies

This ruling applies to a product known as the "IR 5 Tax Wizard" which has been marketed by HomeOFFICE Software Limited.

Assumptions

This ruling is based on the assumption that the "IR 5 Tax Wizard" is bought by the taxpayer for the purpose of calculating the 1996 tax liability of that taxpayer, and is used for that purpose.

The ruling

Where the "IR 5 Tax Wizard" is purchased and used by an IR 5 taxpayer for the purpose of calculating that taxpayer's income tax liability, for any year, the cost of "IR 5 Tax Wizard" will be deductible under section DJ 5 of the Income Tax Act 1994.

The deduction is available in the year in which "IR 5 Tax Wizard" is purchased.

The period for which this ruling applies

This ruling will apply for the period from 1 April 1996 to 31 March 1997.

Signed

Martin Smith
General Manager (Adjudication & Rulings)

Binding Rulings - review

The binding rulings regime has been in operation since 1 April 1995. We are now reviewing it to see if we can improve its operation. A number of issues have arisen to date, some of which we've addressed in the Questions We've been Asked section of the Tax Information Bulletin.

We are now seeking suggestions both on the binding rulings process and on the legislation itself. If you have any, please send them to:

The Assistant General Manager
Adjudication and Rulings
Inland Revenue National Office
PO Box 2198
Wellington

Legislation and determinations

This section of the TIB covers items such as recent tax legislation, accrual and depreciation determinations, livestock values and changes in FBT and GST interest rates.

1996 international tax disclosure exemption ITR7

Introduction

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

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

Under section 61(2), the Commissioner has issued an international tax disclosure exemption which applies for the income year ended 31 March 1996. This exemption may be cited as "International Tax Disclosure Exemption ITR7", and the full text appears at the end of this item.

Scope of exemption

The scope of the 1996 disclosure exemption is the same as the 1995 exemption. Disclosure is required for these interests:

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

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

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

Example

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

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

In this example the husband and wife must disclose their interests as interests in a foreign company and as interests in a FIF. However, only the FIF interests should be disclosed on an IR 4H series form (see "Overlap of interests" on page 21).

Foreign company interests

A person who holds a control or income interest in a foreign company must disclose that interest, regardless of the company's country of residence. The 1996 international tax disclosure exemption also makes no distinction about residence, and any interest in a foreign company which is an "income interest of 10% or greater" must be disclosed. Disclosure is to be made on form IR 4G "Interest in a Foreign Company Disclosure Schedule".

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

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

Foreign investment fund interests

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

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

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

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

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

A person who holds an interest in a FIF at any time during the 1996 income year must disclose the interest and calculate FIF income or loss on the form "Interest in Foreign Investment Fund Disclosure Schedule and Worksheet" (IR 4H). The FIF rules allow a person four options to calculate FIF income or loss (accounting profits method, branch equivalent method, comparative value method and deemed rate of return method), so the Commissioner has prescribed four forms under the IR 4H series to disclose and calculate FIF income or loss from an interest in a FIF using one of the methods.

Overlap of interests

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

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

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

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

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

Summary

The 1996 international tax disclosure exemption removes the requirement to disclose an interest held in a foreign company (if the interest is not also an interest in a FIF) that does not constitute an "income interest of 10% or greater" (i.e., it is less than 10%). The disclosure exemption is not affected by the foreign company's country of residence. Further, an interest in a FIF must be disclosed.

Text of determination appears on page 22

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

This exemption may be cited as "International Tax Disclosure Exemption ITR7"

1. Reference

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

2. Interpretation

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

3. Exemption

Any person who has an income interest or a control interest in a foreign company (not being an interest in a foreign investment fund), in the income year ending 31 March 1996, shall not be required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that income interest or control interest in that foreign company and that income year, except where:

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

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

This exemption is signed on the 11th day of April 1996.

Max Carr
National Manager, Corporates

Lawnmowers - draft depreciation determination

Introduction

Currently there are three general depreciation rates for various types of mowers as follows:

- Agriculture, Horticulture and Aquaculture: "Mowers (gang and PTO type)" 12.5 years, 15% DV, 10% SL.
- Contractors, Builders and Quarrying: "Mowers (domestic type)" 5 years, 33% DV, 24% SL.
- Residential Rental Property Chattels: "Lawn mowers" 4 years, 40% DV, 30% SL.

The Commissioner proposes to issue a general depreciation determination which will set two new depreciation rates. These two new depreciation rates will both be added to the Agriculture, Horticulture & Aquaculture industry category and the Contractors, Builders and Quarrying category. The draft determination is reproduced below. It will set a new depreciation rate of 63.5% diminishing value ("DV") for domestic type lawnmowers used by lawnmowing contractors. In addition it will set a depreciation rate of 33% DV for non-domestic type lawnmowers used by lawnmowing contractors.

The depreciation rate for gang and PTO ("power take off") type mowers and the depreciation rate for lawnmowers used at residential rental properties, of 15% DV and 40% DV respectively, will remain unchanged.

The proposed new depreciation rate for "Lawnmowers (domestic type in use by lawnmowing contractors)" of 63.5% DV is based on an estimated useful life ("EUL") of two years and a residual value of 13.5% of cost. Two years reflects the EUL for a domestic type of lawnmower used commercially by a lawnmowing contractor.

Exposure draft - General Depreciation Determination DEPX

This determination may be cited as "Determination DEPX: Tax Depreciation Rates General Determination Number X".

1. Application

This determination applies to taxpayers who own the asset classes listed below.

This determination applies to "depreciable property" other than "excluded depreciable property" for the 1995-96 and subsequent income years.

2. Determination

Pursuant to section EG 4 of the Income Tax Act 1994 I hereby amend Determination DEP1: Tax Depreciation Rates General Determination Number 1 (as previously amended) by:

- Inserting into the "Agriculture, Horticulture and Aquaculture" industry category the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below:

Agriculture, Horticulture and Aquaculture	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Lawnmowers (domestic type in use by lawnmowing contractors)	2	63.5	63.5
Lawnmowers (non-domestic type in use by lawnmowing contractors)	5	33	24

- Deleting from the "Contractors, Builders and Quarrying" industry category the general asset class, estimated useful life, and diminishing value and straight-line depreciation rates listed below:

Contractors, Builders and Quarrying	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Mowers (domestic type)	5	33	24

- Inserting into the "Contractors, Builders and Quarrying" industry category the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below:

Contractors, Builders and Quarrying	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Lawnmowers (domestic type in use by lawnmowing contractors)	2	63.5	63.5
Lawnmowers (non-domestic type in use by lawnmowing contractors)	5	33	24

3. Interpretation

In this determination, unless the context otherwise requires, expressions have the same meaning as in the Income Tax Act 1994.

If you wish to make a submission on these proposed changes please write to:

Assistant General Manager
Adjudication and Rulings
National Office
Inland Revenue Department
PO Box 2198
WELLINGTON

We need to receive your submission by 15 May 1996 if we are to take it into account in finalising this determination.

Questions we've been asked

This section of the TIB sets out the answers to some day-to-day questions that people have asked. We have published these as they may be of general interest to readers.

These items are based on letters we've received. A general similarity to items in this package will not necessarily lead to the same tax result. Each case will depend on its own facts.

Income Tax Act 1994

Prizes paid in instalments - assessability to recipient

Sections BB 4 and CE 1 (1)(a) (sections 65(2)(l) and (j), Income Tax Act 1976) - Items included in assessable income and annuities: A taxpayer has entered a competition which offers, as the grand prize, the option of $18,000 a year for life (paid as $1,500 a month) or a $200,000 lump sum payable immediately. If the winner elects to receive $18,000 annually, the competition organiser will purchase, for a once only premium, an annuity policy from an insurance company to pay the $1,500 per month to the winner for life. The taxpayer asks what the tax consequences are for each prize option. The competition does not relate to the taxpayer's employment or business activities.

Section CE 1 (1)(a) includes all annuities as assessable income. A prize is assessable income when it is paid as an annuity (i.e. a yearly sum payable for a stipulated number of years or by reference to some other period such as the life of the annuitant).

The prize option of $18,000 a year for life is paid as an annuity, so it is assessable income under section CE 1 (1)(a).

The prize option of a lump sum of $200,000 is not a periodic, recurrent, and regular payment and is not paid in return for the taxpayer providing services or other benefits to the competition organiser. The lump sum prize option is not income according to ordinary concepts and so is not assessable as "income from any other source" under section BB 4 (d).

If the lump sum of $200,000 is paid in instalments (but not under an annuity policy), these are instalments of the capital sum and are not assessable income.

Travel costs incurred by person who is both employed and self-employed

Section BB 7 (section 104, Income Tax Act 1976) - Expenditure or loss incurred in production of assessable income: A taxpayer lives in Napier and works there for wages 4 days a week. On the fifth day she flies to Wellington where she works as a self-employed consultant. The taxpayer has asked if she can deduct the cost of the air fares between Napier and Wellington against her self-employed income.

Under section BB 7, a taxpayer is able to claim a deduction against total income for any expenditure or loss, in the income year in which that expense or loss is incurred, to the extent that it is:

- Incurred in gaining or producing assessable income for any income year; or
- Necessarily incurred in carrying on a business so as to gain or produce assessable income in any income year.

However, under section BB 8 (b) (section 106(1)(j), Income Tax Act 1976) a section BB 7 deduction is not available for any expenditure or loss to the extent to which it is of a private or domestic nature. Generally, any expenses incurred in getting to work and back home are classed as private. Section BB 8 (a) (section 106(1)(a), Income Tax Act 1976) precludes a deduction for capital expenditure. Expenditure that puts a person into a position to earn income is classed as capital expenditure.

It is necessary, therefore, for the expenditure to be incurred in the production of assessable income (or in the course of a business directed to that end) and not be of a private, domestic, or capital nature.

The taxpayer will need to have records that show:

- The linkage between the incurring of the expenditure and the derivation of the income (or the conducting of a business to that end); and
- The fact that the costs are neither incurred to put her into a position to earn income, nor of a private nature, but rather an incident of her income earning process.

If the taxpayer is to claim a deduction for the flights to and from Wellington, she must be able to demonstrate to the Commissioner's satisfaction that her home base is also being used as an essential work base integral to her business of providing consultancy services, rather than merely a convenient place from which to do work on some occasions. If she can show that her home is an essential work base, she may claim the air fares, and also be able to claim deductions under section BB 7 for a proportion of home expenses that can be shown to be incurred in running her consultancy business. She will need to keep records that show the basis for any claim.

Charities whose objects are not limited to New Zealand

Section CB 4 (section 61, Income Tax Act 1976) - Non-profit bodies' and charities' exempt income: A representative of a business charity that has Inland Revenue's charitable status approval, has asked if the charitable business's profits are exempt from income tax. She has pointed out that the charity's objects are not confined to New Zealand.

Under section CB 4 (1)(c), income derived by trustees in a charitable trust, society, or institution, established exclusively for charitable purposes is exempt from tax, except when that income is income to which paragraph (e) applies.

Section CB 4 (1)(e), exempts from tax:

> Income derived directly or indirectly from any business carried on by or on behalf of or for the benefit of trustees in trust for charitable purposes within New Zealand...
>
> Provided that if those purposes are not limited to New Zealand the Commissioner may apportion the income in such manner as the Commissioner deems just and reasonable between those purposes within New Zealand and the like purposes out of New Zealand, and may allow to the trustees, society, or institution a partial exemption accordingly...

To enable the Commissioner to apportion the income, the charity must file an income tax return in the prescribed form, including the annual accounts. Based on this information, the Commissioner will determine whether or not a partial exemption will apply and the appropriate apportionment method to be used for the year in question.

In this case, the charity qualified for only a partial exemption for the year in question. This decision was based on information that the charity had supplied to Inland Revenue with its annual tax return.

Health services provided by employer - FBT liability

Section CI 1 (section 336N(1), Income Tax Act 1976) - Meaning of "fringe benefit": In an effort to improve the employment conditions of its staff, a large company plans to provide personnel with:

- a subsidised medical care scheme
- the services of an industrial chaplain
- the services of a nurse able to give regular health checks.

The chaplaincy services and medical checks will be provided on the employer's premises. A company representative has asked if the company will be liable for fringe benefit tax on these benefits.

Section ND 1 (section 336S(2), Income Tax Act 1976) imposes tax on fringe benefits. The term "fringe benefit" describes benefits or advantages other than monetary remuneration passing from employer to employee and arising out of the employment relationship. A benefit will not be brought within the fringe benefit tax rules unless it is a benefit that is received in relation to, in the course of, or by virtue of the employment of an employee, and is provided or granted by the employer of the employee.

Section CI 1 provides the definitions of what does and does not constitute a fringe benefit. Paragraphs (e), (f), and (h) of the section include within the definition any contribution made by an employer on behalf of an employee that consists of:

- any contribution to an approved sick, accident, or death benefit fund
- any specified insurance premium or any contribution to any insurance fund of a Friendly Society
- any contribution to any superannuation scheme.

Specifically excluded from the definition of fringe benefit tax under section CI 1 (q) is a benefit provided on the employer's premises, unless it is a benefit consisting of the use or enjoyment of free, discounted, or subsidised travel, accommodation, or clothing.

In this case, the subsidised medical care payments are liable to fringe benefit tax at the rate of 49 cents in the dollar. The value of the services of the industrial chaplain and the nurse is not subject to fringe benefit tax.

Whether a taxpayer's death constitutes "permanent departure from New Zealand"

Section JB 3 (2) (section 336D(2), Income Tax Act 1976) - Determination of other income: A tax practitioner's New Zealand superannuitant client has recently died. The practitioner is in the process of calculating the deceased's "other income" for New Zealand superannuation purposes. She has asked if she should calculate the "other income" using the section JB 3 (2) formula, on the grounds that the taxpayer's death constitutes a "permanent departure from New Zealand during the income year".

New Zealand superannuitant surcharge is calculated with reference to the superannuitant's "other income". The surcharge is imposed when a superannuitant's income, other than New Zealand superannuation, exceeds a stated exemption.

Section JB 3 (2) provides a formula for calculating the "other income" of a superannuitant who receives New Zealand superannuation for only part of the income year because of:

(a) The superannuitant's New Zealand superannuation commencing, for the first time, after the beginning of the income year; or

(b) The superannuitant's permanent departure from New Zealand during the income year.

In the context of section JB 3 (2), "Permanent departure from New Zealand" does not include death. This is because when a superannuitant dies, a tax return is filed for the period up to the date of death. New Zealand superannuation is received for the whole of the taxpayer's income year, up to the date of death. Any income derived after the date of death is not the superannuitant's income, and is therefore not subject to surcharge.

We advised the tax practitioner that in this case she should use the section JB 3 (1) formula for calculating the deceased's "other income".

Refund from applying FITC credit to earlier income years

Section LE 2 - Credits in respect of dividends to non-resident investors: A company paid a dividend and a supplementary dividend to a non-resident shareholder in the 1996-97 income year, thereby giving rise to a foreign investor tax credit (FITC). The company's forecasts indicate that it will have no income tax liability for the 1996-97 year. A company representative has asked whether a refund can be obtained immediately by applying the FITC credit against the company's income tax liability for the 1995-96 income year.

When a company pays a dividend and a supplementary dividend to a non-resident shareholder, under section LE 2 (4) the resulting FITC credit must be first offset against the company's current year income tax liability. If the company does not have a sufficient current year income tax liability against which to offset this credit, under section LE 2 (6) the company may elect that the credit be instead offset against the company's income tax liability in one of the four immediately preceding years.

Section LE 2 (6) requires that the election by the company to offset the FITC credit against a previous year's income tax liability must be made with the company's return of income for the income year in which the dividend and supplementary dividend are paid. Therefore, the company can only apply the FITC credit to its 1995-96 income year once it has filed its 1996-97 income tax return.

Goods and Services Tax Act 1985

Different activities performed by registered person

Section 6 - Meaning of the term "taxable activity": A GST registered person earns her living as an odd job person. Because of work commitments, she has hired a friend as a subcontractor to help her. The friend, who is a GST registered livestock agent, is not employed by the odd job person but will be subcontracting for her on a regular basis. He has asked Inland Revenue if he should charge GST for the odd job work which is totally unconnected with his occupation as a livestock agent.

GST registration covers all taxable activities undertaken by a registered person. Section 6(1)(a) describes a "taxable activity" as:

Any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club.

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In this case, the friend is carrying out a taxable activity as a livestock agent. The occasional work he is doing also meets the "taxable activity" definition. Both activities form part of his overall taxable supplies. Different taxable activities are not registered separately. He must charge and account for GST on the payments he receives from the subcontracting work in the normal manner.

Commission paid by overseas clients to New Zealand agents

Section 11(2)(e) - Zero-rated services: An overseas racehorse owner has asked a New Zealand agent to find her suitable quality horses for purchase. The agent has agreed to act for the buyer, and will export any purchases once they are acquired in return for a commission payment. The agent has asked if GST on the commission can be zero-rated, as the services are provided for and to a non-resident who is outside New Zealand at the time the services are performed.

Under section 11(2)(e), a supply of services is zero-rated when:

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

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

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

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

In general law, the term "moveable personal property" includes horses and other domestic animals.

The services provided by the agent are not zero-rated because they are provided in connection with moveable personal property which is in New Zealand at the time the services are performed.

Example

An Australian trainer asks a GST registered New Zealand agent to find him a suitable colt in New Zealand. The agent finds a colt that the trainer approves of, arranges its purchase, and receives a commission for her services. She must account for and return GST of one-ninth of the commission in her next GST return.

However, if the agent had bought the horse herself, on-sold it to the trainer, entered it for export and arranged for that export, she would not be acting as an agent. The sale to the Australian would be a supply of goods able to be zero-rated under section 11(1)(a) or section 11(1)(ac), rather than a supply of services.

Taxi licensees and GST registration

Section 27(1)(b) - Commissioner may make assessment of tax: A tax practitioner who acts for a part-time taxi licensee has read an item on taxi licensees and GST registration on page 13 of Tax Information Bulletin Volume Four, No.10 (May 1993), and is seeking additional information. His client's turnover is less than $30,000 per year, and she is not registered for GST. However, on the published schedule of fares displayed in the taxi, as set by the company for which the client works, the prices are clearly stated as including GST. The practitioner

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has asked if his client is required to register for GST, even though her turnover is less than that required before registration is compulsory.

In this case, the taxi licensee is making supplies for a consideration which includes GST, as evidenced by the schedule of fares published by the company and displayed in the vehicle.

Section 27(1) states:

> ... the Commissioner may from time to time, from returns furnished under this Act and from any other information in the Commissioner's possession, make assessments of the amount that, in the Commissioner's judgment, is the tax payable pursuant to the Act by -
>
> (a) Any person required to furnish any return under this Act; or
>
> (b) Any person, not being a registered person, who supplies goods and services and represents that tax is charged on that supply...

By displaying a schedule of fares and levying a charge that includes GST, the licensee is indicating to passengers that the fares she charges include the tax. The licensee is liable to register for GST even though her turnover may not exceed $30,000. If she does not voluntarily register for the tax, under section 27(1)(b) the Commissioner has the authority to deem her to be registered, and to assess her for the GST she has charged.

Section 51(2) allows a person 21 days from becoming liable to register to apply to be registered. In this case, the licensee became liable from the time she started her business and began charging GST inclusive fares. If necessary, under section 51(4)(b), the Commissioner may determine the date from which registration will take effect, and deem the licensee to be registered from that date.

Child Support Act 1991

Reduction in liable parent's income

Section 40 - Election where taxable income for Child Support purposes is estimated to have fallen at least 15 percent: A liable parent has had his Child Support liability assessed on his income from two years ago. At that time he worked at a second, part-time job. He no longer works at the second job and his current income is considerably less than what it was two years ago. He has asked if he can have his Child Support payments reduced.

Under section 40, when a liable parent's income has fallen by at least 15% from the original amount of income used in the current Child Support formula assessment, the parent may elect to have the Child Support income based on the estimated income of the current year.

When making an election, the liable parent must provide a written notice of the estimation on the appropriate form (CS 107). This election must be given to the Commissioner before or during the Child Support year; and specify the person's estimate of his or her taxable income for the income year corresponding to the Child Support year. It must also include other information required on the form.

However, an estimation election cannot be made in any of these circumstances:

- If an estimation election has already been made within the previous three months, and the new estimation differs by $500 or less from the original.
- If an income amount order is in force in relation to the person and to any months in the Child Support year in which the application is to apply.
- A person is subject to a variation in his or her Child Support income amount made by either the Commissioner following an Administrative Review, or the Court.

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When a liable parent makes an estimate of current income, that estimate will be compared to his or her actual income at the end of the financial year to determine the correct amount of Child Support payable. If the liable parent has underestimated the income, penalties may be incurred.

In this case the liable parent's income had dropped by more than 15% from the original amount used in his Child Support assessment; it was his first estimation so the $500 exclusion clause did not apply, and he was not subject to any order of the Court. Therefore, the liable parent was able to make an election based on his estimated income, resulting in his Child Support liability being reduced.

Tax Administration Act 1994

This is the third in a series of questions and answers on the binding rulings process. It includes questions raised at the 1995 Tax Conference of the New Zealand Society of Accountants and other questions and issues referred to us. The earlier series are contained in TIBs Volume 7, Nos. 6 and 7 of December 1995 and January 1996. We will publish further items as they come to hand.

The first two items deal with the Commissioner's ability to give private or product rulings when questions of fact are involved. The third and fourth questions have a similar theme in that they both provide guidance on the parameters of the Commissioner's ability to rule on questions of tax status.

Share sales - Commissioner cannot rule on a question of fact

Section 91E - Commissioner to make private rulings on request: Three years ago a taxpayer purchased a parcel of shares as a long-term investment. An opportunity has now arisen for him to purchase some land at a popular holiday location at a very reasonable price. To finance this purchase he will need to sell the shares. He has asked for a ruling that any profits he makes on the sale will not be assessable income under the second limb of section BB 4 (c) of the Income Tax Act 1994. This provision deems assessable income to include all profits and gains derived from the sale of any personal property (excluding land) if the property was purchased with the purpose or intention of selling it. Can the Commissioner rule in this situation?

Under section 91E(1), the Commissioner is required to rule, on application, on how any taxation law applies to a particular person and to a particular arrangement. However, under section 91E(4)(a) he cannot rule if it would require him to determine questions of fact (unless, in line with section 91E(4A), the ruling applies to section FB 2 or GD 13 of the Income Tax Act 1994 which deal with transfer pricing).

The Commissioner will not give a ruling in this case.

The taxpayer has stated that he purchased the shares for long-term investment - not for the purpose or intention of selling them. Cases such as *National Distributors Ltd v CIR* (1989) 11 NZTC 6346 make it clear that the test under the Act is one of dominant purpose, and that this is a subjective test of the state of mind of the purchaser. This will always be a question of fact and, therefore, is not a matter that the Commissioner can rule on under section 91E(4)(a). Nor would the Commissioner be willing to give a ruling on assessability that was based upon the factual assumption that the taxpayer's dominant purpose at the time of acquisition was one of resale.

Subdivided land - ruling not on a question of fact

Section 91E - Commissioner to make private rulings on request: Nine years ago a taxpayer purchased land which she has since subdivided. The subdivision involved cross-lease or unit title, preparation of plans, surveying to confirm boundaries and building lines, and legal costs. The taxpayer proposes to sell this land, and wants a ruling giving confirmation that any profit she makes from the sale will not be assessable income under section CD 1 (2)(f) of the Income Tax Act 1994.

The Commissioner can rule on this matter.

Section CD 1 (2)(f) taxes profits from developments or subdivisions (not being work of a minor nature) when the undertaking or scheme was commenced within 10 years of acquisition. In this instance we would look at relevant case law and other authorities to determine what constitutes "work of a minor nature" and then apply these to the subdivision. In doing so, we are applying the law to the facts and ruling accordingly. We are, therefore, not ruling on a question of fact.

Ruling cannot determine whether a company is a NZ resident

Section 91E - Commissioner to make private rulings on request: The Chief Financial Officer of a United States company that has some New Zealand management has asked for a private ruling on:

(a) Whether the company has its centre of management in New Zealand and is, therefore, resident under domestic law.

(b) The residence of the company under the United States/New Zealand Double Tax Agreement.

Can a private ruling be obtained on these questions?

The Commissioner can only make a ruling on how a taxation law applies to a particular "arrangement". "Arrangement", as defined in section OB 1 of the Income Tax Act 1994, means:

> any contract, agreement, plan, or understanding (whether enforceable or unenforceable), including all steps and transactions by which it is carried into effect.

When "tax status" is the issue, there is not generally an arrangement, and accordingly, Inland Revenue would not rule on an applicant's tax status as such.

If the "arrangement" was the *establishment* of the company we could rule on the company's tax residence, but this would generally only be possible in relation to a specific point in time, i.e., the time of the company's establishment. The company's subsequent tax residence would not derive from the "arrangement", i.e., the establishment of the company.

In other cases the applicant could choose to obtain the Commissioner's view on an "arrangement" that raises the status issue (e.g., the derivation of foreign income). However, the private ruling would only be binding for *that transaction*.

In the above example at (a) the Commissioner would not rule as no apparent "arrangement" exists. The Commissioner would also not rule on (b), both for the reason given in (a) and, because, under section 91E(4)(d)(ii), the question involves an issue dealt with under a double taxation agreement procedure.

Starting a trust, partnership or company does constitute an "arrangement"

Section 91E - Commissioner to make private rulings on request: Three doctors in partnership together are contemplating dissolving the partnership and forming a company as their business vehicle. They have applied for a binding ruling on the tax consequences of setting up the company. As the Commissioner can only rule on how any taxation law applies to a particular "arrangement", the question arises as to whether the establishment of a legal entity constitutes an "arrangement".

Section 91E(1) requires the Commissioner to rule, on application, on how any taxation law applies to a particular "arrangement" (see definition in the previous item).

Setting up a company constitutes an "arrangement" as there will obviously be a plan or agreement in existence to establish the entity. Therefore, the Commissioner can rule on how the taxation law applies *to this arrangement*. If the taxpayers want a ruling on the deductibility of set-up costs or on whether the taxation avoidance provisions of section BB 9 of the Income Tax Act 1994 apply, the Commissioner will rule on those matters as they involve the application of taxation law to that arrangement, i.e., the formation of a company. The tax residence of the company could also be ruled on, but only in relation to a specific point in time, i.e., the time of the company's establishment. The company's subsequent tax residence would not derive from the "arrangement", i.e., the establishment of the company.

However, other issues in relation to the company such as assessability of future income, company grouping etc., would need to be the subject of separate applications if binding rulings were required on these matters.

Private ruling can be made when arrangement is one of several options

Section 91E - Commissioner to make private rulings on request: A consortium wishes to apply for a private binding ruling on a tax aspect of a tourist development project. The project is one of three options on which feasibility studies are being carried out. There are only enough funds for one of the options to be developed. The consortium has asked whether it can obtain a binding ruling.

The Commissioner would need to be satisfied that the option being considered is seriously contemplated in terms of section 91E(4)(b). Assuming that the feasibility study being carried out on the option is a substantial exercise, i.e., involving significant time, effort, and expenditure, the Commissioner will accept that this option is being seriously contemplated.

If we are to be asked about more than one option, separate applications would be required for each.

Notification and publication of product rulings

Section 91FH - content and notification of a product ruling: An insurance company applied to Inland Revenue for a product ruling on a loss of earnings insurance policy it was planning to market to the general public. At the time of its application the company asked Inland Revenue to refrain from publishing the ruling. What is the position in this case?

Under section 91FH(2), the Commissioner must advise the making of a product ruling by notice in the Gazette. The notice will appear in a Gazette that follows the issuing of the ruling. Section 91FH(3) specifies that the notice must indicate the subject of the product ruling and where a copy of the ruling may be obtained. Inland Revenue is, therefore, required to advise the making of a product ruling and to provide a copy to anyone who may want one.

However, there may be commercial reasons for a taxpayer not wanting a product ruling to be published within a certain period of time or even not published at all. Inland Revenue will not publish a product ruling in the Tax Information Bulletin without the permission of the applicant. All product rulings issued will now contain a request that the applicant advises Inland Revenue whether or not the applicant consents to the ruling being published in the Tax Information Bulletin and if so, when. If the applicant does not wish the ruling to be published, Inland Revenue will not identify the applicant in the Gazette notice.

Change of address to which applications for binding rulings are to be sent

Sections 91EC and 91FC - applying for binding rulings: Following the reorganisation of Inland Revenue, the former Rulings Directorate has now become part of the Adjudication and Rulings business group. Consequently, applications for binding rulings which were previously sent to the Director, Rulings Directorate, should now be sent to:

The Assistant General Manager
Adjudication and Rulings
Inland Revenue National Office
PO Box 2198
Wellington

Tax Administration (Binding Rulings) Regulations 1995

Binding ruling fees - zero-rating for GST

A non-resident has forwarded an application for a private binding ruling to Inland Revenue. The applicant's agent has asked if Inland Revenue can zero-rate the fees payable, under section 11 of the GST Act 1985, thereby reducing them by 1/9th.

The Tax Administration (Binding Rulings) Regulations 1995 prescribes the fees charged for binding rulings. Regulation 3 states:

(1) The fees payable in respect of an application for a private ruling or a product ruling are as follows:

(a) An application fee of $210, which must accompany the application:

(b) A further fee calculated at $105 per hour (or part hour), beyond the first 2 hours, spent in consideration of the application...

Regulation 7 states:

The fees prescribed by these regulations are inclusive of any goods and service tax payable under the Goods and Services Tax Act 1985.

The supply is correctly zero-rated under section 11 of the GST Act 1985, but the terms of Regulation 7 do not operate so as to reduce the level of fees in zero-rated cases. In such cases, the statutory fees of $210 and $105 per hour are inclusive of zero per cent GST.

Non-residents are therefore liable for the fees as prescribed in Regulation 3, i.e., $210 application fee and $105 per hour beyond the first two hours.

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.

The TIB is always printed in a multiple of four 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.*

Income from a Maori Authority (IR 286A) - Feb 1996: *For people who receive income from a Maori authority. Explains which tax return the individual owners or beneficiaries fill in and how to show the income.*

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 back (SL 5) - 1996: *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.*

Visitor's Tax Guide - (IR 294) - Nov 1995: *A summary of New Zealand's tax laws and an explanation of how they apply to various types of visitors to this country.*

Business and employers

ACC premium rates - Mar 1996: *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 1996.*

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

Electronic payments to Inland Revenue (IR 87A) - May 1995: *Explains how employers and other people who make frequent payments to Inland Revenue can have these payments automatically deducted from their bank accounts.*

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) - March 1996
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

Company amalgamations (IR 4AP) - Feb 1995: *Brief guidelines for companies considering amalgamation. Contains an IR 4AM amalgamation declaration form.*

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 companies that receive dividends from overseas companies. This booklet also deals with the attributed repatriation and underlying foreign tax credit rules.*

Foreign investment funds (IR 275B) - Oct 1994: *Information for taxpayers who have overseas investments, but who don't have a controlling interest in the overseas entity.*

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

May 1996

5 Large employers: PAYE deductions and deduction schedules for period ended 30 April 1996 due.

(We will accept payments received on Monday 6 May as in time for 5 May.)

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

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

Small employers: PAYE deductions and deduction schedules for period ended 30 April 1996 due.

Gaming machine duty return and payment for month ended 30 April 1996 due.

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

RWT on dividends deducted during April 1996 due.

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

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

FBT annual liable return (1 April 1995-31 March 1996) and payment due for employers who elected to pay FBT on an annual basis.

PAYE/ACC: 1996 PAYE and earner premium reconciliation (IR 68P) and 1996 ACC employer premium calculation (IR 68A) due, and 1996 ACC employer premium to be paid.

RWT on interest: annual reconciliation statement (IR 15S) due.

RWT on dividends: specified dividend reconciliation (IR 17S or IR 17SA) due.

June 1996

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

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

IR 5 taxpayers' tax returns due to be filed.

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

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

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

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

RWT on dividends deducted during May 1996 due.

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

Imputation - debit balances as at 31 March 1996 due for payment.

28 GST return and payment for period ended 31 May 1996 due.

30 FBT final day for small employers to elect pay FBT annually.

Student Loans: First instalment of 1997 non-resident assessment due.

(We will accept payments received on Monday 1 July as in time for 30 June.)

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

This page shows the draft public binding rulings and policy statements that we now have available for your review. To give us your comments on any of these drafts, please tick the appropriate boxes, fill in your name and address, and return this page to us at the address below. We will send you a copy of the draft.

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

Name ______________________________

Address ______________________________

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Policy statements	***Comment Deadline***
☐ **2450**: GST and finance leases - classification, method of accounting and treatment of residual value clause	31/05/96
☐ **3304**: Deductibility of long service leave - change in policy for expenditure incurred prior to income year commencing 1 April 1990	31/05/96
☐ **3538**: Transfers of depreciable property between 100% commonly owned companies - withdrawal of Commissioner's practice	31/05/96

Public binding rulings	***Comment Deadline***
☐ **3653**: Timing of associated persons test in relation to profits and gains derived from land sales and other dispositions	31/05/96
☐ **3167**: Effect of declaration of trust for charitable purposes under section 24B of the Maori Trust Boards Act 1955	30/06/96

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

Affix Stamp Here

Manager (Rulings)
Adjudication and Rulings
National Office
Inland Revenue Department
P O Box 2198
WELLINGTON

Attention Public Rulings Consultation

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Inland Revenue
Te Tari Taake