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.

Whether section CD 1 (4)(a)(i) and section CD 1 (7)(a) income tax exemptions apply to non-natural persons

Public ruling - BR Pub 96/8

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

Taxation law

This ruling applies in respect of section CD 1 (4)(a)(i) and section CD 1 (7)(a) of the Income Tax Act 1994.

Arrangements to which this ruling applies

This ruling applies to the sale or other disposition of land by non-natural persons.

The period for which this ruling applies

This ruling applies to the sale or other disposition of land occurring during the period 1 June 1996 to 31 May 1999.

The ruling

The words "the taxpayer's spouse" in section CD 1 (4)(a)(i) and section CD 1 (7)(a) do not restrict the meaning of "taxpayer" to natural persons. "Taxpayer" in section CD 1 (4)(a)(i) and section CD 1 (7)(a) includes non-natural persons such as companies and trusts.

This ruling is signed by me on the 14th day of May 1996.

Martin Smith
General Manager (Adjudication & Rulings)

Analysis of public ruling BR Pub 96/8

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

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

Background

Profits or gains assessable to taxpayers under section CD 1 (2) are subject to a number of exemptions.

This ruling considers whether the taxpayer must be a natural person to come within the exemptions contained in section CD 1 (4)(a)(i) and section CD 1 (7)(a).

continued on page 2

from page 1

Legislation

Cross-reference table

Income Tax Act 1994	Income Tax Act 1976
CD 1	67
CD 1 (4)(a)(i)	67 (6)(a)(i)
CD 1 (7)(a)	67 (9)(a)

Section CD 1 (4) states:

Subsection (2)(e) shall not apply to the sale or other disposition of any land in any case where the Commissioner is satisfied that-

(a) The land was acquired by the taxpayer, and used or intended to be used-

(i) By the taxpayer, or by the taxpayer's spouse, or by both of them, primarily and principally for the purposes of a farming or agricultural business carried on by the taxpayer, or the taxpayer's spouse, or both of them; or...

Section CD 1 (7) states:

Subsection (2)(f) and (g) shall not apply to the sale or other disposition of any land in any case where-

(a) That land is a lot resulting from the division into 2 or more lots of a larger area of land which, immediately before that division, was occupied or used by the taxpayer, or by the taxpayer's spouse, or by both of them, primarily and principally for the purposes of a farming or agricultural business carried on by the taxpayer, or the taxpayer's spouse, or both of them; and...

Application of legislation

The ordinary meaning of the words "by the taxpayer, or the taxpayer's spouse, or both of them" in section CD 1 (4)(a)(i) and section CD 1 (7)(a) does not require the taxpayer to be a natural person. On a literal interpretation, by considering each alternative in section CD 1 (4)(a) separately, a non-natural taxpayer, e.g. a company, could clearly come within the words: "The land was acquired by the *taxpayer*, and used ...By the *taxpayer*...principally for the purposes of a farming or agricultural business carried on by the *taxpayer*.

However, the reference to the "taxpayer's spouse" could instead be interpreted as colouring the word "taxpayer", and limiting its meaning to natural persons.

It is the Commissioner's view that the words are to be given their ordinary meaning, and that "taxpayer" is not restricted to natural persons. This interpretation is supported by the legislative history of the exemptions. Prior to 1983, the exemptions only referred to "taxpayer", and it was clear that a company or other non-natural persons could come within the exemptions. In 1983, the exemptions were amended to include taxpayers' spouses. The intention at that stage was to extend the exemptions, rather than to narrow them to natural persons.

Bank of New Zealand's "Cash Draw Saver" account

Product ruling - BR Prd 96/11

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 and the definitions of "interest" and "money lent" in section OB 1.

Arrangement to which this ruling applies

The arrangement is as described in the Bank of New Zealand (BNZ) promotional booklet titled "Day-to-day & Savings Accounts". The booklet details all the terms and conditions applicable to the particular savings account to which this ruling applies. The BNZ encourages depositors to save in an account referred to as "Cash Draw Saver" in the promotional booklet. This Cash Draw Saver account has the following characteristics.

Every month a prize pool of $350,000 is to be won by Cash Draw Saver account holders only. There will be one prize of $100,000, five of $10,000, 20 of $5,000, and 100 of $1,000. A depositor could win multiple prizes: winning the $100,000 will not prevent the depositor winning one or more of the $10,000, $5,000, or $1,000 prizes in any one month. Every $100 saved gives one chance in each of the prize draws each month. The BNZ reserves the right to vary or amend the amount of cash prizes or suspend or terminate the monthly cash draw at any time.

The Cash Draw Saver accounts also attract interest. Interest is calculated daily on a depositor's entire balance and credited monthly to his or her account.

Depositors have access to their Cash Draw Saver accounts 24 hours a day, 7 days a week through money machines, EFTPOS, and 24-Hour Telephone Banking. They can make deposits and withdrawals at the Bank. All deposits are free of activity fees, but withdrawals, after the first two in any one month, are charged for.

Assumptions

The ruling is based on the facts as set out in the letter dated 11 March 1996 that accompanied the application dated 15 March 1996, and the information contained in the promotional booklet describing the above arrangement. In particular, it is assumed that:

- The depositor is not in the business of entering prize competitions.
- The value of the right to enter the prize competition is nominal, based on the number of entries. From the information provided, it is estimated that a depositor has a one in 400,000 chance of winning a prize. The value of the right to enter the prize competition will be considered to be nominal if the chance of winning does not decrease substantially from this approximate level.

The ruling

- The prizes received by depositors will not be "interest" as defined in section OB 1.
- The prizes received by depositors will not be assessable income for the purposes of section BB 4.

The period for which the ruling applies

This ruling applies from the income year commencing 1 April 1996 to 31 March 1999.

Signed

Martin Smith
General Manager (Adjudication & Rulings)

Global Communications Systems (NZ) Ltd's sale of phone cards

Product ruling - BR Prd 96/14

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

Taxation law

This ruling applies in respect of section 10(16) of the Goods and Services Tax Act 1985.

Arrangement to which this ruling applies

The arrangement is the sale of phone cards by Global Communications Systems (NZ) Limited to retailers of the phone cards, where that supply is made in New Zealand.

continued on page 4

from page 3

Assumptions

This ruling is based on the assumptions that:

- The phone cards have a monetary value on their face; and
- The consideration payable for the phone cards does not exceed the monetary value on the face of the cards; and
- The ruling is not concerned with the GST implications of the provision of telecommunication services.

The ruling

The value of supply of phone cards to retailers in New Zealand shall be disregarded for goods and services tax pursuant to section 10(16) of the Goods and Services Tax Act 1985.

The period for which the ruling applies

This ruling applies for the period commencing 1 April 1996 to 31 March 1999.

Signed

Martin Smith
General Manager (Adjudication & Rulings)

Policy statements

This section of the TIB contains policy statements issued by the Commissioner of Inland Revenue. Generally, these statements cover matters on which Inland Revenue wishes to state a policy, but which are not suitable topics for public binding rulings.

In most cases Inland Revenue will assess taxpayers in line with the following policy statements. However, our statutory duty is to make correct assessments, so we may not necessarily assess taxpayers on the basis of earlier advice if at the time of assessment we consider that the earlier advice does not follow the law.

Homestays - GST treatment

Summary

This item sets out the Commissioner's policy on when GST registered homestay operators can claim input tax deductions. It also discusses how section 21 adjustments apply and a recent TRA decision concerning GST and a farmstay: *Case S56* (1996) 17 NZTC 7,361. (Reported as TRA case 92/176 on page 40 of TIB Volume Seven, No.8.)

The most significant input tax deductions claimed by homestay operators are for the initial purchase price or construction costs of the home, and/or renovation or extension costs to an existing home. In order to get a full input tax deduction for these expenses a GST registered operator must:

- be carrying on a taxable activity; and
- demonstrate that the relevant goods or services are acquired for the principal purpose of making taxable supplies.

These requirements create a "two stage" test.

Whether a person is carrying on a taxable activity of homestay operation will be a question of fact and degree in each case. It will involve an examination of all the circumstances, which may involve the consideration of the steps taken to start the operation, the type and location of the home, the local tourism market, and the anticipated or actual level of occupation.

To establish whether the principal purpose test is satisfied, the Commissioner generally applies a formula relating to the floor area of the home to assess to what degree it is used, or to be used, in making taxable supplies. The formula includes a 50% estimated use of common areas for homestay purposes.

Section 21 adjustments apply to goods and services, including the home, applied for both homestay and private purposes.

When an input tax deduction on the purchase price or construction costs of a home is available, GST will be payable on the subsequent sale or other supply of the home, or the deemed supply of the home on cessation of the homestay operation. When a registered person has claimed an input tax deduction for an extension to an existing dwelling, and the extension is principally for homestay purposes, GST will be payable on the subsequent supply of the home to the extent that the proportion claimed bears to the whole home.

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

Background

Providing short term holiday accommodation in a private home for a charge is becoming increasingly popular. This is commonly called "homestay" or "farmstay" accommodation. Typically, it involves providing accommodation to paying guests in a person's own home by making available a bedroom or bedrooms, and possibly other rooms, exclusively for guests, and sharing other parts of the home with guests. It may also involve preparing meals for guests.

Homestay operators often voluntarily register for GST. A number of operators have sought input tax deductions on the cost of acquiring or building their home. Others have sought input tax deductions on the cost of renovating or extending their home.

Input tax deductions are only available for goods and services acquired for the principal purpose of making taxable supplies. There has been some confusion as to how to satisfy the principal purpose test in the context of homestays. Questions have also been raised on how sections 21(1) and 21(5) apply to supplies of goods and services that are subsequently applied for both taxable and private purposes.

Legislation

Section 8 states that GST is chargeable on the supply (not being an exempt supply) in New Zealand of goods and services by a registered person in the course or furtherance of a taxable activity carried on by that person, by reference to the value of that supply.

Section 6(1)(a) defines the term "taxable activity" as being:

> 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

continued on page 6

from page 5

includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club.

Section 6(2) deems anything done in connection with the start or finish of a taxable activity to be carried out in the course or furtherance of that taxable activity.

Under the Act, registered persons must account for GST (output tax) on the supplies made in each taxable period. Section 20 permits the deduction of input tax from the amount of output tax attributable to a given taxable period. Section 2 defines input tax:

"Input tax", in relation to a registered person, means-

(a) Tax charged under section 8(1) of this Act on the supply of goods and services made to that person: ...

(c) Any amount equal to the tax fraction (being the tax fraction applicable at the time of supply within the meaning of section 9 or any other provision of this Act) of the consideration in money for the supply, being a supply by way of sale that is not a taxable supply, to a registered person of any secondhand goods ...

being in any case goods and services acquired for the principal purpose of making taxable supplies:...

Section 21(1) requires output tax adjustments to be made when goods and services acquired for the principal purpose of making taxable supplies are subsequently applied for a private or exempt purpose. Section 21(5) permits input tax adjustments to be made when goods and services acquired or produced after 1 October 1986, other than for the principal purpose of making taxable supplies, are subsequently applied for the purpose of making taxable supplies. Under both sections there is a deemed supply to the extent of that subsequent application.

The value of the deemed supply is essentially the lesser of these two amounts:

- the cost of those goods and services
- the open market value of that supply.

To avoid doubt, section 5(16) provides that any subsequent supply of a dwelling for which an input tax deduction has been claimed is a taxable supply.

Section 5(18) states:

Where a registered person has claimed a deduction in accordance with section 20(3) of this Act in respect of a proportion of a dwelling, the supply of that dwelling shall be a taxable supply only to the extent that the proportion claimed bears to the whole dwelling.

Policy - input tax deductions

To claim an input tax deduction for goods and services relating to a homestay, the GST registered operator must fulfil both requirements of a "two stage" test. He or she must satisfy the Commissioner that:

- a taxable activity is being carried on; and
- the goods and services have been acquired for the principal purpose of making taxable supplies.

Stage One: carrying on a taxable activity

Registration

To claim input tax deductions a person must be GST registered. The Act contemplates compulsory and voluntary registration. Under section 51(3), a person applying for voluntary registration must satisfy the Commissioner that a taxable activity is being carried on or that the person intends to carry on a taxable activity from a specified date.

For many homestay operations the total value of supplies will not exceed $30,000 in any 12-month period, so operators will seek voluntary registration. The character of homestay operations is such that in some cases persons may seek to register when the nature or extent of their operation does not amount to a taxable activity. This may be because insufficient steps have been taken to start the activity, or because the level of anticipated occupation by guests is so low or infrequent that it takes the activity outside the definition of taxable activity. In either case, no input tax deductions are available because the person is not carrying on a taxable activity, and should not be registered.

Taxable activity

Under section 6(1), the principal characteristics of a taxable activity are:

- There must be some form of activity.
- The activity is carried on continuously or regularly.
- The activity involves (or is intended to involve) the supply, for consideration, of goods and services to another person.
- The activity need not be carried on for profit.

The question of whether an activity is carried on continuously or regularly for the purposes of the Act is relevant to homestays. The meaning of these words has been considered by the Courts.

Newman v CIR (1995) 17 NZTC 12,097 is the leading case in this area. The Court of Appeal delivered separate judgments from which the following general comments are relevant here:

- The application of the taxable activity test to particular circumstances will necessarily involve questions of fact and degree.
- "Carrying on" means "the habitual pursuit of a course of conduct" and implies "a repetition of acts".
- The legislation looks to a course of conduct that can fairly be described as being carried on continuously or regularly. It is not a matter of importing any overlay of commercial dealing.
- It is the activity and not the making of supplies that must be continuous or regular.
- The definition is construed as a whole, bearing in mind section 6(2) (commencement and termination), and the scheme of the Act.

The High Court also considered the meaning of "continuously or regularly" in *Allen Yachts Charters Limited v CIR* (1994) 16 NZTC 11,270. Justice Tompkins said at page 11,274:

> [The] activity must be carried on "continuously or regularly". This indicates that the activity must either be carried on all the time, i.e., continuously, or it must be carried on at reasonably short intervals, i.e., regularly. An activity that is intermittent or occasional does not qualify.

The Court found that the yacht chartering activity in question was a taxable activity. Although it had not been carried on continuously, as there had been only 12 charters over a two-year period, it had been carried on regularly. This was the result given the number of occasions when there was a charter, and also the activities relating to the charter operation. For example, weekly marketing, availability of the boat, signs advertising its availability, and the continuation of these activities up until the sale of the boat.

In an earlier TRA decision *Case P73* (1992) 14 NZTC 4,489, also dealing with a yacht chartering business, Barber J found that no taxable activity had been carried on. The principal use of the yacht in question was racing and not chartering. Barber J found that the yacht company had intended to commence a chartering operation. However, that operation either never commenced, or did not commence to the necessary degree to be carried on "continuously or regularly". The following parts of the decision are relevant here:

> I am in no doubt that, at material times, ...the objector was not carrying on a taxable activity. The objector intended to take all steps necessary to establish business as a charterer, but did not achieve that enterprise. Its activities were preparatory of that. ... In fact, the objector did not get beyond development work for a business. As it dealt with survey aspects and promoted the availability of chartering, it became apparent that there was no market for the objector's enterprise. [at page 4,493]
>
> ...
>
> I appreciate that sec 6(2) deems the inclusion of commencement (and termination) activity into the course of that activity. However, here there was never the establishment of any taxable activity. Commencement work can only be added to such an activity. By itself, it cannot amount to a taxable activity. [at page 4,494]
>
> ...
>
> There were budgets and feasibility studies. ... The objector incurred expenses in altering the vessel for passenger carrying purposes. ... I also accept that chartering is a seasonal activity and that a boat can be taken out of the water for quite long periods for good reasons. I accept the intentions of the objector to commence chartering from the very outset of GST registration. ... The chartering activity was never much more than a proposal and, certainly, was never continuous or regular as required by sec 6(1)(a). [at page 4,495]

Case S56, a recent TRA decision, considers the GST treatment of farmstays. In that case the taxpayer sought input tax deductions for supplies made to him on the construction of a new farmhouse. The taxpayer maintained that the principal purpose in constructing the house was the provision of farmstay accommodation. At the same time as constructing the farmhouse the taxpayer was also developing a farming enterprise to complement, and form part of, the farmstay operation. To date the taxpayer had not received any farmstay guests. On the particular facts, the Court held that the taxpayer was carrying on the activity of farming; the construction activity forming part of the taxpayer's overall farming activity. This was despite the considerable delay in accepting guests.

The Commissioner is not appealing *Case S56*. The result in this case can be confined to its facts and contrasts with the result in *Case P73*.

Application to homestays

Determining whether a taxable activity is being carried on, including whether it is being carried on continuously or regularly, will always be a question of fact and degree. It will involve an examination of all the circumstances of the particular case. Some factors that may be relevant in the homestay context are:

- The steps the operator has taken to commence operating as a homestay. For example, undertaking feasibility studies, preparing business plans, advertising (nature, and extent), approaching local authorities for necessary consent.
- The type, size, design and layout of the home.
- The location of the home.
- The extent and nature of any modifications to the home.
- The nature of the local tourist industry.
- The time dedicated, or able to be dedicated, by the operator to the homestay operation.
- The availability of accommodation over a sustained period.
- The steps the operator has taken which demonstrate a continuing commitment to supply homestay accommodation. For example, advertising and ongoing marketing activities.
- The level of occupation since the date of registration, including future bookings.

The examples in this statement show the consideration the Commissioner gives to these factors in determining whether or not there is a taxable activity. The examples are illustrative only, as each case must be considered on its own facts.

Deregistration

Section 52(5) allows the Commissioner to cancel a person's registration when he considers that person is not carrying on a taxable activity. Under section 52(5A), when a person has never carried on a taxable activity deregistration is as at the date of registration.

The combined effect of sections 52(5), 52(5A), 5(3), and 10(8) is to claw back some or all of the original input tax. The Commissioner will invoke these provisions when he considers a purported homestay operator is not carrying on a taxable activity.

continued on page 8

from page 7

Stage Two: principal purpose

If a registered person can establish that he or she is carrying on a taxable activity, that person satisfies stage one of the two stage test. In order to claim a particular input tax deduction, the person must also satisfy stage two of the test.

Under the definition of input tax, an input tax deduction is only available when the goods or services concerned are acquired for the principal purpose of making taxable supplies.

The Courts have considered the principal purpose test. "Purpose" means the object or the end that the taxpayer has in mind or view. It is not synonymous with the taxpayer's motive or intention: *Case M53* (1990) 12 NZTC 2,312 and *CIR v BNZ Investment Advisory Services Ltd* (1994) 16 NZTC 11,111. "Principal" means the "main or primary or fundamental" purpose. It does not necessarily mean "more than 50%": *BNZ Investment*.

However, when there are only two possible purposes i.e., taxable (homestay) and non-taxable (private or exempt), the principal purpose must be more than 50%. When the principal purpose is making taxable supplies, input tax is claimable in full, even if there is a partial, less than 50%, use of the goods or services in the non-taxable (private or exempt) activity: *Coveney v CIR* (1995) 16 NZTC 12,193.

The principal purpose test applies at the time of acquisition of the relevant goods or services: *Case M53* at page 2,316.

A number of cases address the question of whether the principal purpose test is a subjective or objective one, or a test involving both a subjective and an objective analysis. The Commissioner considers that it is a mixed test, i.e., it is a subjective test to the extent that it is the taxpayer's purpose that is under examination. However, the objectively ascertainable actions of the taxpayer and other facts surrounding the claim are relevant to see if the stated purpose bears this out in fact.

TRA decisions *Case S16* (1995) 17 NZTC 7,123 and *Case S56*, confirm this approach to the principal purpose test. In these decisions Barber J made the following observations about the principal purpose test:

- In ascertaining the taxpayer's principal purpose, the Court must make an overall assessment of what the taxpayer says was the intention at the relevant time, the evidence of the witnesses, and the so-called objective facts, particularly those relating to the use of the goods by the taxpayer.
- It is useful, and possibly determinative, to consider the taxpayer's use of the property in order to ascertain the principal purpose for which the taxpayer acquired the supply. "Purpose" and "use" are not the same concepts, but an objective consideration of use will help ascertain whether a good was acquired for the principal purpose of making taxable supplies.
- In ascertaining what is the principal use of real property it is relevant to consider an area breakdown of the property - identifying the private, taxable, and common purpose areas.

Application to homestays

When the homestay operator is an individual, there will usually be only two possible purposes for acquiring goods and services: for private use and for making taxable supplies. When the homestay operator is a company or partnership there will usually be only two possible purposes for acquiring goods and services: for exempt use and for making taxable supplies. In both situations, a full input tax deduction is only available when the principal purpose in acquiring goods and services is the making of taxable supplies in the course of carrying on the homestay operation.

The most significant potential homestay input tax deductions are for the initial purchase price or construction costs of the home, and/or renovation or extension costs to an existing home. In claiming these input tax deductions, operators must establish that their principal purpose is the taxable purpose of carrying on the homestay operation. However, given that these claims relate to the operator's private home, the contrary position is that the principal purpose may be a private or exempt purpose. To determine the principal purpose involves considering both the subjective facts, i.e., the operator's stated purpose, and the objective facts, i.e., the actual, or reasonably anticipated, use of the property. An objective analysis of the use, or intended use, involves looking at an area breakdown of the property, or the relevant part of the property: *Case S56.*

GST registered homestay operators will need to provide Inland Revenue with accurate and credible information as to the use, or intended use, of the property. This will usually involve providing a detailed plan of the property.

Calculation of the percentage of taxable use

A homestay property splits into three types of areas, i.e., exclusively private (or exempt), exclusively homestay, and common areas.

The calculation of the percentage of taxable use of the property does not include the exclusively private (or exempt) areas. It includes 100% of the exclusively homestay areas. Exclusively homestay areas are those areas of the home set aside for the exclusive use of guests. Such areas are not used by the registered person, his or her family, or non-paying guests at times when there are no paying guests. Exclusively homestay areas may include bedrooms, ensuite bathrooms, and lounges, when a home includes more than one living room.

Common areas are those areas of the home used by guests and the registered person, his or her family, and non-paying guests. These include areas used by guests, but also used by the registered person, his or her family, or non-paying guests at times when guests are not staying. The Commissioner acknowledges that a percentage of homestay use needs to be attributed to the common areas. In *Case S56* Barber J attributed 50% homestay activity to the common areas. This is on the basis that these areas are available for homestay use in the future. Generally, the Commissioner will accept 50%. However, in some situations this figure may not be an appropriate reflection of the principal purpose of the common areas. For example, if homestay accommodation is only available for part of the year, or on a restricted basis.

As noted, the principal purpose test is both an objective and subjective one. In terms of the subjective component of the test, *Case S56* places considerable emphasis on the credibility of the taxpayer. This illustrates the fact that even in cases where on a floor area breakdown of the property more than 50% is attributable to the homestay purpose, Inland Revenue will need to be satisfied that the taxpayer's stated intentions support the conclusion that the principal purpose in acquiring, constructing, or modifying the home is one of homestay operation. This will involve an examination of all the circumstances of the particular case.

Conversely, in some cases where on a floor area breakdown of the property marginally less than 50% is attributable to the homestay purpose, it may still be possible to show that the principal purpose in acquiring, constructing, or modifying the home is the making of taxable supplies. For example, when the homestay operation forms part of a wider enterprise. This will involve an examination of all the circumstances of the particular case.

Formula

The following formula will generally be applied by Inland Revenue to help determine whether the principal purpose in acquiring goods and services for homestays is the making of taxable supplies. When the percentage of taxable use is 50% or less the principal purpose is generally private (or exempt) and no input tax deduction is available. When the percentage of taxable use is more than 50% the principal purpose is generally the making of taxable supplies and a full input tax deduction is available. The formula assumes 50% homestay use of common areas. As discussed above, in certain cases Inland Revenue may apply a different percentage to the common areas.

$$\text{Percentage of taxable use} = \frac{a + (b \times 50\%)}{c}$$

In this formula:

a is the area of the home used exclusively for homestay purposes

b is the area of the home used for both homestay and private (or exempt) purposes

c is the total area of the home

The formula will generally also be applied when the relevant input tax deduction only relates to part of the home. This will often be the case for renovation and extension expenditure. When such expenditure is not exclusively for homestay purposes, the formula applies to determine whether the principal purpose is taxable or private (or exempt). For example, when an operator recarpets part of the house, or makes additions to the house, being in part for exclusive homestay use and in part for common use. In such cases the formula only applies to the area of the home which is subject to the renovation or the extension. Example 4 illustrates how the formula applies in these circumstances.

Curtilage

When making the percentage of taxable use calculation, the area surrounding the home (the curtilage) is generally not taken into account under the formula. However, any input tax deduction which is available is calculated on the full purchase price and not just that part of the purchase price which relates to the value of the dwelling. The Commissioner acknowledges that in certain cases the actual, or intended, use of the curtilage may affect the calculation. For example, when significant areas of the curtilage are for the exclusive use of guests (e.g. a swimming pool or tennis court). In such cases, the Commissioner may accept evidence to substantiate a different overall calculation of the actual, or intended, use of the property.

Subsequent supply of home

When an input tax deduction on the purchase price or construction costs of a home is available, GST will be payable on the subsequent sale or other supply of the home: section 5(16). This is regardless of the partial application of the home for private or exempt purposes. TIB Volume 6, No. 11 (April 1995) at page 1 sets out the Commissioner's policy on the treatment of supplies of goods after a change in use, including goods applied partially for private or exempt purposes.

Section 5(18) means that when a dwelling for which an input tax deduction has been claimed for extension expenditure is subsequently supplied, output tax will be payable to the extent that the consideration relates to that proportion of the dwelling.

Under section 5(3) GST may also be payable when a homestay operator ceases to be a registered person. GST will be payable when, at the time of cessation, the home forms part of the assets of the taxable activity. The Commissioner considers that homestay properties for which an input tax deduction has been obtained (on acquisition or construction) form part of the assets of the homestay operation. Homestay properties for which an input tax deduction has never been obtained, and which are not used for the principal purpose of making taxable supplies at the time of cessation, do not form part of the assets of the homestay operation.

continued on page 10

from page 9

Section 21 adjustments

Section 21 adjustments are necessary when a registered person applies goods and services for both taxable and non-taxable purposes.

- **Section 21(1)** applies when a full input tax deduction has been claimed for goods or services that are subsequently applied for non-taxable purposes. In such cases, output tax is payable to the extent of that application.
- **Section 21(5)** applies when no GST input tax deduction has been claimed (generally because the principal purpose test is not satisfied) for goods or services that are subsequently applied for the purpose of making taxable supplies. In such cases, input tax is available to the extent of that application. Section 21(5) only applies to goods and services acquired or produced after 1 October 1986.

The value of any adjustment under section 21(1) or 21(5) is the lesser of the cost price or the open market value of the deemed supply of the relevant goods or services. When the application of the goods or services for a non-taxable purpose (section 21(1)) or for a taxable purpose (section 21(5)) is on an ongoing basis, an adjustment must be made in each taxable period. In both cases, a one-off adjustment is available for a capital asset costing less than $10,000, inclusive of GST. When the goods or services are of a revenue or expense nature and are "consumed" within a taxable period, a single adjustment is made in that period.

For GST purposes, when a company or partnership owns the homestay property there will be an exempt supply of those premises to the individual occupants. In such a case, the first proviso to section 21(1) may apply to some goods and services acquired by company or partnership to run homestays. The proviso limits the circumstances for making ongoing adjustments for exempt supplies.

Part Five of Inland Revenue's GST Guide (GST 600) provides practical information on how to make section 21 adjustments. This booklet is available at any Inland Revenue office.

Different interpretation

In *Case S56* Barber J discusses section 21 adjustments in the context of homestays. He considers that section 21 gives rise to one-off adjustments (not just for assets costing less than $10,000), rather than period-by-period adjustments.

The Commissioner does not necessarily agree with these obiter statements. In the Commissioner's view Barber J's interpretation tends to ignore the words "subsequently applied", appearing in sections 21(1) and 21(5), and the fact that one-off adjustments are expressly dealt with in the provisos to those sections as applying only to assets costing less than $10,000. The Commissioner considers that the better interpretation of section 21 is that which is consistent with existing policy. Example 2 illustrates the application of this policy to homestays.

Examples

Example 1

An individual wants to go into the homestay business. She has heard that it is a growth industry and a way of meeting interesting people. Her spouse, who is in full-time employment, agrees. The couple live in a small farming town situated just off a main highway. It is a pleasant enough place, but does not have any notable attractions. The couple look into the possibility of selling their existing home and buying another further out of town. They register for GST stating their taxable activity to be "homestay operators". They sell their present home and buy a three bedroom home about 10 kilometres from town. They claim an input tax deduction on the purchase price of the house.

As soon as they move in, they advertise the homestay in the local paper and put up a homestay sign outside the front gate. They write away to a home hospitality organisation to find out more about listing their home in the organisation's publication.

Inland Revenue queries the input tax deduction claim. Enquiries reveal that:

- The town is too remote to attract tourists on a regular basis.
- The taxpayers have not undertaken research into the local market, nor taken any significant steps to ascertain the viability of the activity.
- The home is not of a type that is likely to attract guests, and no steps have been taken to modify it for homestay purposes:
- At the time the claim is queried (12 months after registration) only four paying guests (two of whom were relatives of town residents) have stayed.

In the absence of other evidence being provided, this claim would probably be disallowed on the basis that the taxpayers are not carrying on a taxable activity.

Example 2

An individual works in the city, but dreams of moving to the country and changing her lifestyle. She likes the idea of working part-time and running a homestay in a rural area. She investigates the tourist market in various locations, before deciding to move to a coastal area where the tourism industry is thriving, particularly during the summer months. A four bedroom house seems ideal for her purposes, so she makes an offer to buy it. The house is near a picturesque beach and a small town, which has several restaurants, a theatre, and a number of arts and crafts shops. There are several other homestays in the vicinity. She contacts both the local tourist office and a national home hospitality organisation to find out about listing her homestay.

The taxpayer registers for GST as a homestay operator, and has two-monthly taxable periods.

She purchases the house and land for $150,000. The value of the land is $50,000, the value of the house is $100,000.

The taxpayer intends to use two of the bedrooms exclusively for homestay purposes. A builder is hired to put in ensuite bathrooms for these rooms, which the taxpayer redecorates. She advertises in the local newspaper and places a regular monthly advertisement in a national newspaper. A thousand advertising brochures are printed, and a homestay sign is placed outside the house. The taxpayer registers with the local tourist office and a national home hospitality organisation, and sends brochures to them. She contacts Inland Revenue to establish whether an input tax deduction can be claimed on the purchase price of the house, and on the cost of the renovations and advertising. She also wants to know how to make section 21 adjustments on the purchase price of the house.

Inland Revenue staff are satisfied that the taxpayer is carrying on a taxable activity. They advise her as to how the principal purpose test applies. She supplies Inland Revenue with a floor plan of the house (at the time it was acquired) showing the areas that are exclusively private, exclusively homestay, and common to both purposes. Only two bedrooms are exclusively for homestay purposes. The common areas are the lounge, dining room, hallway, kitchen, and laundry. The exclusively private areas are the taxpayer's bedroom, the spare bedroom, the bathroom, and a small sewing room.

Attributing 50% taxable purpose to the common areas results in 40% homestay application and 60% private application. The principal purpose test is not satisfied. No input tax deduction is available for the purchase price of the house and land.

A full input tax deduction is available for the building and redecorating expenses, and for the costs of advertising, as these goods and services relate exclusively to the homestay operation.

Section 21 adjustments

On the basis of 40% homestay application, period by period section 21(5) adjustments for the supply of the house are available.

The consideration for the deemed taxable supply is an amount equal to the tax fraction of that part of the lesser of:

- the cost of the house, to the extent that it is applied for homestay purposes; and
- the open market value of the supply of the house, to the extent that it is applied for homestay purposes.

Cost

Cost is not the cost of acquiring the home. Cost is related to making the supply of part of the home. In this case the principal cost is depreciation of the capital value of the home. There are no interest charges.

Depreciation - straight-line basis at 3% (the house has a timber frame)

$$\frac{\$100,000 \text{ x } 3\% \text{ x } 40\%}{6} = \$200$$

Annual maintenance expenses, rates and insurance are also expenses relating to the supply of the home. These are estimated to be $1,500.

$$\frac{\$1,500 \text{ x } 40\%}{6} = \$100$$

The total cost of the house, to the extent that it is applied for homestay purposes, during the two-month period is $300.

Open market value

The open market value of the supply of the home to the extent that it is applied for homestay purposes is:

(the number of nights homestay accommodation is available during the two-month period) x (the total tariff per night).

In most cases cost will be the lesser amount.

Assuming cost is the lesser amount in this case, the adjustment available for each taxable period on the basis of 40% taxable application of the house is a deduction of:

$$\frac{\$300}{9} = \$22.22$$

In the future, a different percentage (more than 50%) based on actual occupation levels may be used to calculate the use of the common areas. Inland Revenue staff advise the taxpayer to maintain records to substantiate the level of occupation over the next 12 months.

Example 3

A married couple operate a motel in a town with a good tourist trade. A large private residence on the outskirts of town is for sale. The couple think it will make an ideal private hotel. They are considering selling the motel and buying the house. They ask Inland Revenue whether they may claim a full input tax deduction on the purchase price of the house.

The house has six bedrooms, four of which the taxpayers intend to make available exclusively for guests. There is a formal dining room and lounge, a library, billiards room and large kitchen. These will be available for use by guests and by the family. The house is surrounded by two hectares of land includ-ing a swimming pool and tennis court. These

continued on page 12

from page 11

facilities will be available to guests and the family. The husband is an excellent chef and intends to offer evening meals to guests to be served in the formal dining room.

The taxpayers supply Inland Revenue with a floor plan of the house showing which areas are exclusively private, exclusively homestay, and common to both purposes.

Attributing 50% to the common areas results in 55% homestay application and 45% private application. The principal purpose test is satisfied. A full input tax deduction is available on the purchase price of the house. Period by period section 21(1) adjustments must be made to reflect the private use of the home.

Example 4

A husband and wife farm in partnership in an area with a steady local and foreign tourist trade. The partnership is registered for GST. The couple see how successful local homestay operations are and decide to offer farmstays. Their home is a small, two bedroom colonial cottage. The couple decide to modernise the house by adding a further three bedrooms, two with ensuite bathrooms, and extending the lounge. The two bedrooms and ensuites are exclusively for farmstay purposes. The lounge will be for private and farmstay purposes.

The couple consult local homestay operators and take steps to assess the viability of the venture and to advertise the farmstay. They start receiving farmstay guests. Due to demand, they begin to offer evening meals.

The taxpayers contact Inland Revenue to establish whether the partnership may claim an input tax deduction for the $40,000 cost of the extension to the house. They also want to know how to treat the costs involved in offering meals to guests.

The cost of the extension needs to be apportioned over the floor area of that part of the house. Modifying the formula set out above to apply to extensions, item "a" is the area of the two bedrooms and ensuites, item "b" is the area of the extension to the lounge, and item "c" is the total area of the extension. Attributing 50% homestay use to the common areas results in 85% homestay application and 15% exempt (i.e., provision of residential accommodation by the partnership to the couple) application. The principal purpose test is satisfied, and a full input tax deduction is available for the costs of the extension.

In this case no section 21(1) adjustments for the exempt application of the extension are necessary at this time. This is because the proviso to section 21(1) applies. The value of all exempt supplies to be made in the following 12 months is reasonably estimated to not exceed the lesser of $48,000 and 5% of the total consideration for all taxable and exempt supplies to be made by the partnership in that period.

The couple are also advised to keep records of the food and other items they purchase exclusively for homestay consumption or use. They are able to claim a full input tax deduction for this expenditure. They must make section 21 adjustments for items that are consumed by the family and guests based on the percentage of taxable versus private use.

GST incurred in determining tax liability

Summary

This item sets out the Commissioner's interpretation of section 20A of the Goods and Services Tax Act 1985.

Section 20A allows GST registered persons to claim input tax deductions for goods and services acquired in connection with the calculation or determination of their GST or income tax liabilities. It also allows input tax deductions for goods and services acquired in connection with the making of GST and income tax related objections or appeals. It achieves this by deeming these goods and services to be acquired for the principal purpose of making taxable supplies.

Section 20A(4) requires GST registered persons who receive any reimbursement, award of the Court, or similar payment for the cost of goods and services falling within section 20A to pay output tax on that payment.

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

Background

Section 20A was inserted into the Act by the Goods and Services Tax Amendment Act 1988, effective from 24 March 1988. It mirrors the language of section DJ 5 of the Income Tax Act 1994 (section 165, Income Tax Act 1976). Section DJ 5 deems certain expenses associated with determining taxation liabilities to be deductible for income tax purposes.

Legislation

Section 8(1) imposes GST on the supply (other than an exempt supply) in New Zealand of goods and services by a registered person in the course or furtherance of a taxable activity carried on by that person.

Section 20(3) permits the deduction of input tax from output tax. Section 2(1) defines "input tax" as:

"Input tax", in relation to a registered person, means-

(a) Tax charged under section 8(1) of this Act on the supply of goods and services made to that person:...

being in any case goods and services acquired for the principal purpose of making taxable supplies:...

Section 20A deals with GST incurred in relation to the determination of a registered person's tax liability. It expressly entitles registered persons to claim input tax deductions for goods and services acquired in connection with the calculation, determination, assessment of, and objection in relation to, their assessable income or GST liabilities. Section 20A(2) states:

Subject to this section, any goods and services acquired by the registered person in connection with-

(a) The calculation or determination of the assessable income of the registered person for any income year:

(b) The calculation or determination of the goods and services tax payable by the registered person for any taxable period:

(c) The preparation, institution, or presentation of an objection to or an appeal against or in consequence of any determination or assessment made, in respect of the registered person, by the Commissioner under the provisions of the Income Tax Act 1976 or the Goods and Services Tax Act 1985:

(d) Any contribution by the registered person towards the expenditure incurred by any other taxpayer or registered person, as the case may be, where-

 (i) That expenditure is allowable under this section in the calculation or determination of the assessable income of, or any goods and services tax payable by, the first-mentioned registered person; and

 (ii) The first-mentioned registered person has objected to or appealed against an assessment or determination made, in relation to the matter by, the Commissioner under the provisions of the Income Tax Act 1976 or the Goods and Services Tax Act 1985,-

shall be deemed to be goods and services acquired by the registered person for the principal purpose of making taxable supplies; and the Commissioner shall allow that person to make a deduction under section 20(3) of this Act of the tax charged thereon.

For the purposes of section 20A, "assessable income", "income year" and "taxpayer" have the same meaning as in section OB 1 of the Income Tax Act 1994 (section 2, Income Tax Act 1976). "Goods and services tax payable" has a special meaning for the purposes of the provision. The definition in section 20A(1) limits its meaning to amounts calculated under sections 19, 19A, 19B, 19C, and section 20. It also includes any amount referred to in section 17(2) or section 27(6) and amounts refundable under section 19C or section 20.

Section 20A(3) limits the scope of the available input tax deductions under section 20A(2). Deductions are not available for goods and services acquired in connection with any matter or assessment arising from an income tax or GST return that the Commissioner considers fraudulent or wilfully misleading. Section 20A(3) also excludes deductions for goods and services acquired in connection with:

- any offence under any Inland Revenue Act.
- any assessment of penal tax (provided that it is not subsequently cancelled).
- any objection or appeal the Commissioner considers to be inconsequential or frivolous.

Section 20A(4) states:

Any amount received by the registered person at any time, whether by way of reimbursement, award of the Court, recovery, or otherwise howsoever in respect of goods and services deemed under this section to be acquired by the registered person for the principal purpose of making taxable supplies, shall be deemed to be supplied by that registered person in the course of a taxable activity in the taxable period in which it is received.

Application of legislation

Section 20A(2)

Section 20A(2) deems goods and services acquired in connection with determining taxation liabilities to be goods and services acquired for the principal purpose of making taxable supplies. Subject to the express exclusions in section 20A(3), it applies to goods and services acquired in connection with:

- Calculating or determining the registered person's assessable income or GST payable. For example, legal and accounting fees relating to the preparation of the registered person's accounts for taxation purposes and income tax and GST returns. Also, any costs involved in dealing with Inland Revenue enquiries in relation to those returns. It also extends to the cost of purchasing taxation publications to assist in calculating and determining taxation liabilities.
- Preparing, instituting, or presenting an objection or appeal by the registered person regarding an income tax or GST determination or assessment. For example, professional fees relating to the objection or appeal process, witness fees, and court costs.
- Any contribution by the registered person towards the expenses of another person when, if the registered person had incurred those expenses, they would give rise to an input tax deduction under section 20A(2)(a), (b), or (c). This is provided they relate to a matter which is also the subject of an objection or appeal by the registered person.

Section 20A(2) only applies to goods and services closely associated with the circumstances set out in paragraphs (a) to (d) of the provision. Judicial consideration of section 20A(2) and section DJ 5 (1), the analogous provision for income tax purposes, confirms this approach. Refer to: *Case Q43* (1993) 15 NZTC 5,208; *Case E84* (1982) 5 NZTC 59,441; *Yurjevich v CIR* (1991) 13 NZTC 8,185; *Case J8* (1987) 9 NZTC 1,048.

The cases illustrate the scope of sections DJ 5 (1)(a) and (b), particularly the meaning of the words "calculation or determination". Sections 20A(2)(a) and (b) also contain these words. Judge Bathgate considered the

continued on page 14

from page 13

interpretation of these words in *Case E84* at page 59,444. To summarise that interpretation, as it applies to section 20A(2):

- "Calculation" refers to the action by which the registered person, his or her accountant or agent, reaches his or her determination of the registered person's assessable income for a particular year or the GST payable for any taxable period. It does not include the preparation for that purpose, in the way of gathering information together, or any preliminary steps to that calculation. It refers to working out, from figures and information on hand, the determination of assessable income or GST liabilities.
- "Determination" is the end result of the calculation by or for the registered person. It is the process that gives the final figure.

The cases also show that the goods and services must be acquired in close connection with the circumstances listed in section 20A. In *Yurjevich v CIR* the High Court considered whether there was a link or connection sufficiently close and relevant to the preparation, institution, or presentation of the objection that it could reasonably be said that the expenditure was incurred in connection with it. The Court found on the facts that the expense of travelling out of town to discuss an objection to a tax assessment with the taxpayer's relatives was too remote and not sufficiently relevant to the purpose of preparing an objection. However, the Court noted that section DJ 5 may extend to travel expenditure in different circumstances.

Section 20A(3)

Under section 20A(3), section 20A does not apply to any goods and services acquired in connection with:

- any matter or assessment arising from an income tax or GST return that, in the opinion of the Commissioner, is fraudulent or wilfully misleading.
- any Inland Revenue Act (as scheduled in the Tax Administration Act 1994) offence.
- any assessment of income tax or GST penal tax.
- any inconsequential or frivolous objection or appeal.

Case Q43 considers section 20A(2) and section 20A(3). The issue was whether certain barrister's fees for representing the objector in criminal proceedings were for services acquired for the principal purpose of making taxable supplies. Alternatively, whether the fees were for services within the terms of section 20A(2)(c), i.e., the preparation, institution, or presentation of an objection to a GST assessment.

On the first issue, Judge Barber found that the objector was not trading at the time the fees were incurred, and was not likely to trade in the future. Accordingly, the fees were not for services acquired for the principal purpose of making taxable supplies.

As to the application of section 20A, Judge Barber found that section 20A(3) applied to prevent the objector claiming an input tax deduction. That provision prevents input tax deductions for any goods and services acquired in connection with a fraudulent return, or an offence under any Inland Revenue Act.

Section 2 definition of "input tax'

Case Q43 illustrates that even when goods or services do not come within section 20A(2), an input tax deduction may still be available under the general definition of "input tax" in section 2. This will be the case when the goods or services have been acquired for the principal purpose of making taxable supplies.

Goods or services are acquired for the principal purpose of making taxable supplies when there is a sufficient nexus between the incurring of the expenditure and the course or furtherance of the company's taxable activity: *Case Q43* at page 5,214. The taxable activity must involve the making of taxable supplies or the prospect of making future taxable supplies. The goods and services must relate closely to that activity and the making of taxable supplies.

Some professional taxation advice services may not come within section 20A(2). Whether input tax deductions for professional taxation advice fees are available under the general definition of "input tax" will depend on the facts of each case. To obtain a deduction the advice must either directly relate to the making of a taxable supply or taxable supplies or there must be a close nexus between the advice and the carrying on of the registered person's taxable activity.

If the principal purpose in acquiring the advice is the making of exempt, or private or other non-taxable supplies, no input tax deduction is available. In cases where the purpose in acquiring the advice is the making of taxable and non-taxable supplies section 21 will apply.

Section 20A(4)

Under section 20A(4), when a registered person receives any payment to reimburse the cost of any goods and services falling within section 20A(2), he or she must return output tax on that payment.

The payment may be by way of reimbursement, award of the Court, recovery, or some other kind of payment in respect of such goods and services. This includes out-of-court settlements with Inland Revenue when the Commissioner agrees to contribute towards the registered person's costs in objecting to, or appealing against, a determination or assessment.

The time of supply for the purposes of accounting for output tax on such a payment is the time of receipt.

Example

An operating company for a forestry consulting business is GST registered and files two-monthly GST returns. It employs a firm of accountants.

The role of the accountancy firm is threefold: to assist the company in filing its returns (income tax and GST), to provide ongoing taxation and accounting advice in relation to the business, and to prepare end-of-year accounts for taxation and company law purposes.

In addition, the firm recently assisted the company in its dealings with Inland Revenue. This related to the company's objection to its 1994 income tax assessment. The matter went to the High Court and the company won the case. The Court awarded the company $1,000 as a reasonable contribution towards its costs in objecting to the assessment.

The accountancy firm bills the company six-monthly. The latest bill itemises the different services performed and the cost of each service. It includes the cost of assisting in the presentation of the objection.

Input tax deductions

The preparation of the returns and the end-of-year accounts are services within sections 20A(2)(a) and (b). The service of assisting with the objection comes within section 20A(2)(c). An input tax deduction is available for the other services to the extent that they have been acquired for the principal purpose of making taxable supplies. There must either be a direct nexus between the advice given and the making of a taxable supply or taxable supplies, or there must be a close nexus between the advice and the carrying on of the registered person's taxable activity. To the extent that the advice relates to the making of exempt or other non-taxable supplies, no deduction will be available.

Under section 20A(4) the company must account for $111.11 output tax on the Court award. It must return this amount in its GST return for the taxable period in which it receives payment.

Binding ruling fee

In addition, the company asks its accountants to apply for a binding ruling on its behalf. The ruling is to ascertain the income tax and stamp duty treatment of the proposed sale of one of its business premises. The binding ruling fee is $2,940 inclusive of GST.

Section 20A(2) does not apply, i.e., the acquisition of the binding ruling is not in connection with the calculation or determination of the assessable income of the company. In this case, there is no direct link between calculating or determining the company's assessable income and the binding ruling. Obtaining the ruling is only preparatory to the calculation of the company's income tax position: *Case E84*. This is particularly so where the ruling relates to a proposed, rather than a completed, transaction. In addition, the ruling deals with stamp duty liability, which is not included within section 20A(2).

However, the company may claim an input tax deduction for the cost of the ruling because the ruling has been acquired for the principal purpose of making taxable supplies. It has been acquired for the principal purpose of making a possible future taxable supply of the business premises. The binding ruling has not been acquired for the purpose of making exempt supplies.

Balance date change - transitional returns

Summary

This item outlines how the Commissioner applies the legislation concerning the transitional income tax returns required following the Commissioner's approval of a change of balance date. It also states the Commissioner's policy on the application date for a change of balance date. The Commissioner's policy on the actual granting of non-standard balance dates remains that stated in Appendix B of TIB Volume Five, No.11 (April 1994).

Transitional returns

Sections 38 and 39 of the Tax Administration Act 1994 set out the treatment for transitional returns. When the new balance date is an earlier date in the calendar year than the original balance date, the taxpayer must file a return for the period from the original return date up to and including the new return date in the next succeeding year. When the new balance date is a later date in the calendar year than the original balance date, the taxpayer must file a return for the period from the original return date up to and including the new return date in the same calendar year. Under section 39, during the transitional period all income derived by the taxpayer during that period must be added to *any other income derived for the same year* for the purposes of assessment.

Application dates for new balance dates

The Commissioner's policy is not to allow a taxpayer to carry back a known income or loss into a prior income year. This would occur when the taxpayer applies for a new balance date after the anniversary of the old balance date, and requests the new balance date to be effective from the previous income year. Furthermore, the Commissioner will not agree to a change to a balance date which is earlier than the date of the application. Assuming the taxpayer satisfies the Commissioner's requirements for a change of balance date, the Commissioner will permit the change in balance date to take effect in the income year of the request, if it is possible to file tax returns for all the income years. This depends on the dates involved in the change of balance date. If there would otherwise be a missing return, the change will take effect in the income year following the request.

All legislative references in this item are to the Tax Administration Act 1994 unless otherwise stated.

continued on page 16

from page 15

Background

When the Commissioner approves a non-standard balance date for a taxpayer who previously had either a standard 31 March balance date or another non-standard balance date, a return for a period of other than 12 months will result. Some confusion has arisen over how to work out these periods and when the change of balance date takes effect.

Legislation

Cross-reference table

Income Tax Act 1994	**Income Tax Act 1976**
IB 4	16(6)
KB 2	16(5)
OB 1 definition of "year"	2
Tax Administration Act 1994	**Income Tax Act 1976**
33	9
38	15
39	16
119(2)	379(2)

Section 33 requires taxpayers to file tax returns for every year. Section OB 1 of the Income Tax Act 1994 defines a "year" as starting on 1 April and ending on 31 March. (This definition from the Income Tax Act applies to the Tax Administration Act because of the effect of section 3(2) of the Tax Administration Act.)

When taxpayers balance their accounts to a date other than 31 March, section 38 allows them to file returns to that non-standard balance date. The election to have a non-standard balance date requires the Commissioner's consent. When a taxpayer has a non-standard balance date, section 38 deems the taxpayer to derive the income during the year ending on 31 March nearest to that balance date. Section 38 deems 30 September in any year to be nearer to the last preceding 31 March than to the next succeeding 31 March.

Section 38 states:

(1) Instead of furnishing a return in accordance with section 33 for any year ending with 31 March, any taxpayer may, with the consent of the Commissioner, elect to furnish a return for the year ending with the date of the annual balance of the person's accounts, and in any such case the income derived during that year shall for the purposes of the Income Tax Act 1994 be deemed to have been derived during the year ending with the 31 March nearest to that date.

(2) For the purposes of this section and section 39, 30 September in any year shall be deemed to be nearer to the last preceding 31 March than to the next succeeding 31 March.

...

Under section 39(1), when there is a change of balance date the taxpayer must file a transitional tax return. This return is for the income derived during the transitional period which begins on the day after the original balance date and ends on the new balance date.

Section 39 states:

(1) If in any case the new return date is an earlier date than the original return date, the taxpayer shall furnish a return for the period from the original return date up to and including the new return date in the next succeeding year, and if the new return date is a later date than the original return date, the taxpayer shall furnish a return for the period from the original return date up to and including the new return date in the same year. For the purposes of this subsection, one date shall be earlier than another if it is earlier in the calendar year notwithstanding that it may not be earlier in the financial year.

(2) All returns of income made in accordance with subsection (1) shall be deemed to be returns of income derived during the year ending with the 31 March nearest to the new return date, and the income derived by the taxpayer during that period shall, for the purposes of assessment, be added to any other income derived for the same year, and the taxpayer shall be assessed and liable for income tax accordingly.

...

(5) In this section-

"New return date" means, in the case of a taxpayer who has changed the taxpayer's return date, whether before or after the commencement of this Act, the date to which the change was made or, if the taxpayer has made more than one change, means the date to which the last change was made:

"Original return date" means, in the case of a taxpayer who has changed the taxpayer's return date, whether before or after the commencement of this Act, the return date immediately prior to the new return date:

"Return date" means the last day of the period for which a return of income is required to be made.

Transitional tax returns when balance date changes

Under section 39(1), when the new return date is an earlier date in the calendar year than the original return date, the taxpayer must file a return for the period from the original return date up to and including the new return date in the next succeeding year.

Example 1

A 31 March balance date is to change to a 31 January balance date. The return for the 1995-96 income year will cover the period from 1 April 1995 to 31 January 1996. The return for the 1996-97 income year will be from 1 February 1996 to 31 January 1997.

When the new return date is a later date in the calendar year than the original return date, the taxpayer must file a return for the period from the original return date up to and including the new return date in the same calendar year.

Example 2

A 31 March balance date is to change to a 31 December balance date. Assuming that the change is to take place in the 1995-96 income year, the transitional return will cover the period 1 April 1995 until 31 December 1995. The return for the 1996-97 income year will be from 1 January 1996 to 31 December 1996.

Section 39(2) deems all tax returns made in accordance with sections 38 and 39 to be returns of income derived during the year ending on the 31 March which is nearest to the new return date. It also provides that, for assessment purposes, the income derived by the taxpayer during that period must be added to any other income derived for the same year and be included in the tax return for that year. This is to avoid a situation where there are two tax returns for one year or no return for a particular year.

Example 3

A taxpayer changes from a standard balance date to a 31 July balance date in the 1996 year:

1/4/95 - 31/3/96:	Standard 1995-96 income year
1/4/96 - 31/7/96:	Four-month period within the 1995-96 income year
1/8/96 - 31/7/97:	1996-97 income year.

If the income derived during the period 1 April 1996 - 31 July 1996 was not added to the income derived in the period 1 April 1995 - 31 March 1996, there would be two returns for the 1995-96 income year. There is therefore a return for the 16-month period from 1 April 1995 to 31 July 1996.

Returns for less than 6 months or more than 18 months

Most returns will be for a period of more than 6 months and less than 18 months. However, in a few special circumstances returns are required for a period of less than 6 months or more than 18 months. Returns for a period longer than 18 months only occur when there is a change from an early balance date to a late balance date. Returns for a period shorter than 6 months only occur when there is a change from a late balance date to an early balance date. Note that changes from or to the standard balance date do not produce returns for less than 6 months or more than 18 months.

Example 4

In 1995 a taxpayer changes from a balance date of 30 September to a balance date of 30 November for the 1995 income year:

1/10/94 - 30/9/95	1994-95 income year
1/10/95 - 30/11/95	Two-month period within the 1995-96 income year
1/12/95 - 30/11/96	1996-97 income year.

In this case it is not possible to include the income derived during the two-month period in the 1995-96 income year with other income derived in the same income year, because there is no other income derived during the 1995-96 income year. The taxpayer must file a two-month return.

Example 5

In 1995 a taxpayer changes from a 30 November balance date to a balance date of 31 July for the 1996-97 income year:

1/12/94 - 30/11/95	1995-96 income year
1/12/95 - 31/7/96	Eight-month period within the 1995-96 income year
1/8/96 - 31/7/97	1996-97 income year.

The legislation requires the taxpayer to add the income derived during the transitional period to other income derived in the same income year. Therefore, the taxpayer must add the income derived in the eight-month period from 1 December 1995 to 31 July 1996 to the income derived in the period from 1 December 1994 to 30 November 1995 giving a return for a 20-month period.

Adjustments when return is for a period of more or less than a year

Some adjustments may be necessary when the return is for other than a 12-month period. Under section KB 2 of the Income Tax Act 1994, when there is a change of balance date and the taxpayer is assessed for income tax for a period of less than a year, any rebates allowable under sections KC 1 to KC 4 are proportionately reduced. Similarly, when the taxpayer is assessed for a period of more than a year, the total of such rebates is proportionately increased. Similar provisions relate to tax rates (in section IB 4) and provisional tax (in section 119(2) of the Tax Administration Act.).

Balance date change - effective date

The Commissioner's policy is not to allow a taxpayer to carry back a known income or loss into a prior income year. This would occur when the taxpayer applies for a new balance date after the anniversary of the old balance date, and requests the new balance date to be effective from the previous income year. For the same reason, the Commissioner will not permit a change to a balance date which has already passed before the date of application. The Commissioner's policy on the granting of non-standard balance dates remains that stated in Appendix B of TIB Volume Five, No.11 (April 1994).

Subject to these requirements, the Commissioner will permit a change in balance date to take effect in the income year of the request, if this would mean that it is possible to file returns for all the income years. If there would otherwise be a missing return, the change will take effect in the income year following the request.

continued on page 18

from page 17

Therefore, the taxpayer must:

- file the tax returns in the normal way for any old balance dates that have passed; and
- file the tax return for the following year to the new balance date, provided the new date is not before the date of application.

Applying the legislation and the Commissioner's policy, if a taxpayer requests a new balance date and the Commissioner consents to the request, the taxpayer will be permitted to change to the new balance date in the current year, unless the answer to *both* of the following questions is "yes":

- Does the new date fall after 30 September in the current accounting year? (The current accounting year is the period from the beginning of the current accounting year until the end of the current accounting year, assuming that there was no change of balance date.)
- Is the application date after the proposed new date in the current accounting year?

If the answer to both of these questions is "yes", the taxpayer will have to change to the new balance date in the income year which immediately follows the income year in which he or she made the application.

There is a flowchart showing this procedure at the end of this item. In the examples shown below when the taxpayers have existing 31 March balance dates, the current accounting year corresponds to the income year as both run from 1 April to 31 March of the succeeding calendar year.

Example 6

HB Co Ltd, which breeds horses, has decided that it would like to change from a 31 March balance date to the industry standard balance date for horse breeders of 31 July. It makes its request on 20 March 1996 which is in the 1995-96 income year. The Commissioner grants the request. The current accounting year is from 1 April 1995 to 31 March 1996. As the new date of 31 July is not after the date of 30 September in the current accounting year, the company may change to the new balance date in the 1995-96 income year in which the application is made.

For the 1995-96 income year, HB Co Ltd files a return from 1 April 1995 to 31 July 1996.

In this case there was no need to consider the second question as to whether the application was after the new date in the current accounting year, because we had already answered "no" to the first question. It is only if the answer to both questions is "yes" that the change will have to take place in the next income year.

Example 7

GG Ltd has a 31 March balance date. The company has changed from being an organic strawberry grower to running a childcare centre. It would like to adopt the industry standard date for childcare centres of 31 December. On 20 March 1995 it applied to change its balance date.

The new date of 31 December is after 30 September in the current accounting year which is the period from 1 April 1994 to 31 March 1995. The answer to the first question is "yes". The answer to the second question (Is the application date of 20 March 1995 after the new date of 31 December in the current accounting year period from 1 April 1994 to 30 March 1995?) is also "yes". The change of balance date will have to take effect in the income year which immediately succeeds the income year in which the application was made. If the company was permitted to extend its year which began 1 April 1994 to 31 December 1995, there would be no return for the 1994-95 income year. The correct treatment is to file tax returns as follows:

1/4/94 - 31/3/95	1994-95 income year
1/4/95 - 31/12/95	Nine-month period within the 1995-96 income year
1/1/96 - 31/12/96	1996 -97 income year.

If the Commissioner had permitted the company to extend its return for the period 1 April 1994 to 31 December 1995, this would have given a return for the 1995-96 income year, but there would have been no return for the 1994-95 income year.

Example 8

The facts are as in Example 7, except that the company makes the request on 20 April 1995. The 1994-95 income year ended on 31 March 1995, so the request made on 20 April 1995 is made during the 1995-96 income year. The new balance date of 31 December falls after 30 September in the current accounting year which is the period from 1 April 1995 to 31 March 1996. Therefore, the answer to the first question is "yes". The application date of 20 April 1995 does not fall after the new balance date in the current accounting year period from 1 April 1995 to 31 March 1996, so the answer to the second question is "no". Therefore, it is possible to make the change in the income year in which the application is made. The company may file a return for the period 1 April 1995 to 31 December 1995 which is the return for the 1995-96 income year. There is no missing return.

1/4/94 - 31/3/95	1994-95 income year
1/4/95 - 31/12/95	1995-96 income year

After this, returns are filed to 31 December in the normal way.

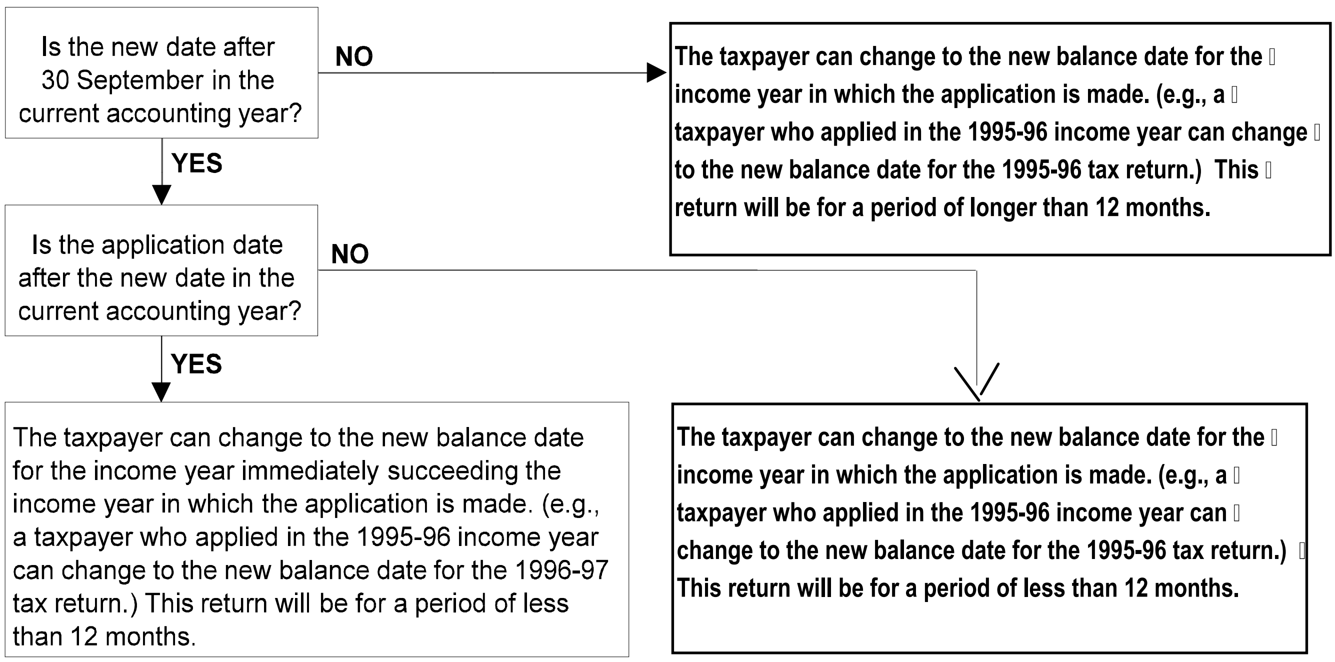
Approval for a subsequent income year

No difficulty exists if the taxpayer requests a change in balance date for a subsequent year when the person would otherwise be entitled to change in the current year. However, in most cases taxpayers wish to make the change as soon as they can.

The flowchart shows the year in which a change will take effect.

Assume that the taxpayer requests a change of balance date and the Commissioner agrees to the request. Also assume that:

- The “current accounting year” is the period from the beginning of the current year to what would be the end of the current year if there were no balance date change.
- The “new date” is the day and month of the new balance date. Note that this does not include the year.
- The “application date” is the date on which the applicant sent in the application to the Commissioner for the change of balance date.



FBT and work related vehicles - Court decision in *Rag Doll Fashions* case

The High Court judgment in *Rag Doll Fashions (NZ) Ltd v CIR* rejected the Commissioner’s appeal against a TRA decision which included a finding that a hatch-back car; with rear seat folded down and covered by a plywood “floor” which extended to the rear of the vehicle, had been sufficiently altered to satisfy the design element of the work related vehicle test (section OB 1 Income Tax Act 1994). The Commissioner originally appealed this judgment but subsequently withdrew the appeal for reasons peculiar to this case. The withdrawal of the appeal is not to be taken as an acceptance by Inland Revenue that design alterations of such (temporary) nature generally are sufficient to satisfy the work related vehicle test.

Conclusion

Inland Revenue’s policy regarding work related vehicles remains unchanged. Our view is that alterations to the design of a motorcar must be permanent in nature in order to satisfy the work related vehicle test.

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.

Marquees - draft depreciation determination

Currently, the three following general depreciation asset classes may initially appear to apply to marquees:

- Leisure: "Marquees" 12.5 years, 15% DV, 10% SL.
- Leisure: "Tents" 5 years, 33% DV, 24% SL.
- Hire Equipment: "Party hire equipment" 4 years, 40% DV, 30% SL.

The Commissioner considers that the asset class and rate which currently applies for all marquees, including marquees which are hired out, is "Marquees" under the "Leisure" industry category. The asset class "Tents" under the "Leisure" industry category, and the asset class "Party hire equipment" under the "Hire Equipment" asset category do not apply to marquees. The "marquee" asset class is identified as the applicable asset class by applying the instructions for "Finding the right rate" on page 24 of the Depreciation Guide (IR 260) April 1994.

The Commissioner proposes to issue a general depreciation determination which will:

- Delete the existing asset class "Marquees" and general depreciation rate of 15% DV and 10% SL from the "Leisure" industry category.
- Insert a new asset class "Marquees (Canvas, including frames & poles)" with a general depreciation rate of 22% DV and 15.5% SL into the "Leisure" industry category and the "Hire Equipment" asset category.
- Insert a new asset class "Marquees (PVC, including frames & poles)" with a general depreciation rate of 26% DV and 18% SL into the "Leisure" industry category and the "Hire Equipment" asset category.

The draft determination is reproduced below. The proposed new depreciation rates are based on the estimated useful lives set out in the draft determination below and residual values of 13.5% of cost.

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:

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

Leisure	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Marquees	12.5	15	10

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

Leisure	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Marquees (Canvas, including frames and poles)	8	22	15.5
Marquees (PVC, including frames and poles)	6.66	26	18

- Inserting into the "Hire Equipment (Where on short-term hire of 1 month or less only)" asset category the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below:

Hire Equipment (Where on short-term hire of 1 month or less only)	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Marquees (Canvas, including frames and poles)	8	22	15.5
Marquees (PVC, including frames and poles)	6.66	26	18

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 & Rulings
National Office
Inland Revenue Department
PO Box 2198
WELLINGTON

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

Lawnmowers - depreciation

Previously there were 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 has issued a general depreciation determination which sets two new depreciation rates and deletes one depreciation rate.

The determination sets a new depreciation rate of 63.5% diminishing value (DV) for domestic type lawnmowers used by lawnmowing contractors. In addition, it sets a depreciation rate of 33% DV for non-domestic type lawnmowers used by lawnmowing contractors. These two new depreciation rates have both been added to the Agriculture, Horticulture & Aquaculture industry category and the Contractors, Builders and Quarrying industry category. The determination deletes the depreciation rate of 33% DV for domestic type mowers. The determination is reproduced below.

The 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.

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, remains unchanged.

General Depreciation Determination DEP15

This determination may be cited as "Determination DEP15: Tax Depreciation Rates General Determination Number 15".

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:

continued on page 22

from page 21

- 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.

This determination is signed by me on the 16th day of May 1996.

Martin Smith
General Manager (Adjudication & Rulings)

Propane gas cylinders - depreciation

In Tax Information Bulletin Volume Seven, No.7 (January 1996) at page 20, we published a proposed new asset class for "Propane Gas Cylinders" setting a depreciation rate based on an estimated useful life of 20 years. After considering submissions that we received on the proposal we have decided to make further amendments. We now intend to:

- Create a new asset class "Gas Cylinders - LPG (inc. Propane & Butane)" with the following details:

Estimated useful life (years)	8
DV banded depn rate (%)	22
SL equiv banded depn rate (%)	15.5

- Amend the existing asset class "Gas Cylinders" to "Gas Cylinders - Other" with the following details:

Estimated useful life (years)	12.5
DV banded depn rate (%)	15
SL equiv banded depn rate (%)	10

If you wish to make submissions on this proposed change please write to:

Manager (Rulings)
National Office
Inland Revenue Department
PO Box 2198
WELLINGTON

Please send any submissions by 1 July 1996.

Tomato graders - depreciation

In TIB Volume Seven, No.10 (March 1996) we published proposed new depreciation rates for tomato graders. We invited TIB readers to make submissions on this proposal. Here is the finalised determination.

General Depreciation Determination DEP14

This determination may be cited as "Determination DEP14: Tax Depreciation Rates General Determination Number 14".

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 1996/97 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" and "Food Processing" industry categories the general asset class, estimated useful life, and diminishing value and straight-line depreciation rates listed below:

	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Graders (Tomatoes)	8	22	15.5

3. Interpretation

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

This determination is signed by me on the 10th day of May 1996.

Jeff Tyler
Assistant General Manager (Adjudication & Rulings)

Chemists - prescription amounts due from the Department of Health

The amount chemists will be asked to bring into account for income tax purposes for prescriptions outstanding from the Health Benefits Centre for the year starting 1 April 1995, or equivalent balance date, is unchanged from the 1994 year at $20.79. Chemists have the choice of using this figure or using the actual value of prescriptions owing at 31 March, or equivalent balance date.

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

Valuation of low-priced land

Section CD 1 (9) (section 67(4)(f), Income Tax Act 1976) - Profits for gains from land transactions: A tax practitioner's client is involved in a land sale under section CD 1 (2)(g). The taxpayer acquired the land in 1955 at a very low price. The practitioner has noted that it would be unfair if the profit on the sale of the land was calculated using that 1955 cost price, as the development work did not start until 1992. She has asked what land value she should use to produce a realistic tax profit.

Section CD 1 (9) states:

> For the purposes of paragraph (g) of subsection (2) the Commissioner may ascertain the value of any land at the date of the commencement of any undertaking or scheme referred to in that paragraph in such manner as the Commissioner thinks fit.

Under section CD 1 (2)(g):

> All profits or gains, not being profits or gains which are included in the assessable income under any of paragraphs (a), (b), (c), (d), (e), and (f), derived from the sale or other disposition of any land to the extent that those profits or gains are derived from the carrying on or the carrying out of any undertaking or scheme, whether or not an adventure in the nature of trade or business, involving the development or division into lots of that land, and the Commissioner is satisfied that that development or division work (being work involving significant expenditure on earthworks, contouring, levelling, drainage, roading, kerbing, or channelling or on any other work, service, or amenity customarily undertaken or provided in major projects involving the development of land for industrial, commercial, or residential purposes) has been carried on or carried out by or on behalf of the taxpayer on or in relation to that land.

This means that when income is assessable income under section CD 1 (2)(g), the Commissioner may value the land at the start of the undertaking or scheme. Inland Revenue will normally accept a valuation of the land by a registered valuer or other suitably qualified person, as at the date of starting the undertaking or scheme (in this case 1992).

Under section CD 1 (8), the Commissioner may, when he considers it necessary for the purposes of section CD 1 (2)(a) to (f):

- Determine the cost price of the land in any manner he thinks fit.
- When land is acquired with any other real or personal property, apportion the cost price of that land and the other real or personal property as he thinks fit.

Expenses incurred in establishing access track to farm property - deductibility

Section DO 4 (section 127, Income Tax Act 1976) - Expenditure on land improvements used for farming or agriculture: The entrance to a farm has been relocated, and the owner is constructing a new access track. He has asked about the deductibility of the costs incurred in putting in the access track.

Under section DO 4 (1) a taxpayer is entitled to claim a deduction, except in the year the taxpayer sells or otherwise disposes of the land, for expenditure of any of the kinds specified in Part A of Schedule 7. The amount of the deduction is limited by section DO 4 (3), and depends on when the expenditure is incurred.

Under clause 6 of Part A of Schedule 7, the taxpayer is entitled to claim 5 percent of the diminished value of the expenditure incurred in the construction of access roads or tracks to or on the land. If the expenditure is incurred before the end of the 1995 income year, the taxpayer is entitled to a deduction each year, until the property is sold, of 125 percent of the rate specified in Part A of Schedule 7, i.e., 6.25 percent.

If the expenditure is incurred in the taxpayer's 1995-96 income year or in any subsequent year, he is entitled to a deduction each year, until the property is sold, of 120 percent of the rate specified in Part A of Schedule 7, i.e., 6 percent.

Sale price of depreciable property when disposed of

Section EG 19 (10)(b) (section 117(11)(d), Income Tax Act 1976) - Gain or loss from disposition of depreciable property: A taxpayer is selling off a number of her business assets on which she has been claiming depreciation. Under the terms of a sale contract drawn up by her agent, the assets will realise $140,000 in total, less legal fees of $1,500 and the agent's commission of $3,500. The taxpayer has asked if she should deduct the fees and commission from the sale price of the individual assets.

Section EG 19 applies to the disposal of depreciable property, except for the following types of property:

- schedule depreciable property, (i.e., a petroleum drilling rig, a support vessel for an offshore petroleum drilling rig or production platform)
- property accounted for using the pool method under section EG 11 (section 108J, Income Tax Act 1976)
- intangible property, other than software, which is "excluded depreciable property" as defined in section OB 1 (section 107A, Income Tax Act 1976)
- any land improvement which is excluded depreciable property of a type for which no depreciation allowance was allowed under section 108 as it applied before the 1993-94 income year.

To establish whether there has been a gain or a loss from the disposal of depreciable property, a taxpayer must calculate the amount of the consideration derived from the disposal. This is then compared to the "adjusted tax value" (as defined in section OB 1 (sections 107A and 117(11)(b), Income Tax Act 1976) of the property at the date of disposition. The result will be one of the following:

- assessable income, up to a maximum of the depreciation actually claimed - if the sale price was more than the adjusted tax value.
- a deduction from assessable income (except when the property is a building) - if the sale price was less than the adjusted tax value.

Under section EG 19 (10)(b):

> The consideration derived from any disposition of property shall be treated as the amount so derived less any amount payable by the taxpayer in disposing of the property (not being an amount otherwise deductible under this Act).

The legal fees and agent's commission fall into the category of "not being an amount otherwise deductible under this Act" because of section BB 8 (a) (section

continued on page 26

from page 25

106(1)(a), Income Tax Act 1976), which denies a deduction for capital items "except as expressly provided in this Act".

The taxpayer should calculate the consideration of an individual asset by deducting from the sale price a sum that is:

$$\frac{\text{Individual sale price}}{\text{Aggregate sale price}} \quad \text{x} \quad \text{Amount payable when disposing of the property}$$

Example

If this taxpayer sold one asset for $23,500, the consideration derived from the disposal under section EG 19 (10)(b) would be:

$$\$23{,}500 \quad - \quad \left(\frac{\$23{,}500 \text{ x } \$5{,}000}{\$140{,}000}\right)$$

= $23,500 - 839.29

= $22,660.71.

Income Tax (Withholding Payments) Regulations 1979

Journalists - income tax treatment

Clause 1 of Part B of the Schedule to the Income Tax (Withholding Payments) Regulations 1979: A taxpayer is a professional freelance writer who produces articles for magazines, brochures, and a weekly newspaper. She has asked for clarification of the income tax treatment of journalists.

Journalists who write for one paper or magazine are usually employees of that newspaper or magazine. However, in this case the taxpayer is a freelance writer producing articles for several publications. Freelance journalists are covered by the Income Tax (Withholding Payments) Regulations 1979.

Under clause 1 of Part B of the Schedule to the Income Tax (Withholding Payments) Regulations 1979, withholding tax at 25 cents in the dollar is deducted from:

Fees or other remuneration for or in relation to contributions (including photographs, illustrations, and cartoons) by freelance journalists, writers, artists, or other regular or casual contributors -

(a) To newspapers, magazines, journals, pamphlets, circulars, handbills, or other like publications:

(b) For radio, television, theatrical, or stage productions or presentations, or other like productions or presentations.

Under section BB 7 of the Income Tax Act 1994 (section 104, Income Tax Act 1976), a deduction is allowed for any expenditure or loss incurred in gaining or producing the assessable income of the journalist. However, regulation 7 of the Income Tax (Withholding Payments) Regulations 1979 allows the Commissioner to make a determination of the amount of expenditure or loss incurred in the production of a withholding payment.

Examples of the types of expenditure that can be claimed, are the costs of:

- any work related travel
- work related accommodation
- discs, depreciation, and other costs if a computer is owned and used.

In this case, the taxpayer will have withholding tax of 25 cents in the dollar deducted from her payments for articles and contributions, and will be able to claim a deduction for expenses she incurs in producing them.

The author must include the gross income from the IR 13 Withholding Payment Deduction Certificate in box 12 of her IR 3 tax return. Any expenses incurred should be shown in box 25 of the return. A credit will be allowed for the amount of withholding tax that has been deducted. The author will also be liable for both provisional tax (depending on the amount of residual tax that is payable) and earner and employer ACC premiums on this income.

Goods and Services Tax Act 1985

GST on FBT for employer's contribution to "medicare" insurance

Section 21(3) - Fringe benefit: A company's accountant has advised that the company pays fringe benefit tax (FBT) on its contribution to "medicare" payments for its employees. She has asked if the company must account for GST on the FBT value of the supply of the medicare, or whether the supply is exempt.

Generally, under section 21(3), when a registered person provides or grants a fringe benefit to another person, and that other person is employed under a contract of service by the registered person, the fringe benefit is deemed to be a supply of goods and services made by the registered person in the course of that registered person's taxable activity.

However, section 21(3A)(a) provides that section 21(3) shall not apply to benefits that relate to goods or services that are exempt from GST under section 14.

Section 14 deems that certain supplies are "exempt supplies" for GST purposes. Section 14(a) specifically exempts the supply of financial services.

"Financial services" is defined in section 3(1) and includes at paragraph (i):

The provision, or transfer of ownership, of a life insurance contract or the provision of re-insurance in respect of any such contract.

Medical insurance is not included in the definition, and is therefore liable for GST. That means the fringe benefit provided in this case is not an exempt supply, so GST must be calculated on the taxable value of the fringe benefit as shown on each quarterly FBT return.

The Commissioner's policy for valuing the benefit provided in this situation is the GST exclusive cost of the premiums paid by the employer. Whether or not the employer is registered for GST is irrelevant. This is because the benefit provided is the payment of the medicare premium. The word "premium" connotes the GST exclusive amount.

Student Loan Scheme Act 1992

Student loan deductions not made by employer

Section 44 - Application of penalty clause in loan contract: A taxpayer took out a Student Loan to help pay her way through university. As she was in employment, she completed an IR 12 with the correct tax deduction code of G ED and handed it to her employer so that deductions could be made from her wages for offsetting against her Student Loan. The employer failed to make the deductions, which meant that no payments were offset against her loan. Interest has been charged on her loan account, and the taxpayer now wishes to know if the

continued on page 28

from page 27

interest can be remitted, on the grounds that it was through no fault of her own that the deductions were not made by the employer.

Matters such as eligibility for loans under the scheme, credit limits, draw-down limits, or the general imposition of interest on loan balances are matters covered by the loan contract signed by a student borrower. By law, the Commissioner has no discretion to remit interest imposed, nor can he re-calculate interest on a Student Loan account if no payment has been received by Inland Revenue.

On the assumption that the taxpayer's earnings are over the repayment threshold of $13,884 for the year ending 31 March 1996, when Inland Revenue receives the taxpayer's tax return we will make an assessment which will show the amount required to be repaid by 7 February 1997. In other words, although the employer failed to deduct the Student Loan repayment from the taxpayer's wages, the taxpayer has until the following 7 February to make payment.

If no repayments have been received by 7 February, a penalty of 2% per month will be charged on the total amount overdue until payment is made.

The onus is on the taxpayer to ensure that the correct amount of tax is deducted from her wages. She now has the option of sending a payment direct to Inland Revenue, which will be credited for interest purposes at the date received.

In this case, the employer did not in fact deduct any Student Loan repayment, so no credit can be given to the employee's Student Loan account. Further, for failing to deduct the repayment deductions as requested by the employee (in using the G ED tax deduction code), the employer risks prosecution under section 77(1)(a).

When an employer deducts Student Loan repayments from an employee's wages and fails to pay them to Inland Revenue, the situation is treated differently. Generally, the employee is given a credit for the amount as if it had been paid to Inland Revenue on time. The employer is liable to prosecution by Inland Revenue for failure to account for moneys held in trust.

Legal decisions - case notes

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

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

• • • • • Important decision

• • • • Interesting issues considered

• • • Application of existing law

• • Routine

• Limited interest

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

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

Unexplained deposits - whether assessable as dividend income

Rating: •

Case: J P R Alexander V CIR Auckland M 696/92

Keywords: *burden of proof, evidence*

Summary: In an oral judgment delivered by Justice Tompkins it was held that the onus of proof rests with Mr Alexander to show that any particular item has been wrongly included as income and that all the relevant assets and deposits were made in respect of the company. The assessments were amended to the extent of whether they were confirmed or not.

Facts: The objector was the governing director of a private company. As a consequence of matrimonial property claims against him the company passed a minute authorising him to protect the company's assets from legal challenge. The company provided a declaration of trust authorising him to move assets to various nominees. Due to several location moves the minute and the declaration of trust were lost, as were other company records.

The company operated a service station and garage, but later sold these and became involved in scenic and charter flights.

Decision: Justice Tompkins commented that if Mr Alexander received and retained money from the company, whether as trustee or otherwise, it would be treated as taxable dividends. If he could prove he was holding the money in trust or if the money went back in some form to the company, then the assessments would have been incorrect.

Justice Tompkins rejected Mr Alexander's explanation that the accounts were wrong in respect of two aircraft that he claimed he purchased for the company. No evidence was called to confirm the purchases and the aircraft did not appear in the accounts as an asset. It was held that it was more likely that the aircraft were Mr Alexander's even if they were used by the company.

continued on page 30

from page 29

A number of deposits in Mr Alexander's personal accounts which were assessed as dividend income to Mr Alexander were confirmed in the absence of any proper explanation or evidence that the amounts were repatriated to the company. These deposits included interest payments, debts owing to the company, unexplained deposits, rental payments and interest on hire purchase.

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

Out of Court settlement for damage to property - whether GST input tax deduction allowable

Rating: •

Case: TRA No 93/238

Keywords: *taxable supply, input credit, settlement*

Summary: The objectors paid an amount to a partnership in full settlement of a damages claim for damage caused by the negligent escape of a fire. The Taxation Review Authority found that there was no supply of any good or service from the partnership to the objectors. The objectors' claim for a GST input tax was therefore disallowed.

Facts: The objectors are farmers registered for GST. In 1990 they lit a fire on their farm in order to burn off stubble which remains after harvesting. The fire spread to the adjoining farm and caused damage to farm machinery that was owned by a partnership in the business of agricultural contracting. The partnership was undertaking contract work at the time for the neighbouring farm owner.

The partnership issued proceedings for damages against the objector. However, after negotiations between the parties the dispute was settled by the objectors making a payment to the partnership. The High Court was advised that the dispute was settled and the claim was struck out.

The objectors claimed a GST input credit on the payment. The Commissioner contended that there was no taxable supply made by the partners to the objectors so that there could be no input tax credit available. The partners, by not proceeding with their claim against the objectors, did not forego legal rights. Their legal right was to obtain financial compensation for damage, not the issuing of proceedings and obtaining a judgment which are simply steps in the legal mechanism.

Decision: Judge Barber held that no input credit was available to the objectors on the sum paid to settle a claim against them for damages caused by the negligent escape of their fire.

Judge Barber rejected the objectors' submission that the surrendering of a right to establish liability and secure a Court judgment against the objectors is the provision of a service.

Judge Barber stated that all that physically passed between the objectors and the partners was the cheque, and in the abstract was the surrendering by the partners of their right to proceed with the claim. Judge Barber accepted the Commissioner's submission that the partnership has not foregone a legal right but achieved enforcement of its legal right to damages. There was no supply in return for the payment.

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

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.*

Employer's guide (IR 184) - 1996: *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.*

First-time employer's guide (IR 185) - April 1996: *Explains the tax obligations of being an employer. Written for people who are thinking of taking on staff for the first time.*

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 1996: *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 - 1997
- 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) - 1997: *PAYE deduction tables for employers whose employees are having NZ 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

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.

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

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

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

July 1996

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

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

Tax returns due to be filed for all non-IR 5 taxpayers with balance dates from 1 October 1995 to 31 March 1996.

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

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

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

FBT return and payment for quarter ended 30 June 1996 due.

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

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

RWT on dividends deducted during June 1996 due.

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

(We will accept payments received on Monday 22 July as in time for 20 July)

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

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*
☐ **2824**: GST - Supplies of dwellings and other real property	30/06/96

Public binding rulings	*Comment Deadline*
☐ **3385**: GST - Zero-rating and temporary imports such as yachts	30/06/96
☐ **3391**: Lease surrender payments - income tax treatment	30/06/96
☐ **3476**: GST - Advertising space and advertising time supplied to non-residents	30/06/96

Inland Revenue
Te Tari Taake

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

Affix
Stamp
Here

Team Leader (Systems)
Adjudication and Rulings
National Office
Inland Revenue Department
P O Box 2198
WELLINGTON

Contents continued - questions and legal case notes

Questions we've been asked (pages 24-28)

Legal decisions - case notes (pages 29-30)

IR 270 exchange rate form - correction to Canadian exchange rate for January 1996

In last month's TIB we reprinted Inland Revenue's IR 270 exchange rate form. Unfortunately this form showed an incorrect figure for the Canadian exchange rate for January 1996. The correct figure is 0.9099.

We apologise for any inconvenience that this error may have caused.

Volume Seven, No.13 May 1996

Contents

This TIB has no appendix

Inland Revenue
Te Tari Taake