

Average market values of specified livestock - 1996

Under section EL 8 of the Income Tax Act 1994 (the Act), the Governor-General has announced, by Order in Council, the national average market values of specified livestock for the 1995-96 income year.

The values listed below apply to animals valued under the herd scheme.

High-priced livestock

The trigger price for high-priced livestock purchased in the 1995/96 income year is the greater of these two amounts:

- \$500
- Five times the greater of these two amounts:

(a) the national average market values listed below; or

(b) the national average market values declared for the 1994/95 income year.

The trigger price for animals purchased during the 1995-96 income year is shown in the right hand column below.

High-priced livestock cannot be valued under the herd scheme but must be capitalised and written off at an assigned percentage. The assigned percentages for the 1995-96 income year remain the same as the 1994-95 income year. They are shown in the table at the end of this item.

Type of livestock	Classes of livestock	Average market value per head	High-priced trigger price
		\$	\$
Sheep	Ewe hoggets	35	500
	Ram and wether hoggets	33	500
	Two-tooth ewes	44	500
	Mixed-age ewes (rising three-year and four-year old ewes)	37	500
	Rising five-year and older ewes	30	500
	Mixed-age wethers	28	500
	Breeding rams	144	720
Beef cattle	<i>Beef breeds and beef crosses:</i>		
	Rising one-year heifers	142	710
	Rising two-year heifers	241	1,205
	Mixed-age cows	304	1,520
	Rising one-year steers and bulls	207	1,035
	Rising two-year steers and bulls	317	1,585
	Rising three-year and older steers and bulls	427	2,135
	Breeding bulls	1,049	5,245
Dairy cattle	<i>Friesian and related breeds:</i>		
	Rising one-year heifers	364	1,820
	Rising two-year heifers	704	3,520
	Mixed-age cows	868	4,340
	Rising one-year steers and bulls	149	745
	Rising two-year steers and bulls	259	1,295
	Rising three-year and older steers and bulls	351	1,755
	Breeding bulls	573	2,865
	<i>Jersey and other dairy cattle:</i>		
	Rising one-year heifers	327	1,635
	Rising two-year heifers	651	3,255
	Mixed-age cows	828	4,140
	Rising one-year steers and bulls	138	690
	Rising two-year and older steers and bulls	262	1,310
	Breeding bulls	520	2,600
Deer	<i>Red deer:</i>		
	Rising one-year hinds	225	1,125
	Rising two-year hinds	357	1,785
	Mixed-age hinds	413	2,065
	Rising one-year stags	273	1,365
	Rising two-year and older stags (non-breeding)	431	2,155
Breeding stags	2,321	11,605	

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Deer (cont'd)

Wapiti, elk, and related crossbreeds:

Rising one-year hinds	279	1,395
Rising two-year hinds	433	2,165
Mixed-age hinds	513	2,565
Rising one-year stags	335	1,785
Rising two-year and older stags (non-breeding)	537	1,785
Breeding stags	2,432	12,160

Other breeds:

Rising one-year hinds	101	505
Rising two-year hinds	163	815
Mixed-age hinds	182	910
Rising one-year stags	119	595
Rising two-year and older stags (non-breeding)	185	925
Breeding stags	472	2,360

Goats

Angora and angora crosses (mohair producing):

Rising one-year does	22	500
Mixed-age does	39	500
Rising one-year bucks (non-breeding)/wethers	17	500
Bucks (non-breeding)/wethers over one year	38	500
Breeding bucks	121	605

Other fibre and meat producing goats (Cashmere or Cashgora producing):

Rising one-year does	22	500
Mixed-age does	39	500
Rising one-year bucks (non-breeding)/wethers	17	500
Bucks (non-breeding)/wethers over one year	38	500
Breeding bucks	121	605

Milking (dairy) goats:

Rising one-year does	126	630
Does over one year	135	675
Breeding bucks	192	960
Other dairy goats	77	500

Pigs

Breeding sows less than one year of age	168	840
Breeding sows over one year of age	200	1,000
Breeding boars	292	1,460
Weaners less than 10 weeks of age (excluding sucklings)	38	500
Growing pigs 10 to 17 weeks of age (porkers and baconers)	80	500
Growing pigs over 17 weeks of age (baconers)	121	605

Assigned percentages of high-priced livestock

Under the livestock valuation regime owners of high-priced livestock have the choice of using straight-line rates or diminishing value rates as the assigned percentage write down.

The rates for the 1995/96 income year are unchanged from last year. They are shown in the following table.

Livestock category	Straight-line rate	Equivalent diminishing rate
Sheep	25%	33%
Cattle	20%	26%
Stags	20%	26%
Other deer	15%	22%
Goats	20%	26%
Pigs	33%	40%

A taxpayer who wishes to apply the diminishing value rate to an animal must clearly use the diminishing value rate in the financial statements that support the tax return. Once a taxpayer makes this election it is irrevocable. If there is no such clear use of the diminishing value rate, the straight-line rate will apply.

Inland Revenue to increase action on property speculation

At Inland Revenue we are increasing our enforcement activity in the area of property speculation.

A lot of people in the property market are only wanting to purchase residential housing for their own use. There are generally no tax consequences of this. However, some people are speculating in the market with a view to making a quick profit. Anyone speculating in the property market must consider their tax liability. Generally, anyone who acquires land with the purpose or intention of selling it will be liable for tax on the profits.

The law in this area is very complex, and Inland Revenue's initial research has highlighted the need for further education about when property sales are taxable.

We will publish more information on this subject in the TIB and our other leaflets in the near future.

In the meantime, we remind taxpayers that property transactions are easily identifiable, and we will be increasing our audit focus over the coming months. Anyone who has engaged in property speculation over the last 12 months should include the profits in their 1996 tax return, which is due on 7 July.

We are not wishing to alarm any taxpayers unduly. To reiterate, buying residential property for personal use generally has no tax consequences.

If you have any questions on this subject, please contact a tax advisor or your local Inland Revenue office.

- From a press release issued by the Commissioner, 27/5/96

Fringe benefit tax - prescribed interest rate increased to 10.6%

The prescribed interest rate used to calculate the fringe benefit value of low interest employment-related loans has been increased to 10.6% for the quarter beginning on 1 July 1996. This rate will continue to apply to subsequent quarters until it is further adjusted.

The prescribed rate is up from 10.4% for the quarter that began on 1 April 1996. This increase reflects the recent rise in market rates.

New Inland Revenue office in Panmure

A new Inland Revenue Customer Service Centre has opened in Panmure, Auckland. It is located at:

Esterman Building
18 Pilkington Road
Panmure

This new centre is part of Inland Revenue's commitment to provide better services to our customers. It will make IRD services more readily available in east Auckland.

The new centre is open from 9 am to 4.30 pm Monday to Friday.

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

Consolidated group election - correction to form IR 4EF

Section FD 4 (section 191F, Income Tax Act 1976) - Date of formation of consolidated group: A tax practitioner has read the notes that Inland Revenue provides for completing the IR 4EF form to elect to form a consolidated group of companies. On three occasions, Note 2 mentions 63 days as the time within which Inland Revenue must receive notification of an election. She has asked if the form should instead refer to "63 working days".

Note 2 on form IR 4EF concerns the application date following an election to form a consolidated group. It covers the following three situations:

- General circumstances - section FD 4 (3)
- When the companies are newly-incorporated during the same income year - section FD 4 (4)
- When the companies elect to form a consolidated group during the income year of election - section FD 4 (5).

In all three situations, at sub-paragraph (b)(i), the sections use the following words:

Is received by the Commissioner within 63 working days after the ...

Under section FD 4 (6), the Commissioner may extend the 63 working day period when the relevant company or companies satisfy him that:

...in all circumstances the notice of election could not reasonably be expected to be, or to have been, furnished within that period.

"Working day" is defined in section OB 1 (section 2, Income Tax Act 1976) as meaning any day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
- (b) A day in the period commencing on 25 December in any year and ending on 15 January (both dates inclusive) in the following year.

The form should state "63 working days" and not "63 days". It will be corrected at the time of its next reprint.

Loss on investment - deductibility

Section HE 1 (section 211, Income Tax Act 1976) - Unit trusts: A taxpayer and his wife invested a substantial sum as a retirement fund in a unit trust. Six months later they discovered that they had earned no income from the fund, and in fact were faced with a capital loss of \$6,000. This led them to transfer their investment to another unit trust with the same company, that offered protection

against loss of capital. Now, they wish to sever connections with the company and invest the funds in a trading bank, but have been told that they will incur a \$2,000 penalty deduction for premature withdrawal that will further reduce their capital. They have asked if each may claim a tax deduction on \$4,000, i.e., 50% of the \$8,000 total loss, in their next personal tax returns.

Under section HE 1, for the purposes of the Act:

- A unit trust is deemed to be a company.
- Unit holders' investments in the unit trust are deemed to be shares in the company.
- The unit holders are deemed to be shareholders in the company.
- Distributions are dividends, as the section CF 2 meaning of the term "dividends" includes within the definition at section CF 2 (1)(i) (section 4(1)(j), Income Tax Act 1976):

All income of a unit trust distributed to a unit holder, and all other payments to and transactions with a unit holder in relation to the unit holder's interest in the unit trust that would, if made to or with a shareholder in relation to shares in a company, be dividends under this Act.

In this case, the taxpayers are considered to be shareholders who have incurred a loss from their shareholding. On page 32 of TIB Volume Four, No.5 (December 1992), an article covered the effects of two Court of Appeal decisions delivered on 19 November 1992 which clarified when taxpayers may deduct share losses. Briefly, the effect of the decisions in *CIR v Inglis* (1992) 14 NZTC 9,180 and *CIR v Stockwell* (1992) 14 NZTC 9,190 is that if taxpayers buy shares and would have been liable for tax on any profits or gains from selling the shares, any losses incurred on that sale are deductible.

This principle applies only to people who trade in shares as a business, or who buy shares for the purpose of reselling them. It does not apply to people who typically invest spare money from time to time, hoping for dividends and some capital growth.

The intentions of the taxpayers in this particular situation indicate that the two Court of Appeal decisions do not apply to them. Any losses arising from their investment in the unit trusts are not deductible.

LAQC shareholder's liability for tax deductions owing

Section HG 8 (section 393H, Income Tax Act 1976) - Liability of electing shareholder for income tax of company: A shareholder of a loss attributing qualifying company (LAQC) has advised that the company has gone into liquidation. The LAQC has income tax and PAYE tax deduction obligations which it will be unable to meet. The shareholder has asked if she has any personal liability for the unpaid tax deductions.

Under section HG 4 (1) (section 393D(1), Income Tax Act 1976):

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

...

- (b) Elected to be personally liable in respect of each income year during which the election is at any time in effect for such percentage of-
 - (i) Any income tax assessed as being payable in respect of that income year by that company under section BB 1;...

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Under section HG 14 (a) (section 393N(a), Income Tax Act 1976), to be an LAQC a company must be a qualifying company throughout the income year, so any liability under section HG 4 (1) applies to LAQC shareholders.

Section BB 1 (2) states:

Subject to this Act, income tax shall be payable by every person on all income derived by that person during the year for which the tax is payable.

Under section HG 8 (1):

Where any person elects in accordance with any of subsections (1), (2), and (3) of section HG 4 to be liable for a percentage of any income tax payable by a company then, while the Commissioner shall assess the company in the first instance,-

(a) The Commissioner may assess that person, and...the person shall be assessable and liable as agent...for the company...

Therefore, under section HG 8 the LAQC shareholder may be liable for income tax on income derived by the company. Her liability extends to the percentage of her effective interest in the company for the relevant income year. Under section HG 8 (2), the Commissioner can reduce her liability if she can satisfy him that a smaller percentage should apply.

Under section NC 20 (1), the Income Tax Act and the Tax Administration Act apply to any employer, employee, or other person who is liable to account for or pay to the Commissioner under the PAYE rules as if the amount were income tax.

As detailed above in section HG 4 (1)(b)(i), a shareholder elects to be liable for income tax assessed to a qualifying company under section BB 1 (section 38, Income Tax Act 1976), that is, on income derived by the company.

The income on which the employees pay their income tax (by way of tax deductions) is derived by them, rather than by the company. The qualifying company rules do not provide any personal exposure to the shareholder for unpaid PAYE etc.

LAQC loss - when to claim

Section HG 16 (2) (section 393P(2), Income Tax Act 1976) - Non-standard balance dates: A taxpayer has an interest in a loss attributing qualifying company (LAQC) that has a 30 June balance date. However, the taxpayer must file his IR 3 tax return by 7 July. He has been advised by the company that his share of the loss will not have been calculated by that date. He has asked Inland Revenue when he should claim the loss.

In a non-LAQC company, losses must be retained by the company and offset against income earned in later years. Losses cannot be used by the shareholders. An LAQC is a closely held company that is able to pass losses on to its shareholders. Shareholders are entitled to a share of the loss equal to their effective interest in the company.

Normally, the shareholders are deemed to have incurred their share of the LAQC's loss in the same income year as the loss is incurred by the company. The shareholders claim their share of the loss in their individual tax returns for that income year.

Example 1

An LAQC and a shareholder both have a 31 March balance date. The shareholder has a 50% interest in the company which, in the 1995 income year, incurred a \$10,000 loss.

The shareholder is entitled to a share of the loss equal to her interest in the company. Therefore, she is entitled to a loss of \$5,000. The shareholder will claim that loss in her 1995 IR 3 tax return, due to be filed by 7 July 1995.

However, the taxpayer in this case has a 31 March balance date, whilst the LAQC has a 30 June balance date. The company has advised that it is unable to provide him with details of his share of its 1995 loss by 7 July when he is required to file his tax return. This taxpayer has two options available to him.

The first is to apply for an extension of time in which to file his tax return. Section 37(5) of the Tax Administration Act 1994 (section 17(4), Income Tax Act 1976) allows the Commissioner to extend the time in which to file a tax return. Requests for an extension of time must be made in writing. The latest that the Commissioner can allow for an extension is 31 March of the year following the taxpayer's balance date. Clients of tax practitioners usually receive an automatic extension of time.

The second option is to return the loss in the following year's tax return. This is allowed under section HG 16 (2) which states:

Where, in respect of any company, any shareholder in that company, and any income year,-

- (a) Either the company, the shareholder, or both have a non-standard balance date for that income year; and
- (b) The company has a later balance date for the income year than the shareholder; and
- (c) By reason of the difference in balance dates it is not practicable for the shareholder to ascertain, within the time allowed in accordance with section 37 of the Tax Administration Act 1994 for the furnishing of the shareholder's return of income for that income year, the amount of loss of the company attributable to the shareholder under this section in respect of that income year; and
- (d) The shareholder elects that this subsection shall apply by applying accordingly the provisions of this Act,-

the amount of any loss of the company so attributable to the shareholder in respect of that income year shall, notwithstanding section 38 of the Tax Administration Act 1994, be treated for the purposes of this Act as if it were incurred by the shareholder on the first day of the immediately succeeding income year of the shareholder.

This means that the shareholder can choose to return his share of the company's 1995 LAQC loss in his 1996 tax return. No formal application or approval of the Commissioner is required.

Example 2

A shareholder with a 31 March balance date is entitled to a share of the 1995 income year loss incurred by an LAQC which has a 30 June balance date. The shareholder prepares his own tax return and does not wish to apply for an extension of time. His tax return is due to be filed by 7 July 1995.

The shareholder has been advised by the directors of the company that the company accounts will not be completed until mid-August: far too late for the shareholder to include his share of the loss in his 1995 tax return. The shareholder decides that, in accordance with section HG 16 (2), he will include the loss in his 1996 tax return, which is due to be filed by 7 July 1996. No formal application is required by the shareholder.

Dividend imputation credit subject to surcharge

Section JB 3 (section 336D, Income Tax Act 1976) - Determination of other income: A New Zealand superannuitant has received a cash dividend from two of her shareholdings. One of the paying companies has attached imputation

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credits to its dividends, the other has not. The superannuitant has asked why she has to pay New Zealand superannuitant surcharge on the imputation credits.

New Zealand superannuitant surcharge is calculated on the basis of a superannuitant's other income that exceeds a certain exemption. "Other income" for surcharge purposes is defined in section JB 3. It is generally the superannuitant's taxable income, together with one-half of any New Zealand pension or annuity that has been received from a registered scheme (e.g., Government Superannuation).

Under section CF 6 (1) (section 4B(1), Income Tax Act 1976), the amount of income derived by a person who receives a dividend is the amount of the dividend *including* any imputation credits and/or withholding tax deductions.

Therefore, as both the dividend received and the imputation credit attached are included in the shareholder's taxable income, for surcharge purposes the other income will also increase, resulting in more surcharge being payable.

However, the shareholder is allowed a credit against his or her income tax liability for the amount of the attached imputation credit. This is similar to PAYE, in that both the income received and the PAYE deducted are assessable as gross income, with the PAYE being allowed as a tax credit against the tax liability.

Even though more surcharge is payable, a superannuitant will in fact be better off under the imputation regime. For example, before the imputation regime, a superannuitant's dividend would have been treated as follows:

Company profit	\$149.00	
less company tax at 33%	<u>\$ 49.00</u>	<u>\$100.00</u>
Cash dividend		\$100.00
less individual tax at 33%	\$ 33.00	
less surcharge at 25%	<u>\$ 25.00</u>	
Net tax liability		\$ 58.00
Cash dividend to superannuitant	\$100.00	
less net tax liability	<u>\$ 58.00</u>	
Net dividend		<u>\$ 42.00</u>

Under the imputation regime, that same profit is taxed as follows:

Company profit	\$149.00	
less company tax at 33%	<u>\$ 49.00</u>	<u>\$100.00</u>
Cash dividend	\$100.00	
plus imputation credit	<u>\$ 49.00</u>	
Gross dividend		\$149.00
less individual tax at 33%	\$ 49.00	
less surcharge at 25%	<u>\$ 37.25</u>	
	<u>\$ 86.25</u>	
less imputation credit	<u>\$ 49.00</u>	
Net tax liability		<u>\$ 37.25</u>
Cash dividend	\$100.00	
less net tax liability	<u>\$ 37.25</u>	
Net dividend		<u>\$ 62.25</u>

We told the superannuitant that the gross dividend is taxable, and must be included when calculating any surcharge that may be payable.

Income Tax (Withholding Payments) Regulations 1979

United States sportsperson's income earned in New Zealand

Clause 4(b) of Part B of the Schedule to the Regulations - Specified payments to non-resident entertainers: A New Zealand sports club is giving a four-month trial to an American player who is a United States resident. A representative of the club has asked if payments made to the player are subject to New Zealand income tax.

Under section BB 3 (b) of the Income Tax Act 1994, all income derived from New Zealand is assessable for income tax, regardless of whether the person deriving the income is a New Zealand resident. Under clause 4(b) of Part B of the Schedule to the Regulations, specified payments to non-resident entertainers are subject to a tax deduction of 20 cents in the \$1.

Briefly, a "specified payment" is defined in regulation 2(1) as a payment of any kind made to a non-resident entertainer for services rendered in connection with a "specified activity". "Specified activity" includes any activity or performance by a non-resident entertainer in connection with any sporting event. A "non-resident entertainer", also defined in regulation 2(1), is a person who is not deemed to be resident under the Income Tax Act 1994 and who, while visiting New Zealand, performs or participates in a specified activity.

Under regulation 4(2)(a), the American player will not be subject to the withholding payment rules if he is paid a salary, wage, or extra emolument: in that event the PAYE rules will apply.

In any event, the Regulations and the Income Tax Act 1994 may be modified by any applicable double taxation agreement (DTA). Whilst all New Zealand's DTAs give New Zealand the right to tax income derived by non-resident entertainers in New Zealand, specific conditions apply to the DTA with the United States. Under Article 17 of the New Zealand/United States DTA, New Zealand is precluded from taxing an artiste or athlete whose gross receipts derived from personal activities do not exceed US\$10,000 in an income year.

It is often difficult to determine at the start of a visit if the US\$10,000 threshold will be exceeded.

Approval may be obtained from the Non-resident Entertainers Unit at Inland Revenue's Auckland Office for withholding tax or PAYE not to be deducted, provided all of these conditions are met:

- It can be conclusively determined that the person's gross income, including expenses reimbursed or borne, will not exceed the threshold in an income year.
- An undertaking is given that the person will not earn further income from New Zealand during the remainder of the income year.
- The required documentation is received at the Auckland Office before the due date for remitting the appropriate income tax deductions.

When the above determination cannot be made and/or the undertaking given, Inland Revenue will not give approval for the appropriate deductions not to be made. Withholding tax or PAYE deductions must be made. If it is found at a later date that the sportsperson's gross income has not exceeded US\$10,000, a full refund of income tax deducted will be made upon the filing of a New Zealand income tax return.

Goods and Services Tax Act 1985

Organisation with income tax exemption - GST registration

Section 51(1) - Liability to register: A newly formed trust has recently received income tax exemption status from Inland Revenue under section CB 4 (1)(c) of the Income Tax Act 1994 (section 61(25), Income Tax Act 1976). Its activities include raising funds in New Zealand and overseas to allow it to provide health services in developing countries. The trust's main sources of income are from donations and grants from government agencies. Its Funds Manager has asked for details of calculating the total value of supplies, in order to establish whether the liability to register threshold figure of \$30,000 has been exceeded.

The organisation must register for GST if its turnover is expected to exceed \$30,000 in any twelve-month period. That turnover will not include donations received in the form of "unconditional gifts", because unconditional gifts made to non-profit bodies are not consideration for the supply of goods or services.

"Unconditional gift" is defined in section 2(1) as:

a payment voluntarily made to any non-profit body for the carrying on or carrying out of the purposes of that non-profit body and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods or services to the person making that payment, or any other person where that person and that other person are associated persons; but does not include any payment made by the Crown or a public authority.

This definition expressly excludes payments made by the Crown or a public authority, so the grants received from the government agencies cannot be regarded as a donation. In fact, under section 5(6D), any payment in the nature of a grant or subsidy made on behalf of the Crown or by any public authority is deemed to be consideration for a supply of goods or services.

We advised the Funds Manager that, in calculating the turnover of the trust, she should include the value of any grants received from the government agencies. If the trust charges for the services provided overseas, whether nominally or otherwise, these charges should also be included in the turnover figure, even though they would be zero-rated. Turnover would not include the donations the trust receives, nor any exempt supplies, such as any interest the trust is paid. If the value of the trust's turnover exceeds, or is expected to exceed, \$30,000 in any twelve-month period, the trust must register for GST.

Tax Administration Act 1994

New Tax Act does not erase convictions under previous Act

Section 227 - Transitional provisions and savings: A taxpayer was convicted of a first offence under the Income Tax Act 1976 and incurred a substantial fine. She has asked whether, if she commits a similar offence under the Tax Administration Act 1994, the earlier offence will be taken into account, or whether her record is effectively wiped clean following the passing of the 1994 Act.

Sections 186 to 214 contain details of offences against the Tax Administration Act 1994, the Income Tax Act 1994, and section 115 of the Accident Rehabilitation and Compensation Insurance Act 1992. Sections 221 to 223 contain the penalties for these offences. In many instances the maximum penalty that may be imposed is increased when a person is convicted of the offence on a second or subsequent occasion.

Under section 227(1), the continuity of the operation of the law relating to taxes imposed under the legislation repealed by section YB 3 of the Income Tax Act 1994 (as detailed in Schedule 21 of that Act) is not affected by the coming into force of the following Acts:

- The Tax Administration Act 1994
- The Income Tax Act 1994
- The Taxation Review Authorities Act 1994.

Section 227(6) of the Tax Administration Act 1994 states:

For the purpose of determining the punishment which may be imposed on a person in respect of the commission of an offence under a provision of this Act, an offence committed by that person under a corresponding repealed enactment is deemed to have been committed under that provision.

Although the Income Tax Act 1976 is included as a repealed enactment in Schedule 21, section 227(6) treats an offence committed under a section of the Income Tax Act 1976 as an offence committed under the Tax Administration Act 1994. We therefore told the taxpayer that the first offence she committed under the Income Tax Act 1976 would be taken into account when considering the level of punishment applicable to any subsequent similar offence committed under the Tax Administration Act 1994.

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'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.

Accrual rules - statutory interpretation of section 64BA(1)(c)(i) of the Income Tax Act 1976

- Case:** Lyttelton Port Company Limited v CIR, HC Christchurch AP130/94
- Act:** Income Tax Act 1976 - ss 64B(1)(c)(i) & (ii), 104, 106(1)(l) & 108
- Keywords:** *Accruals rules, deductibility of redundancy payments and demolition expenses*
- Summary:** The High Court found that the objector was not entitled to a deduction for a "deemed" interest component or losses associated with the disposal of certain buildings. However, the objector was entitled to deduct costs associated with the disposal of those buildings and also the costs of repaying a loan to cover redundancy payments.
- Facts:** On 1 October 1988 the Port Company, a statutorily established body, took possession of assets previously owned by the Lyttelton Harbour Board and began operating the port. However, the Minister's approval for the transfer had not been received at this stage and actual transfer of the assets occurred at a later date. The Minister retrospectively deemed the transfer to have occurred on 1 October 1988. The objector claimed a deduction for the alleged "deemed" interest component with respect to the deferred property settlement. The Commissioner disallowed this claim.
- The Port Company set up a trust which borrowed money to pay redundancy to waterside workers. These borrowings were to be met by a levy charged to all port users. On 1 October 1990 the Port Company repaid \$845,000 on the loan and the levy ceased. The Port Company treated this payment as a revenue payment, and claimed a deduction. The Commissioner rejected this claim.
- The Port Company also demolished buildings it owned, as it had no real use for them. It claimed the losses on demolishing and disposing of the building, and the demolition costs, as a deduction. The Commissioner disallowed these claims.
- Decision:** Justice Hansen held that there was no "deferred settlement". It was always intended that consideration would pass and possession be given on 1 October 1988; this had simply been delayed. Justice Hansen held that section 64BA(1)(c)(i) requires a subjective consideration of what is the lowest price the parties would have agreed to for the transfer of property on 1 October 1988. The fact that the parties had not specifically turned their minds to a deferral or settlement, or what the lowest price may have been for the purposes of the Income Tax Act did not matter. As section 64BA(1)(c)(i) applied there was no interest expense to spread under section 64F. Therefore the Commissioner was correct in disallowing the interest on the deferred property settlement. Justice Hansen found that section 64BA(1)(c)(ii) did not apply to the present fact situation.

Justice Hansen found that essentially the repayment of the \$845,000 was an election by the Port Company to make a lump sum repayment of money borrowed for redundancy, as opposed to allowing it to be paid off by port levies. Justice Hansen found that there was no enduring benefit and therefore the payment was not of a capital nature. The fact that the payment improved the Company's competitive advantage by eliminating the levy was incidental and did not change the essential character of the payment.

Finally, Justice Hansen found that the word "disposal" in the proviso to section 106(1)(l) did not cover the act of demolishing a building. Therefore the proviso did not apply and the Commissioner was correct in disallowing the deduction for the losses on demolition of the buildings. Justice Hansen distinguished *Mt Isa Mines Limited v SCT* (1992) ACT 4755 and found that the Objector's primary motivation in demolishing the buildings was that it would be dangerous to leave them sitting empty to deteriorate. The creation of a better asset, a greater area of uncluttered wharfage, was purely incidental. Thus the costs of demolition were a revenue item and were deductible.

GST - subdivision of objectors' home property

Case: TRA No 94/8 and 93/147

Keywords: *Subdivision of home property, taxable activity*

Act: Goods and Services Tax Act 1985 - sections 6, 8(1) and 51

Summary: The TRA found that the subdivision of the taxpayer's home property amounted to a taxable activity.

Facts: The objectors, a married couple, purchased a block of land in 1972 and constructed a weekend cottage on Lot 3 in 1974. In 1985 they built a retirement home on Lot 4, selling Lot 3 to finance it. In 1987 they considered the property was no longer suitable for them because of the wife's ill health. After an unsuccessful attempt to sell it in one piece they subdivided Lot 4 into five lots, of which four were vacant. The remainder contained the objectors' dwelling. Subdivision work included preparing a scheme plan for subdivision, power supply installation, engineering work, legal work, road work, phone cable installation and substantial development work in relation to council requirements.

The objectors ultimately sold the four lots and Inland Revenue made a determination under section 51 of the GST Act that the objectors were required to register for GST. The gross proceeds of five sales were \$813,000.00, before deducting subdivision expenditure of \$63,353.57 and further sale expenses.

Decision: The TRA considered there was extensive subdivisional and marketing activity. The nature of the subdivisional work did not differ markedly from that in the *Newman* case [1995] 17 NZTC 12,097 (CA), except for the addition of roading work and the increased number of sections. An application of the fact and degree test indicated that this was not a one off severance of a modest piece of land from a home property but a detailed subdivision resulting in one large section becoming five. When the activity was viewed as a whole, and assessing the circumstances of the particular case as a question of fact and degree, the TRA considered the subdivision was carried on continuously or regularly and amounted to a taxable activity.

NZ Bill of Rights Act does not prevent charging of penal tax after a prosecution

- Case:** TRA No. 93/224, 93/221, 93/223
- Act:** New Zealand Bill of Rights Act 1990 - section 26(2)
Income Tax Act 1976 - section 426
- Keywords:** *New Zealand Bill of Rights, penal tax*
- Summary:** The TRA found that the taxpayer was not being punished twice for the same offence and could not rely on section 26(2) of the New Zealand Bill of Rights Act.
- Facts:** Three cases were heard together. Each involved a claim by the objectors that, because he or she had already been convicted and fined in the District Court for filing false income tax and GST returns, the Commissioner could not subsequently impose penal tax. They relied on section 26(2) of the New Zealand Bill of Rights Act, which provides that no one who has been convicted of an offence shall be punished for it again.
- Decision:** Judge Barber found in favour of the Commissioner. His reasoning was that penal tax is imposed for tax evasion. That is a separate and distinct offence from that of filing false returns, for which the objectors were convicted and fined. Accordingly, the objectors' liability to be chargeable with penal tax is not affected by the Bill of Rights.
- In any event, section 426 of the Income Tax Act 1976 provides that assessment or recovery of penal tax is not barred by the taxpayer having been convicted under tax legislation of the same or any other offence. The provisions of the Bill of Rights do not affect this meaning.
-

Management fees - deductibility

- Case:** Lockwood Buildings Limited v CIR, HC Auckland M455/95
- Act:** Income Tax Act 1976 - sections 104, 106(1)(a)
- Keywords:** *Management fees, deductibility, capital or revenue expenditure*
- Summary:** Inland Revenue claimed that a portion of management fees paid by Lockwood Buildings Ltd (Lockwood) to its parent company were not deductible as they were capital in nature. The High Court rejected this claim.
- Facts:** Lockwood employed its parent company, La Grouw Corporation Ltd (La Grouw), to take care of its management and strategic planning matters, and paid a fee to La Grouw for those management services. In this capacity, Lockwood paid La Grouw to investigate the possible acquisition of timber mills and State forests. La Grouw in turn employed a consultant to undertake this assignment. These investigations were undertaken to ensure that Lockwood would receive a steady supply of timber for its day to day business. Lockwood subsequently purchased a timber mill.
- La Grouw calculated the amount of fees payable to each of its subsidiaries on the basis of profits made by each subsidiary, rather than calculating the fee in relation to services actually performed for that subsidiary. Inland Revenue claimed that Lockwood's payment to La Grouw for investigation of the forestry industry was not deductible to Lockwood because it represented capital expenditure.
- Decision:** The High Court found as a matter of fact that Lockwood did engage La Grouw to provide management services which Lockwood was unable to provide for itself. It was immaterial to Lockwood how the fee was made up and it was also

immaterial that the services were provided by Lockwood's parent company. It is commonplace in business conglomerates for members of the same group to trade with one another and if the fee had been paid to a company outside the group the case would probably have never arisen. The fees were not capital in nature and were deductible.

Property holding company - whether engaged in specified activity

Case: TRA 94/43

Act: Income Tax Act 1976 - section 188A(1)

Keywords: *Specified activity*

Summary: A property holding company was held to be engaged in a specified activity.

Facts: The objector is an electrical engineering company which is part of a group of companies. In the years ended 31 March 1988 and 31 March 1989 it offset part of its assessable income against losses incurred by an associated property holding company, "S Limited." The Commissioner reassessed the returns for these two financial years and restricted the loss offsets under section 188A(7) of the Income Tax Act 1976 on the grounds that "S Limited" was engaged in a "specified activity" as defined in section 188A(1). An objection by the taxpayer was disallowed and a case was stated to the Authority.

Decision: The issue in this case was whether the property company was engaged in a "specified activity" as defined in s 188A(1) of the Income Tax Act 1976. The TRA stated that the words are to be given their ordinary meaning. The words "with a view" in the sentence "acquiring or holding of any land with a view to the derivation from the whole or a part thereof of any rents..." had their ordinary and natural meaning of "intention" or "purpose". It was held that the property company was engaged in a "specified activity" because it always intended to charge rent to the objector. Although the property company had other "views" in mind other than charging rents, when it acquired the property it was still engaged in a "specified activity". Thus the Commissioner was correct in limiting the loss offsets of the objector from the property company under s 188A(7) of the Income Tax Act 1976.

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.

Maori Community Officer Service (IR 286) - Apr 1996: An introduction to Inland Revenue's Maori Community Officers and the services they provide.

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 from 1 July 1996.

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.

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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

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.

1996 income 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 and returns 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.

August 1996

- 5 Large employers: PAYE deductions and deduction schedules for period ended 31 July 1996 due.
- 7 Provisional tax and/or Student Loan interim repayments: first 1997 instalment due for taxpayers with April balance dates.
Second 1997 instalment due for taxpayers with December balance dates.
Third 1996 instalment due for taxpayers with August balance dates.

1996 income tax returns due to be filed for all non-IR 5 taxpayers with April balance dates.
- 20 Large employers: PAYE deductions and deduction schedules for period ended 15 August 1996 due.
Small employers: PAYE deductions and deduction schedules for period ended 31 July 1996 due.
Gaming machine duty return and payment for month ended 31 July 1996 due.
RWT on interest deducted during July 1996 due for monthly payers.
RWT on dividends deducted during July 1996 due.
Non-resident withholding tax (or approved issuer levy) deducted during July 1996 due.
- 30 GST return and payment for period ended 31 July 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 _____

Policy statements	Comment Deadline
<input type="checkbox"/> 3255: Whether company wanting to claim pre-1993 losses must satisfy shareholder continuity requirements	31/07/96
Public binding rulings	Comment Deadline
<input type="checkbox"/> 1960: GST: Input tax deductions for hire purchase financiers and the appropriate method for section 21 adjustments	31/07/96
<input type="checkbox"/> 3801: Guarantee fees paid by NZ subsidiary to overseas parent company	31/07/96



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 WELLINGTON

Contents continued - questions and legal case notes

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Questions we've been asked

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

Legal decisions - case notes

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

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