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.

At the back of this TIB there is a page listing draft binding rulings that Inland Revenue will soon be finalising. You can use that page to order copies of any of those drafts if you want to comment on them before we finalise them.

Low cost income protector policy agreed value

Product ruling - BR Prd 95/5

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

Taxation law

This ruling applies in respect of sections BB 7 and CB 5 (1)(h) of the Income Tax Act 1994.

Arrangement to which this ruling applies

This ruling applies to an insurance product known as a Low Cost Income Protector Policy Agreed Value issued by Sovereign Assurance Company Limited (“Sovereign”) and purchased by the life assured after 25 October 1995.

Assumptions

This ruling is based on the assumption that:

- The Low Cost Income Protector Policy Agreed Value is taken out by an individual and provides cover for that individual.
- The life assured has not elected any optional benefits.
- The life assured is employed or self-employed.

The terms and conditions of the Low Cost Income Protector Policy Agreed Value are contained in the policy document of the same name.

The period for which this ruling applies

This ruling applies from 25 October 1995 to 31 March 1999.

The ruling

Based on the assumptions stated above, under a Low Cost Income Protector Policy Agreed Value where the life assured has not contracted for any of the optional benefits, and the life assured is employed or self-employed:

- Any benefits received by the life assured under the Low Cost Income Protector Policy Agreed Value by way of the Vocational retraining benefit and Rehabilitation expense benefit will be exempt from income tax under section CB 5 (1)(h):

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- Any benefits received by the life assured under the Low Cost Income Protector Policy Agreed Value by way of the Disability income benefit, Proportionate disability income benefit, Recurrent disability, Bed confinement benefit, Recovery benefit, and Leave without pay benefit will be assessable for income tax in the hands of the life assured:
- All premiums paid by the life assured under the Low Cost Income Protector Policy Agreed Value will be deductible from the income of the life assured under section BB 7.

Signed
Simon Sherry
Rulings

Analysis of product ruling BR Prd 95/5

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

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

Background

A ruling has been sought on whether Sovereign's Low Cost Income Protector Policy Agreed Value is a personal sickness or accident ("PSA") insurance policy or a loss of earnings ("LOE") insurance policy under section CB 5 (1)(h).

Legislation

Cross-reference table

Income Tax Act 1994	Income Tax Act 1976
BB 7	104
CB 5 (1)(h)	61(40)

Section BB 7 states that:

In calculating the assessable income of any taxpayer, any expenditure or loss to the extent to which it-

(a) Is incurred in gaining or producing the assessable income for any income year; or

(b) Is necessarily incurred in carrying on a business for the purpose of gaining or producing the assessable income for any income year-

may, except as otherwise provided in this Act, be deducted from the total income derived by the taxpayer in the income year in which the expenditure or loss is incurred.

Section CB 5 (1)(h) exempts from tax:

Income derived by any person, in respect of any period of incapacity for work, from any payment received by that person by way of a benefit under a personal sickness or accident policy of insurance, not being a payment calculated according to loss of earnings or profits:

Treatment of the Policy by employed or self-employed persons

Disability income benefit

Where the life assured is employed or self-employed, the Low Cost Income Protector Policy Agreed Value Disability income benefit is calculated with reference to the life assured's average monthly earnings or income from the life assured's business or occupation. The Disability income benefit contains a maximum cap on the benefit that can be paid, the maximum cap being the amount of the monthly benefit figure shown in the schedule. The benefit is calculated with reference to earnings or profits lost by the life assured. Therefore, the Disability income benefit is a LOE benefit and is assessable income. The existence of a cap does not change this.

The Proportionate disability benefit, Recurrent disability, Bed confinement benefit, Recovery benefit, and Leave without pay benefit are payments of the Disability income benefit and, therefore, are LOE benefits.

PSA benefits

The Vocational retraining benefit and the Rehabilitation expense benefit are PSA benefits. The benefits do not indemnify the life assured for lost earnings or profits. The benefits cover the cost of providing a vocational retraining programme or purchasing specialised equipment or completing home alterations.

Mixed benefit policy

Sovereign's Low Cost Income Protector Policy Agreed Value is a mixed benefit policy because it contains both PSA and LOE benefits. The Commissioner accepts that under some mixed policies, only a negligible amount of each premium may relate to a flat sum benefit while the rest of the premium relates to benefits calculated according to loss of earnings or profits. If the amount of the premium attributable to the flat sum benefits is two percent or less, the whole of each premium can be deducted.

The amount of premium attributable to flat sum benefits under the Low Cost Income Protector Policy Agreed Value is 0.75%. Applying the Commissioner's policy, the amount of premium attributable to flat sum benefits is two percent or less, therefore, the whole of the premium is deductible under section BB 7.

Even though the whole of the premium for the Low Cost Income Protector Policy Agreed Value is deductible, the PSA benefits (the Vocational retraining benefit and the Rehabilitation expense benefit) are still exempt under section CB 5 (1)(h) upon receipt by the life assured. These flat sum benefits are exempt, although the premiums relating to these benefits are deductible.

Share cancellation

Product ruling - BR Prd 95/6

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

Taxation law

This ruling applies in respect of section CF 3 (1)(b) of the Income Tax Act 1994.

All legislative references in this ruling are to the Income Tax Act 1994.

Arrangement to which this ruling applies

The arrangement involves Donaghys Limited making a "pro rata cancellation" of ordinary shares resulting in at least a "fifteen percent capital reduction". Donaghys Limited will achieve the "fifteen percent capital reduction" by cancelling 2 out of every 7 shares held from a base of 42,734,146 shares. Donaghys Limited will provide consideration of $2.50 per share cancelled, consisting of the par value of 50 cents and reserves of $2.00.

More particularly, the ruling is based upon the information you provided to the Commissioner in the form of:

- Schedule D (facsimile of 18 October 1995 detailing movements in the share premium account between 1980 and 1995).
- Schedule C (attached to the application for the product ruling detailing movements in the share capital between 1980 and 1995).
- Notices of allotments of shares made during the period from 1980 to 1995.

You have calculated the amount of "available subscribed capital" according to the statutory calculation of a + b - c by using the following values:

a $28,282,255

b $3,175,419

c $0

Therefore, the amount of "available subscribed capital" equals $31,457,674 ($28,282,255 + $3,175,419 - $0).

Donaghys Limited will seek the approval of the shareholders for this transaction at the company's Annual General Meeting on 26 October 1995. It will also seek the approval of the High Court to cancel the shares.

Other facts of the arrangement and relevant information are as set out in detail in your application for a product binding ruling, letter of 4 October 1995 and facsimiles of 18 and 20 October 1995.

Assumptions

This ruling is based on the assumption that the proposed cancellation of shares by Donaghys Limited takes place according to the details set out in your application for a product binding ruling, letter of 4 October 1995 and facsimiles of 18 and 20 October 1995.

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In particular, the Commissioner assumes that:

i. The shares to be cancelled are to be cancelled in whole and are not “non-participating redeemable preference shares”.

ii. The proposed cancellation is part of a “pro rata cancellation”.

iii. Donaghys Limited intends the proposed cancellation to result in at least a “fifteen percent capital reduction” being a reduction of fifteen percent of the “market value” of Donaghys Limited at the time that it first notified the shareholders of the proposed cancellation. It is also assumed that the cancellation will result in the company distributing to its shareholders an amount at least equal to a “fifteen percent capital reduction”.

iv. The cancellation is not an “on-market acquisition”.

v. The cancellation of the shares does not affect the current or future application of Donaghys Limited’s dividend policy.

vi. At the time of entering into the transaction Donaghys Limited does not anticipate issuing any shares subsequent to the cancellation to meet operational or capital requirements.

vii. Donaghys Limited’s purpose for cancelling the shares is to return to its shareholders surplus funds arising from the sale of a subsidiary company, John Edmonds Limited.

viii. Donaghys Limited has only one class of shares and has not undertaken a share cancellation prior to the proposed share cancellation.

ix. The amount Donaghys Limited distributes in respect of the cancellation will not exceed the amount of the “available subscribed capital per share cancelled”.

The ruling

Subject to the express assumptions stated above being satisfied, any amount distributed in accordance with the proposed share cancellation will be excluded from the definition of “dividends” under section CF 3 (1)(b).

The period for which the ruling applies

This ruling applies to the arrangement, provided the share cancellation occurs within the period 26 October 1995 to 30 June 1996.

Signed
Simon Sherry
Rulings

Relationship between the “unit trust” and “qualifying trust” definitions

Public ruling - BR Pub 95/5

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

Taxation law

This ruling applies to the definitions of “qualifying trust” and “unit trust” in section OB 1 and the definition of “trust rules” in section OZ 1, of the Income Tax Act 1994.

Arrangements to which this ruling applies

This ruling applies to the creation of trusts that are “unit trusts” for the purposes of the Income Tax Act 1994.

The period for which this ruling applies

This ruling applies from the 1996 income year to the 1999 income year.

The ruling

Trusts that fall within both the definition of “qualifying trust” and the definition of “unit trust” in the Income Tax Act 1994 are excluded from the “trust rules”.

This ruling is signed by me on the 15th day of November 1995.

Jeffrey Tyler
Director (Rulings)

Analysis of public ruling BR Pub 95/5

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

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

Background

Some taxpayers are unsure of the relationship between the unit trust and qualifying trust definitions. This ruling provides clarification.

Legislation

Cross-reference table

Income Tax Act 1994	Income Tax Act 1976
CF 3	4A
DF 7	166
HE 1	211
HH 1 (8)	226(10)
HH 3 (5)	227(6)
OB 1	211
OB 1	226(1)
OZ 1 “trust rules”	227-233

Section OB 1 defines the terms “qualifying trust” and “unit trust”.

Section OB 1 also defines “employee share purchase scheme” as meaning:

> a scheme approved for the time being by the Commissioner for the purposes of section DF 7.

Section OZ 1 defines the “trust rules”. Broadly these rules apply to qualifying trusts, non-qualifying trusts, and foreign trusts, but not to unit trusts.

The definitions of “qualifying trust” and “unit trust” and a brief summary of their respective tax treatments are discussed below.

Qualifying trust

Section OB 1 defines a “qualifying trust” as including, with the exception of a superannuation fund, a trust that meets the following requirements:

- From the income year during which a settlement was first made on the terms of the trust until the income year in which the distribution is made, all trustee income derived by the trustees has been liable to New Zealand income tax other than only as non-resident withholding income; or

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- The trustee would have been liable for New Zealand income tax in any relevant income year but for the reason that:
  - No income was derived; or
  - Income was exempt from tax; or
  - Income was offset by carried-forward losses or losses incurred by the trustees; and
- The trustee's obligations in respect of that liability have been satisfied.

The definition also includes a superannuation fund.

The effect of a trust being a qualifying trust is, broadly, that, under section HH 3 (5), distributions from qualifying trusts other than beneficiary income are not assessable to the beneficiaries.

Unit trust

Section OB 1 defines a "unit trust" as:

any scheme or arrangement, whether made before or after the commencement of this Act, that is made for the purpose or has the effect of providing facilities for the participation, as beneficiaries under a trust, by subscribers, purchasers, or contributors, in income and gains (whether in the nature of capital or income) arising from the money, investments, and other property that are for the time being subject to the trust; but does not include -

(a) A trust for the benefit of debenture holders; or

(b) The Common Fund of the Public Trustee or any Group Investment Fund established by the Public Trustee; or

(c) The Common Fund of the Maori Trustee; or

(d) Any Group Investment Fund established under the Trustees Companies Act 1967; or

(e) Any friendly society registered under the Friendly Societies and Credit Unions Act 1982; or

(f) Any superannuation fund; or

(g) Any employee share purchase scheme; or

(h) Any other trust of any specified kind that is declared by the Governor-General by Order in Council, not to be a unit trust for the purposes of section HE 1:

Section HE 1 treats a unit trust as a company for tax purposes. The interests of the unit holders are deemed to be shares. The unit holders are deemed to be shareholders, and the income derived by the trustee is deemed to be income derived by the unit trust.

Distributions derived by unit holders are treated as dividends, subject to section CF 3 which excludes certain items from the definition of dividends. The dividends can have imputation credits attached.

Relationship of unit trusts and qualifying trusts

A unit trust could fall within the definition of qualifying trust. However, if an entity meets all the requirements of the definition of unit trust, it falls outside the trust rules and is treated as a unit trust for tax purposes. HH 1 (8) expressly excludes unit trusts from the application of the trust rules.

To constitute a unit trust for tax purposes, an entity must meet the following requirements in the definition of unit trust:

- The entity must be a trust. It cannot be in the form of a partnership or a joint venture (presuming it does not involve a trust), as in those entities management and control are in the hands of the member. In contrast, in a trust situation the management and control of the property settled are with the trustees.
- The trust must have subscribers, purchasers, or contributors who are beneficiaries under the trust. In contrast, a family trust is not a unit trust because beneficiaries of a family trust do not subscribe, purchase, or contribute for their entitlement to distributions from the trust.
- The trust must have more than one unit holder. The use of the plural when referring to "subscribers, purchasers, or contributors" in the definition supports this interpretation. The definition does not allow nominees for subscribers, purchasers, or contributors to be counted separately. A nominee is treated as the principal when ascertaining the number of unit holders in a unit trust. The use of nominees could in some circumstances circumvent the requirement for participation by more than one unit holder. If, for example, a subscriber and his or her nominees acquired all the units in a unit trust, there would be no real participation as, in substance, there is just one subscriber.
- Unit holders must have a facility to participate in any income or gains arising from the investments that are the subject of the trust. For example, a subscriber for units that carry a nil return would not count for the purposes of the definition.

Example

The example does not form part of the ruling.

Five individuals form a trust to pool their funds and make investments. An independent trustee holds the funds. The trust deed provides that each individual is a beneficiary who is entitled to participate in the income or gains arising from the investment of those funds.

The entity is a unit trust as :

- It is formed as a trust.
- There is more than one contributor.
- Each individual has contributed in his or her own right.
- Each individual will participate in the income and gains arising from the funds that are subject to the trust.

Tax treatment of credit card companies' frequent flyer schemes

Public ruling - BR Pub 95/6

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

Taxation law

This ruling applies in respect of sections CI 1 and CI 2 of the Income Tax Act 1994.

Arrangements to which this ruling applies

This ruling applies to employers whose employees, having joined a frequent flyer scheme ("FFS") promoted by a credit card company, receive entitlements under the FFS.

The period for which this ruling applies

This ruling applies to entitlements received by employees, under an FFS promoted by a credit card company, between 1 December 1995 and 30 November 1998.

The ruling

If an employee joins an FFS and receives benefits (referred to as entitlements), those entitlements are not subject to fringe benefit tax ("FBT"). The only exception is when the employer enters into an arrangement with the promoter of the scheme so that employees can get entitlements under the scheme. If this happens, the employer is deemed to provide benefits to the employees and is liable to pay FBT on the market value of the entitlements.

This ruling is signed by me on the 15th day of November 1995.

Jeffrey Tyler
Director (Rulings)

Analysis of public ruling BR Pub 95/6

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

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

Background

An item entitled "Frequent flyers' schemes - tax treatment", in TIB Volume Five, No.6 (November 1993), explains the tax treatment of FFS. Since that article was written several credit card companies have started promoting their own frequent flyer schemes. The ruling sets out the tax treatment of these schemes and makes it clear that the policy on frequent flyers applies to both an FFS promoted by an airline and to one that is not promoted by an airline.

Legislation

Cross-reference table

Income Tax Act 1994	Income Tax Act 1976
CI 1 "fringe benefit"	336N(1)
CI 2	336N(2)
OB 1 "arrangement"	336N(1)

Section CI 1 defines "fringe benefit" to include any benefit of any other kind whatever, received or enjoyed whether directly or indirectly in relation to, in the course of, or by virtue of the employment of the employee, and which is provided or granted by the employer of the employee.

Section OB 1 defines "arrangement" as meaning:

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

Section CI 2 (1) states:

> For the purposes of the FBT rules, where a benefit is provided for or granted to an employee by a person with whom the employer of the employee has entered into an arrangement for that benefit to be so provided or granted, that benefit shall be deemed to be a benefit provided for or granted to the employee by the employer of the employee.

Application of legislation

Liability for FBT

An employer is liable to pay FBT on the taxable value of a fringe benefit provided or granted by the employer to an employee of the employer.

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An employer can also be liable for FBT if the employer enters into an arrangement with a promoter of a scheme to provide taxable benefits to employees.

Where an employee is a member of a credit card company's FFS

Several credit card companies give all cardholders the opportunity to join their FFS. These schemes allow cardholders to accumulate points on the scheme as they charge goods and services to their credit cards. These goods and services may be employment related or may be private in nature. Subject to certain conditions (which vary from scheme to scheme), the cardholders can transfer the points to a participating airline FFS. The cardholder can then exchange the points for discounted or free travel or goods or services, depending on the terms of the particular airline FFS.

An employer has no FBT liability where its employees join such a scheme and receive entitlements under that scheme because of their membership. The promoter of the scheme provided the entitlement because of the contract with individual employees, not because of any arrangement between the employer and the promoter. It makes no difference in this situation whether or not the promoter of the scheme is a credit card company.

An FBT liability exists if there is an arrangement between the employer and the promoter to provide entitlements under the FFS. The employer is liable on the market value of the entitlements (that is the ultimate benefits received after transfer of points to the participating airline's FFS), subject to some apportionment if the entitlement arises as a result of both employment related and private expenditure.

In this situation an FBT liability exists, even though the promoter (the credit card company) does not physically supply the actual entitlements under the scheme. The method by which the promoter provides the entitlement is irrelevant. It is sufficient if the promoter is contractually bound by the employer to provide that entitlement to the employee. The item on the tax treatment of frequent flyer schemes in TIB Volume Five, No.6 (November 1993) at page 2 covers this situation in detail.

Corporate credit cards

In some situations an employer obtains corporate credit cards for employees. That corporate credit card entitles employees to join the FFS promoted by the credit card company. In this case there is no arrangement between the credit card company and the employer for its employees to receive entitlements under the FFS. The entitlements arise because of the contractual arrangement between the employees and the credit card company.

If there is actually a contractual arrangement between an employer and the credit card company to provide entitlements to employees under the FFS promoted by the credit card company, an FBT liability exists.

Examples

These examples do not form part of the ruling.

Example 1

An employee works for a company. She obtains a personal credit card and joins its associated FFS. Under that scheme she can accumulate points as goods and services are charged on the credit card. After the employee accumulates 10,000 points, she can transfer those points, at her option, to any one of a number of airlines' FFSs affiliated to the credit card company FFS. Once she accumulates a specified number of points on the airline FFS, she can exchange them for free or discounted travel. In the course of her work she incurs a number of employment related charges on the credit card as well as private expenditure. The employee accumulates points on the credit card FFS for both types of expenditure. She very soon reaches the specified threshold of points, and transfers them to a particular airline FFS, exchanging them for a free trip to Fiji.

The company does not have an FBT liability. The receipt of the entitlement under the credit card company's FFS is because of the contractual arrangement between the credit company and the employee. There is no arrangement between the employer and the credit card company to provide the employee with entitlements under its FFS. It does not matter that some of the points that give the entitlement result from employment related expenditure.

Example 2

The following year the employee obtains promotion in the company and receives a corporate credit card on which she is specified as the cardholder. The credit card is from a different company to that which issued her personal card. This particular credit card company allows cardholders to participate in its FFS. This scheme also allows an accumulation of points as goods and services are charged on the card and a transfer of points, subject to certain conditions, to a participating airline FFS.

The employer does not have an FBT liability on any entitlement received by the employee under the credit card company's FFS. There is no arrangement between the employer and the credit card company to provide entitlements to the employee under the FFS. The employee receives those entitlements because of her contractual relationship with the credit card company.

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.

Insurance, indemnity, compensation or damages receipts for loss or damage to trading stock or consumable aids

Summary

This item discusses section EE 2 of the Income Tax Act 1994. Section EE 2 includes as assessable income the amount of any insurance, indemnity, compensation, or damages received by a taxpayer for business assets when both of the following conditions apply:

1. The taxpayer has taken the cost of the asset into account (other than by way of a deduction for depreciation) in calculating the assessable income in any income year.
2. The asset was *either* trading stock *or* an article, material, or thing produced, manufactured, acquired, or purchased for any purpose ancillary to any business of manufacture or production of goods for sale or exchange (i.e. a "consumable aid").

If a receipt relates to trading stock or consumable aids as well as other assets, the Commissioner has the power to determine the portion to be included as assessable income.

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

Background

Trading stock and consumable aids are items that are usually deductible by a business for income tax purposes. If these business assets are lost or destroyed, the business may receive a payment by way of insurance, indemnity, compensation, or damages. The taxpayer generally uses any payment received to replace the trading stock and consumable aids lost or destroyed. The purchase of these replacement items is also normally deductible.

Under section EE 2, the assessable income of any taxpayer is deemed to include the amount of any insurance, indemnity, compensation, or damages received that the taxpayer receives for lost, destroyed, or damaged trading stock or consumable aids, if the taxpayer has previously taken the cost of these items into account in calculating assessable income.

This item does not apply to amounts received for lost or destroyed assets which are not trading stock or consumable aids. There is a discussion on page 8 of the Appendix to TIB Volume Four, No. 9 (April 1993) in relation to insurance proceeds etc, received on the loss or damage of depreciable property. Refer also to section EG 19.

Legislation

Cross-reference table

Income Tax Act 1994	Income Tax Act 1976
CD 1	67
EE 2	79
OB 1 "right to take timber"	74(1)
OB 1 "trading stock"	91(1)

Application

Section EE 2 has three subsections that are discussed below under the following headings:

- Definition of assets to which the section applies.
- Applicable receipts.
- Apportionment.

Definition of assets to which the section applies

Section EE 2 (1) limits the application of the section to the following assets owned by the taxpayer:

- trading stock as defined in paragraph (d) of the definition of "trading stock" in section OB 1
- any other article, material, or thing produced, manufactured, acquired, or purchased for any purpose ancillary to any business of manufacture or production of goods for sale or exchange (referred to in this article as "consumable aids").

Paragraph (d) of the definition of "trading stock" in section OB 1 defines the term to include all of the following:

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- anything produced or manufactured
- anything acquired or purchased for purposes of manufacture, sale, or exchange
- livestock
- timber (including standing timber)
- any right to take timber as defined in section OB 1
- any other real or personal property, if the person who sells or disposes of it either is in a business that comprises dealing in such property, or acquired the property for the purpose of sale or other disposal
- any land if any profit or gain from selling or disposing of the land would be subject to section CD 1
- anything for which expenditure is incurred after 8.30pm on 31 July 1986 and which - if possession of that thing were taken - would be trading stock.

Trading stock does not include any financial arrangement to which the "qualified accruals rules" (as defined in section OZ 1 (1)) apply.

Applicable receipts

Section EE 2 (2) applies when a taxpayer has taken into account the cost (other than by way of a deduction in respect of depreciation) of trading stock or consumable aids (as defined above) in calculating assessable income for any income year.

Section EE 2 (2) deems the assessable income of any taxpayer in any income year to include any amount of insurance, indemnity, compensation, or damages received in that income year by the taxpayer in respect of the loss or destruction of or damage to the trading stock or consumable aids.

The taxpayer must return the total amount received in respect of the trading stock or consumable aids as assessable income. The value of the trading stock in the accounts of the taxpayer is not relevant.

Apportionment

Section EE 2 (3) gives the Commissioner the power to determine the amount that is assessable income under section EE 2 when a person receives an amount by way of insurance, indemnity, compensation, or damages both for an asset to which section EE 2 applies and for some other asset.

In most situations when apportionment needs to be considered, the portion of the payment relating to trading stock and consumable aids is likely to be calculated and identified by the person making the payment, either as separate amounts or as one "inventory" amount (that includes both trading stock and consumable aids).

In cases when the amount is not so easily identifiable, the Commissioner will base any apportionment on the particular facts of the case. The Commissioner will refer to the taxpayer's accounts to determine the total value of relevant trading stock and consumable aids as a proportion of the total value of the assets of the business for which the payment is received. This ratio will then be applied to the total payment received.

Example

Mrs R owns and runs a sheep farm. She discovers one morning that three of her sheep have been stolen, as well as several containers of sheep drench. She reports the theft to the police and eventually receives a payment from her insurance company.

The section OB 1 definition of trading stock at paragraph (d) includes livestock. Therefore, the sheep fall within the "trading stock" category of assets to which section EE 2 applies. The sheep drench is a consumable aid used in the farming business. Assuming the costs of these items have previously been taken into account in calculating Mrs R's assessable income, the total amount of the insurance paid should be included as assessable income in the year received.

Additional and incremental tax - remission

Summary

Additional and incremental tax (commonly referred to as late payment penalties) are charged on tax remaining unpaid after the due date. In some circumstances the Commissioner remits the incremental tax automatically. In other circumstances, taxpayers need to apply in writing to the Commissioner if they want the penalties remitted.

The legislation is quite specific about the circumstances that lead to the charging of additional and incremental tax. The Commissioner is required by law to impose additional tax on unpaid tax under section 139(1) of the Tax Administration Act 1994 and section 41(1) of the Goods and Services Tax Act 1985.

This item sets out the Commissioner's policy when considering remissions.

All legislative references in this item are to the Tax Administration Act 1994 (TAA) unless otherwise indicated.

Legislation

Cross-reference table

Tax Administration Act 1994	Income Tax Act 1976
139(1)	398(2)
157(1)	400(2)
182(1)	413(2)
182(3)	413(3)
182(5)	413(1)

Additional tax and incremental tax - distinction

Reference to "incremental tax" is only for the purposes of section 182, and section 49 of the Goods and Services Tax Act (GST Act).

For income tax purposes, incremental tax is the additional tax charged under section 139(1)(b), 139(1)(c), and 139(1)(d). For GST purposes, incremental tax is the additional tax charged under section 41(1)(b) and 41(1)(c) of the GST Act.

Essentially, additional tax is the tax charged on the day following the due date for the payment of the tax. Incremental tax refers to the additional tax that is charged every six months, or every month in the case of GST, on unpaid tax after the due date for the payment of that tax.

This item distinguishes additional tax from incremental tax on the above basis.

Imposition of additional tax

Additional tax is charged under section 139, which states:

(1) Subject to this section, additional tax shall, as follows, be, and be deemed to be, added to any tax remaining unpaid (not being unpaid provisional tax), and shall be payable accordingly: ....

The balance of section 139 outlines the manner and circumstances under which additional tax is to be imposed on unpaid tax.

Section 139(1)(a) states that additional tax of 10% must be added to tax which remains unpaid at the expiry of the due date of that tax. Further incremental tax of 10% of the outstanding tax, including additional tax, must be added at six-monthly intervals under section 139(1)(b), (c), and (d).

A similar provision for the charging of additional tax and incremental tax is contained in section 41 of the GST Act. The main difference is that 2% incremental tax is charged every month on GST outstanding.

Discretionary remission of additional and incremental tax

Under section 182, relief from additional and incremental tax imposed by section 139 is available.

Section 182(1) states:

Subject to this section, on application for relief made in writing by or on behalf of any taxpayer who has become liable for the payment of any additional tax under section 139(1)(a), or any incremental tax, the Commissioner, if, having regard to the circumstances of the case, the Commissioner thinks it equitable to do so, may, subject to this section, grant relief to the taxpayer —

(a) By the remission of the whole or part of the additional tax, or the incremental tax; or

(b) Where the additional tax, or the incremental tax, has been paid, in whole or in part, by the refund to the taxpayer of the whole or any part of that additional tax or that incremental tax that has been paid, with or without the remission of any part of that additional tax or that incremental tax that has not been paid.

Automatic remission of incremental tax

Section 182(3) provides for the automatic remission of incremental tax in certain situations. It states:

Where any taxpayer becomes liable for the payment of any incremental tax, and at the time at which that liability arises the tax or the additional tax or the incremental tax in relation to which the taxpayer becomes so liable for the payment of that incremental tax is -

(a) Tax that is payable in 2 or more instalments under an arrangement entered into between the taxpayer and the Commissioner; or

(b) Tax in respect of which deductions are required to be made, and paid to the Commissioner, according to a notice issued under section 157(1), -

and every one of those instalments is paid in full in accordance with the terms of that arrangement, or every one of those deductions and payments is made in accordance with that notice, the Commissioner shall grant relief to the taxpayer -

(c) By the remission of the incremental tax first mentioned in this subsection; or

(d) Where the incremental tax so first mentioned has been paid, in whole or in part, by the refund to the taxpayer of the whole or the part of that incremental tax that has been paid, with or without the remission of any part of that incremental tax that has not been paid.

Similar provisions for the relief of incremental tax, for the purposes of GST, are contained in section 49 of that Act.

Section 157(1) enables the Commissioner to require any person (such as a bank or employer) who is holding funds, which are payable to a taxpayer who has defaulted on income tax liabilities, to pay those funds to Inland Revenue. The Commissioner gives written notice (in this item called a "section 157(1) notice") to the person, requiring him or her to deduct a specified sum from the amount payable to the defaulting taxpayer, and to pay that sum to Inland Revenue.

Application of legislation

Automatic remission of incremental tax

Section 182(3) of the TAA and section 49(3) of the GST Act set out the circumstances in which the Commissioner must remit incremental tax, without written

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application from the taxpayer. Both of these conditions must be met for this automatic remission to apply:

- The taxpayer must have entered into an arrangement with the Commissioner to pay the tax in two or more instalments, or deductions of the tax must be made and paid to the Commissioner in accordance with a notice issued under section 157(1) of the TAA or section 43(2) of the GST Act.
- Every payment under the instalment arrangement or deduction under the section 157(1) or 43(2) notice must be made according to the terms of the arrangement or notice.

When a taxpayer makes and adheres to an arrangement for the payment of tax arrears, or where timely deductions are made and paid to the Commissioner under a section 157(1) notice, the Commissioner will remit any incremental tax charged during the period covered by the arrangement or notice and make any appropriate refund.

The automatic remission only applies to the incremental tax charged during the period of the instalment arrangement or the duration of the section 157(1) notice. It does not apply to additional tax incurred on the initial default, i.e. the additional tax of 10% imposed by section 139(1)(a) on the day following the due date for the payment of the tax. The taxpayer may request the remission of the additional tax incurred on the initial default, along with any other incremental tax which is charged outside the period of the instalment arrangement or outside the duration of the section 157(1) notice, under section 182(1) (see following section "Discretionary remission of additional and incremental tax").

The provisions relating to the automatic remission of incremental tax contained in section 182(3) do not apply to penalties for the late payment of PAYE tax deductions or student loan repayments.

Example

Jane fails to pay tax of $700 due on 7 February 1994.

10% additional tax of $70 is added on 8 February 1994, increasing the total amount due to $770.

Further 10% incremental tax of $77 is added on 8 August 1994, increasing the total amount due to $847.

On 1 September 1994 Jane enters into an arrangement with the Commissioner to pay the tax arrears. The arrangement is for Jane to pay $100 per month from 1 October 1994 to 1 May 1995, with the balance of $47 due on 1 June 1995. Jane pays these tax instalments in a timely manner in accordance with the terms of the arrangement.

As Jane pays the instalments in accordance with the arrangement, the Commissioner remits the incremental tax which is charged on 8 February 1995, without written application from Jane. The Commissioner does not automatically remit the additional tax charged on 8 February 1994 or the incremental tax charged on 8 August 1994, as these sums were not charged during the period of the instalment arrangement. However, Jane may request relief from this additional/incremental tax in writing under section 182(1).

Discretionary remission of additional and incremental tax

When additional and incremental tax have been imposed, and have not been automatically remitted in terms of section 182(3), the taxpayer or his or her representative may apply to the Commissioner for relief. Under section 182(1) of the TAA or section 49(2) of the GST Act, all applications for the remission of additional and/or incremental tax must be made in writing.

When applying for remission of additional/incremental tax, the taxpayer must clearly state the grounds for making such an application. This is important because the Commissioner can only allow remission when the circumstances of the case suggest it would be equitable to do so.

Some of the factors that are taken into account when deciding whether to remit additional or incremental tax are:

- whether there is tax still outstanding
- the date the amount outstanding is or was paid - if it was a few days after due date or some time later
- if a genuine oversight occurred
- if there was some confusion surrounding the payment of the tax
- whether there appears to be a deliberate policy of late payment by the taxpayer.

Note that this is not an exhaustive set of circumstances and each case will be considered on its own merits. Note also that remission of additional and incremental tax will not be approved until actual tax liabilities have been paid in full.

$5,000 limit

Taxpayers applying for remission should be aware that under section 182(4) of the TAA and section 49(4) of the GST Act, the Commissioner is unable to remit additional and incremental tax that is in excess of $5,000 without the specific approval of the Minister of Finance.

Underestimation additional tax charged before 1994-95 year - remission under section 413 of Income Tax Act 1976

Summary

This item states the Commissioner's current policy on remitting underestimation additional tax (UEAT) charged before the 1994-95 income year. The Commissioner's policy is that UEAT charged before the 1994-95 income year is eligible for remission only under section 384.

All legislative references in this item are to the Income Tax Act 1976 unless otherwise indicated. The Tax Administration Act 1994 (TAA) is not quoted as that Act only applies to the tax on income derived in the 1995-96 and subsequent income years.

Background

Before the 1994-95 income year, when a taxpayer underestimated the residual income tax (RIT) payable, section 384 imposed UEAT. Section 384(3) allows the Commissioner to remit the UEAT if the RIT is more than the amount estimated because of the occurrence of one of the specific events listed in the section. Section 413 allows the Commissioner to remit additional tax charged for late payment under section 398 if he considers it equitable in the circumstances to do so. Inland Revenue has been asked to clarify whether a taxpayer can request a remission of UEAT (charged for an income year before 1994-95) under section 413 instead of, or in addition to, section 384(3).

Legislation

Section 384(3), as it applied before the 1994-95 income year, listed the specific events that must occur before the Commissioner can remit UEAT:

> Where the Commissioner is satisfied that the taxpayer, in relation to an income year, has become liable to pay additional tax under this section, by reason of the residual income tax payable by the taxpayer in respect of the income derived by that taxpayer in that income year being an amount in excess of the amount estimated by the taxpayer under section 382 of this Act, by reason of -
>
> (a) The enactment of any Act amending this Act or the making of any regulation or Order in Council relating to income tax, on or after the 1st day of the month preceding the month in which the third instalment of provisional tax becomes due and payable; or
>
> (b) The Commissioner making public, on or after the 1st day of the month preceding the month in which the third instalment of provisional tax is due and payable, any ruling in relation to any provision of this Act and that ruling is different to that previously made public by the Commissioner in relation to that provision; or
>
> (c) The adoption by the taxpayer of an incorrect interpretation of any provision of this Act, being an interpretation which, although incorrect, is reasonable having regard to the circumstances of the case; or
>
> (d) The derivation by the taxpayer in the income year of dividends being attributed repatriation, the amount of which could not reasonably have been foreseen at the time of estimation,-
>
> the Commissioner shall remit the additional tax or any part thereof.

Section 384(8) treated UEAT as if it were additional tax imposed under section 398:

> Subject to subsections (5) and (6) of this section and the other provisions of this Part of this Act, the other Parts of this Act shall apply with respect to all additional tax payable under this section as if it were additional tax under section 398 of this Act.

Section 413(2) allows the Commissioner to remit additional tax imposed under section 398:

> Subject to this section, on application for relief made in writing by or on behalf of any taxpayer who has become liable for the payment of any additional tax under section 398(2)(a) of this Act or any incremental tax, the Commissioner, if, having regard to the circumstances of the case, he thinks it equitable to do so, may, subject to this section, grant relief to the taxpayer-
>
> (a) By the remission of the whole or part of the additional tax, or, as the case may be, the incremental tax; ...

Before the 1994-95 income year, UEAT was both imposed and remitted under section 384. For the 1994-95 income year, imposition and remission of UEAT is contained in sections 385 and 386 respectively. From the 1995-96 income year onwards, imposition and remission of UEAT is contained in sections 144 and 178 respectively of the TAA.

Policy

The Commissioner's view is that UEAT charged for an income year before 1994-95 can only be remitted under section 384(3), not under section 413.

Section 384(8) provided that the other Parts of the Act applied to UEAT as if it were additional tax under section 398. However, this was subject to the provisions of Part XII of the Act which contained the limited remission grounds set out in section 384(3).

Further, the Commissioner considers that sections 384(3) and 413 should be interpreted having regard to the total context of the words used and to the purpose of the legislation. Support for this approach can be found in the Court of Appeal's decision in *CIR v Alcan New Zealand Ltd* (1994) 16 NZTC 11,175. Using a context and purpose approach to interpretation, the Commissioner considers that section 384(3) contains the only grounds for remitting UEAT.

The grounds for remitting UEAT contained in section 384(3) are narrower and more restrictive than the general grounds for remitting additional tax contained

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in section 413. UEAT is due and payable at the same time as the taxpayer's terminal tax. If the taxpayer pays the UEAT late, the Commissioner will charge additional tax of 10%. The Commissioner may remit any additional tax charged for late payment of UEAT under section 413 if he considers it equitable to do so in the circumstances.

Example

Ian has been charged UEAT of $500 on his 1994 tax liability, and a further $50 additional tax for paying the UEAT late. Ian requested that the UEAT and the 10% additional tax be remitted and refunded to him. Ian's grounds were that he was out of the country temporarily at the time the UEAT was originally due for payment, and he had simply overlooked arranging for someone else to pay the UEAT.

The Commissioner remitted the 10% additional tax charged for late payment of the UEAT under section 413 after having given consideration to the relevant information, which included:

- Ian's payment history.
- The UEAT having been paid immediately upon Ian's return to NZ.
- The genuine confusion on Ian's part over payment of the UEAT.

However, the Commissioner did not remit the UEAT as the circumstances outlined by Ian did not fall within one of the specific events listed in section 384(3).

Cash basis holder status not optional

Summary

This item discusses whether taxpayers who are cash basis holders for the purposes of the accruals rules have the option of being a cash basis holder or not. It considers the significance of being a cash basis holder.

When a taxpayer meets the definition of cash basis holder, he or she is a cash basis holder and cannot opt out of that status.

The significance of a taxpayer being a cash basis holder is that he or she is excluded from the requirement to calculate income over the life of financial arrangements using a method specified under the accruals rules. Generally, a cash basis holder will return income when it is actually received or credited.

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

Background

Sections EH 1 to EH 8 (part of the "accruals rules" as defined in section OZ 1 (1)) provide mechanisms for calculating income or expenditure from financial arrangements. The purpose of the accruals rules is to ensure that all returns on financial arrangements, whether of an income or capital nature, are brought to tax on a progressive basis over the term of the arrangement.

To assist in lowering compliance costs, the accruals rules exclude most individual taxpayers from being required to calculate income on an accruals basis. The accruals rules achieve this by way of the cash basis holder definition.

Legislation

Cross-reference table

Income Tax Act 1994	Income Tax Act 1976
EB 1	75
EH 1	64C
EH 3	64D

Section EH 3 defines when a person is a cash basis holder. The general rule is set out in subsection (1):

Subject to this section, a natural person shall be a cash basis holder in respect of financial arrangements held by that person in any income year, where-

(a) Either-

(i) The income derived by that person in that income year in respect of those financial arrangements, calculated in accordance with section EH 1 or section EH 4, does not exceed $70,000 ...; or

(ii) The total value of financial arrangements held by the person in the income year does not exceed at any time in the income year $600,000 ...; and

(b) The difference between the following amounts does not exceed $20,000 ..:

(i) The amount of income that would be calculated by the person for the income year-

(A) Using, at the option of the person, either the yield to maturity method or the straight-line method referred to in section EH 1 (3) (regardless of whether or not the person is entitled or has opted to use that method) or, where it is not possible to calculate an amount of income or expenditure in respect of the financial arrangements by using either of those methods, an alternative method approved by the Commissioner; and

(B) Under section EH 4,-

in respect of financial arrangements held by the person at the end of the income year:

(ii) The amount of income that would be calculated by the person for the income year in respect of the financial arrangements held by the person at the end of the income year if the person were a cash basis holder.

The Commissioner has the power to deem natural persons, who do not fall within the section EH 3 (1) definition, to be cash basis holders in certain circumstances set out in section EH 3 (2)(a). In summary, this can occur when the Commissioner is satisfied, having regard to the tenor of the accrual rules, that treatment of a class of financial arrangements under a method other than one of the accrual methods results in a fair and reasonable allocation of income and expenditure among income years.

Conversely, the Commissioner has the power to deem persons who do fall within the section EH 3 (1) definition not to be cash basis holders in certain circumstances set out in section EH 3 (2)(b). In summary, this can occur when the Commissioner is satisfied that a class of financial arrangements has been structured and promoted with the objective of postponing any liability to income tax which would have arisen had the arrangements not been so structured.

Trustees

Under section EH 3 (6), a trustee cannot be a cash basis holder for financial arrangements held as a trustee. However, there are two situations in which section EH 3 (6) does not apply:

- When a trustee holds financial arrangements on bare trust. Under section EH 3 (7), and for the purposes of the cash basis holder definition, financial arrangements held on bare trust are treated as being held by the beneficiaries to the extent of each beneficiary's share of the beneficial interest in the financial arrangement.
- When a trustee of a deceased person's estate holds or issues financial arrangements. Under section EH 3 (8), the trustee can be a cash basis holder when the deceased person was, at the time of his or her death, a cash basis holder. The trustee can be a cash basis holder for the income year in which the death occurred and in each of the four immediately succeeding years in relation to financial arrangements issued or held by the estate when the estate would (except for the fact that it is not a natural person) qualify as a cash basis holder. However, if the estate ceases to qualify as a cash basis holder at any time during the income year in which the death occurred and in the four immediately succeeding years, it cannot again qualify to be a cash basis holder.

Partnerships

Under section EH 3 (9), for the purposes of the cash basis holder test, partners in a partnership are treated as holding financial arrangements to the extent of each partner's share in the financial arrangements held by the partnership (or, as the case may be, the income of the partnership in respect of the financial arrangements).

Application of legislation

In summary, a natural person is generally a cash basis holder under section EH 3 (1) when both of the following two criteria are satisfied:

1. Either:
   - the income derived in the income year from financial arrangements calculated under section EH 1 (generally a yield to maturity basis) or section EH 4 (calculation in year the arrangement matures or is disposed of) does not exceed $70,000; or
   - the total value of financial arrangements held by the person does not exceed $600,000 at any time in the income year.
2. The difference between the income calculated using the yield to maturity or straight-line methods, compared with the method adopted if the person were a cash basis holder, does not exceed $20,000.

The wording of section EH 3 (1) is clear: a natural person shall be a cash basis holder when the definition is met. Being a cash basis holder is not optional. If a taxpayer comes within the definition, it is mandatory for him or her to be a cash basis holder.

Under the Income Tax Act 1994, the Commissioner has no discretionary power to allow a taxpayer to opt out of being a cash basis holder if the taxpayer so elects. The only situation when a person who falls within section EH 3 (1) can be deemed not to be a cash basis holder is when section EH 3 (2)(b) applies. This is in the limited situation when the Commissioner is satisfied that a class of financial arrangements has been structured and promoted with the objective of postponing any liability to income tax which would have arisen had the arrangements not been so structured.

The effect of being a cash basis holder is that, by virtue of section EH 1 (8)(a), sections EH 1 (2) to (6) do not apply. These are the sections that set out the methods of accounting for financial arrangements under the accruals rules.

The accruals rules are largely silent on how cash basis holders return income from financial arrangements. The exceptions are when:

- A financial arrangement matures: a cash base price adjustment is calculated under section EH 4 (2).

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- The taxpayer ceases to be a cash basis holder before a financial arrangement matures: an accruals basis adjustment is calculated under section EH 3 (3).
- The taxpayer becomes a cash basis holder before a financial arrangement matures: a cash basis adjustment is calculated under section EH 3 (4).

In most cases, therefore, cash basis holders will return income from financial arrangements on a "non-accruals" basis. Generally, this means that cash basis holders return income from financial arrangements when the income is paid or received by the person. In addition, cash basis holders may be required to return income from financial arrangements when the income is credited in account, reinvested, accumulated, capitalised, carried to any reserve, sinking, or insurance fund, or otherwise dealt with in the person's interest or on the person's behalf in accordance with section EB 1 (1).

Approved issuer levy - late registration of securities

Summary

This item sets out the application of sections 86H(2) and 86M of the Stamp and Cheque Duties Act 1971 when an approved issuer has failed to register a security or class of securities with the Commissioner. The date of registration of a security or class of securities is the date the Commissioner received the application for registration from the approved issuer. The Commissioner does not have a discretion to alter the date of registration.

All legislative references in this item are to the Income Tax Act 1994 (ITA) and the Stamp and Cheque Duties Act 1971 (SCDA) unless otherwise indicated.

Background

Since 1 August 1991, New Zealand borrowers have been able to pay interest to non-resident lenders, and deduct non-resident withholding tax (NRWT) at the rate of zero percent by paying an approved issuer levy (AIL) of 2% of the interest paid. The AIL can only apply to interest paid by an approved issuer on a registered security.

A recent query suggests there may be general uncertainty about how the rules operate. In particular, we have been asked whether the Commissioner can alter the date of registration of a security or class of securities when the approved issuer overlooks registration of the security, but still pays the AIL as required.

Legislation

Cross-reference table

Income Tax Act 1994	Income Tax Act 1976
NG 2 (1)	311(1)
NG 5	311A
NG 6	311B

Section NG 2 (1)(b) of the ITA imposes NRWT of zero percent on any interest paid to a non-resident to the extent that:

(i) The person by whom that interest is derived and the person by whom that interest is paid are not associated persons; and

(ii) The interest is paid by an approved issuer in respect of a registered security:

Section NG 6 of the ITA deems a person who makes an application to be an approved issuer with effect from the date the Commissioner receives the application, if approved by the Commissioner. The Commissioner may decline approval when the person has been responsible for serious default or neglect in complying with the Inland Revenue Acts during the two-year period ending with the date of that person's application.

Under section 86H(2) of the SCDA, the registration of a security or class of securities takes effect from the date upon which the Commissioner received the application for registration from the approved issuer.

Section 86I of the SCDA treats a payment of interest as being paid by an approved issuer in respect of a registered security only where and to the extent that:

> ... payment is made by the approved issuer of approved issuer levy on the leviable value of the registered security at the time of the payment of interest -
>
> (a) At the rate specified in section 86J of this Act; and
>
> (b) By the date specified in section 86K of this Act, or by such later date as the Commissioner may determine pursuant to section 86M of this Act.

Section 86K of the SCDA requires the AIL to be paid to the Commissioner by the 20th of the month following the month the interest is paid.

Section 86M of the SCDA permits the Commissioner to alter the due date for payment of the AIL when any failure to make payment by the due date is due to circumstances beyond the approved issuer's control.

Application

A New Zealand borrower can pay interest to a non-resident lender and deduct NRWT at the rate of zero percent, provided the borrower pays AIL on that interest payment. However, the option of paying AIL is available only when the borrower is an approved issuer and the interest paid relates to a registered security. Any person who has been, or may in the future be lent money can apply to the Commissioner to be an approved issuer. An approved issuer can apply to the

Commissioner to register a security or class of securities. Approved issuer status and the registration of a security are both effective from the date the Commissioner receives the relevant application.

Section 86I of the SCDA treats interest as being paid by an approved issuer on a registered security only when the approved issuer pays AIL on that interest payment to the Commissioner at the correct rate and by the due date. The due date for payment of the AIL is the 20th of the month following the month the approved issuer pays the interest. The Commissioner has a discretion under section 86M of the SCDA to alter the due date for payment when any failure to pay the AIL on time was due to circumstances beyond the approved issuer's control.

Any interest paid to a non-resident at a time before the approved issuer registers the security must have NRWT deducted by the approved issuer at the time of payment. If the approved issuer registers the security later, only interest paid to the non-resident from that date can be subject to the AIL instead of NRWT. The Commissioner does not have a discretion to alter the date of registration.

It is therefore important for an approved issuer to register a security as soon as possible if the approved issuer wants to pay the AIL on any interest paid instead of having to deduct NRWT.

Example

Frank has been an approved issuer from 1 May 1994, and borrows $100,000 from a lender who is resident in Australia in October 1994. Frank makes monthly interest repayments of $1,200 starting on 15 November 1994. To minimise the cost of the borrowing, Frank decided to pay the AIL on the interest payments rather than deduct NRWT. Frank pays the AIL of $24 per month to Inland Revenue by the 20th of the following month.

In March 1995, Frank realises that despite making four payments of AIL he has not yet registered the security with the Commissioner. On 12 March 1995, the Commissioner receives an application from Frank to register the security. Frank asks the Commissioner to back-date the registration to 1 November 1994, thereby authorising the AIL payments.

Under section 86H(2), the Commissioner registers the security with effect from 12 March 1995, the date he received the application. The Commissioner has no power to register the security from any other date.

As a result, the interest payments made by Frank on 15 November 1994, 15 December 1994, 15 January 1995, and 15 February 1995, totalling $4,800, are liable to NRWT. The Commissioner assesses Frank for NRWT of 10% of the interest paid, amounting to $480. (The NRWT is limited to 10% under the New Zealand and Australia Double Tax Agreement.) The AIL payments of $96 that Frank has already made reduce the NRWT payable, leaving a balance of $384 still to be paid.

The Commissioner may charge a penalty of 10% for the late payment of any NRWT if he is satisfied that the payer is guilty of wilful neglect or default. In this case, a penalty would not be imposed because Frank has not been guilty of wilful neglect or default in meeting his tax obligations.

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.

Proposed new asset classes in basic economic depreciation rates

A taxpayer has asked Inland Revenue to determine basic economic depreciation rates for the following assets:

- Containers (insulated, below $8m^3$)
- Bulkheads (insulated, removable)
- Pallet Covers (insulated)

As well as setting new rates for these assets, we intend to alter the asset class “Containers”, to “Containers, Shipping” in the asset category “Transport”. This alteration is for clarification purposes only. The estimated useful life and depreciation rates of shipping containers remain the same.

The proposed new determinations will amend Determination DEP1: Tax Depreciation Rates General Determination Number 1 (as previously amended) by:

- Inserting into the “Transport” asset category the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below:

Transport	Estimated useful life (years)	DV banded depn rate (%)	SL equiv banded depn rate (%)
Containers (shipping)	20	9.5	6.5
Containers (insulated, below $8m^3$)	5	33	24
Bulkheads (insulated, removable)	4	40	30
Pallet Covers (insulated)	2	63.5	63.5

- Deleting from the “Transport” asset category the general asset class, estimated useful life and diminishing value and straight-line depreciation rate listed below:

Transport	Estimated useful life (years)	DV banded depn rate (%)	SL equiv banded depn rate (%)
Containers	20	9.5	6.5

If you wish to make submissions on these proposed changes you can write to:

Manager
Rulings Directorate
National Office
Inland Revenue Department
PO Box 2198
WELLINGTON

All submissions should be made by 19 January 1996.

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

Tax returns to be filed by New Zealand residents working in Australia

Section BB 3 (a) (section 242(a), Income Tax Act 1976) - Liability to tax on income derived from New Zealand and abroad: A taxpayer is acting as agent for his daughter and son-in-law who, although working in Australia for a period, are New Zealand residents for tax purposes. The taxpayer wants to know what tax returns he should file on their behalf. Their income consists of wages from Australia and interest and rents from New Zealand.

Section BB 3 (a) states:

> All income derived by any person who is resident in New Zealand at the time when the person derives that income shall be assessable for income tax, whether it is derived from New Zealand or from elsewhere.

The taxpayer should file IR 3 tax returns for both his daughter and son-in-law as all their income is assessable for income tax in New Zealand. A credit will be allowed for any tax paid in Australia, up to a maximum of the New Zealand tax payable on that income.

Diminishing business activity request to treat as a hobby

Section BB 4 (a) (section 65(2)(a), Income Tax Act 1976) - Items included in assessable income: A tax practitioner has provided the following details of her client:

- He has to all intents and purposes retired, at the age of 67, from his joinery business.
- He has retained his business assets, and from time to time undertakes work for friends.
- His business income is steadily diminishing.

The practitioner has asked for any future joinery work done by her client to be regarded as a hobby for income tax purposes so that he no longer needs to compile annual financial statements.

Sometimes Inland Revenue is asked to rule, on facts provided, that an activity is an "uneconomic activity" for income tax purposes. When a taxpayer is able to show that an activity is not a business, specifically that it is not carried on for pecuniary profit, Inland Revenue may well allow the activity effectively to be classed as a hobby.

On the facts presented here there is nothing to say that the activity is uneconomic. Although the work when carried out is for friends, it is more likely to be for a reduced profit margin than for a loss. The issue is more the reduction in scale of the activity, rather than its viability. Under section BB 4 (a), the assessable income of any person is deemed to include all profits or gains derived from

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any business. The courts have identified the following factors concerning income:

- Income is something that comes in.
- Income implies the notion of periodicity, recurrence, or regularity.
- The quality of a receipt in the hands of the recipient may determine its character.

"Business" is defined in section OB 1 (section 2, Income Tax Act 1976) as including:

...any profession, trade, manufacture, or undertaking carried on for pecuniary profit.

On the details supplied, the request for hobby status was declined. Even if it had been granted, the taxpayer could still have been liable to pay tax on amounts received, as section BB 4 (d) (section 65(2)(l) of the Income Tax Act 1976) deems assessable income to include "Income derived from any other source".

Fringe benefit value when vehicle user performs own maintenance

Section CI 4 (section 336P(1), Income Tax Act 1976) - Taxable value of fringe benefit: A company employee is given the use of a company car for private purposes, on the understanding that she will perform routine maintenance on the vehicle herself at no cost to the company. Her manager has asked if the value of the servicing can be offset against the value of the fringe benefit. Specifically, Inland Revenue's approval has been sought for the company to value the employee's time at a rate commensurate with that charged in the motor servicing industry.

Section CI 4 (1) states:

...for the purposes of the FBT rules the taxable value of any fringe benefit provided by the employer of the employee in any quarter or (where fringe benefit tax is payable on an income year basis under section ND 4) in any income year shall be the value of that fringe benefit, reduced by-

(a) The amount (if any) paid by the employee (or, where section GC 15 (1) applies, by the associated person) in relation to the quarter or the income year for the receipt or enjoyment of that fringe benefit (not being an amount paid for the acquisition or improvement by the employee or associated person of an asset the receipt or enjoyment of which does not constitute the fringe benefit), except where the fringe benefit is an employment related loan.

Inland Revenue accepts that the employee's car maintenance work is a valuable contribution towards the cost of the fringe benefit provided by the company. However, the legislation refers to "the amount (if any) paid". In this situation, the only amounts likely to be paid by the employee are for servicing items such as oil and filters.

Since the actual servicing of the company car is not an amount paid by the employee, there is no reduction in the value of the fringe benefit as supplied by the employer, except to the extent that the employee has contributed towards the cost of servicing items.

Qualifying company - change of shareholders

Section HG 5 (section 393E, Income Tax Act 1976) - Revocation of shareholder elections: Changes took place within a qualifying company (QC) when a shareholder sold all her 3,000 shares as follows:

- 2,500 to the major shareholder - Mrs Smith; and

- 500 to Mr Smith, husband of Mrs Smith, who thus became a new shareholder.

The company's representative has asked if it is necessary to reapply for QC status in view of these changes.

Under section HG 5 (2)(b), a shareholder election to become a QC is deemed to be revoked:

Upon the sale or other disposal of all the shares in the shareholding in relation to which the election was made (unless those shares are sold or otherwise disposed of to an existing shareholder in the company for whose shareholding a valid shareholder election is already in effect).

In this case some of the shares were sold to Mr Smith, who became a new shareholder. Therefore, the shareholder election will be automatically revoked. The revocation applies from the beginning of the income year in which the event that caused the revocation occurred.

When a shareholder election has been revoked (either voluntarily or, as in this case, automatically), under section HG 6 (2)(b) (section 393F(2)(b), Income Tax Act 1976) a company does not lose its QC status if a new election is made within 63 days from the date the shares were sold or within such extended period as the Commissioner may, upon application, allow.

In this case, if Mr Smith makes a shareholder election as provided for by section HG 6 (2)(b), the company will not lose its QC status.

PAYE deductions from overtime pay

Section NC 2 (4) (section 338(4), Income Tax Act 1976) - Payment in two or more sums: An employer has found it necessary to pay overtime to her employees, who are traditionally paid on a Thursday for the week that ended the day before. The employer has been unable to associate the overtime with the standard pay for the pay period, but instead pays the overtime and any bonuses one week behind the pay period to which they relate. She has asked if this acceptable to Inland Revenue for PAYE purposes.

Under section NC 2 (4), for the purposes of calculating PAYE deductions, when a payment for any period is paid in two or more separate sums, the total paid is to be aggregated with other payments for the same period and the PAYE calculated accordingly.

However, sometimes this is not possible for one or more of the following reasons:

- the size or nature of the employer's business or organisation
- the dispersal of employees
- difficulty in assembling particulars
- some other reason that the Commissioner approves.

In such a situation, overtime pay may be aggregated with other pay (other than overtime pay) for a subsequent pay period, if all of these conditions are met for both pay periods:

- The amount of the employee's salary or wages (other than overtime pay) is substantially the same.
- The amount of the tax deductions applicable to the employee's salary or wages is the same.
- The tax code applicable to the employee is the same.

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In this specific case, as the employer had difficulty in assembling the particulars, and because the employee's details satisfied the above criteria, Inland Revenue accepted the method she was using to calculate PAYE.

Employer Deductions Form (IR 66N) - obligation to file twice a month

Section NC 15 (section 353, Income Tax Act 1976) - Payment of tax deductions to Commissioner: A nationwide company pays its substantial work-force monthly, on the 15th of every month. The company's accountant has queried the company's liability to file the Employer Deductions Form (IR 66N) twice a month.

The legislation requiring deductions of PAYE to be paid to the Commissioner twice-monthly was contained in the Income Tax Amendment Act (No.3) 1989, effective from 1 May 1990, and amended section 353 of the Income Tax Act 1976.

Generally, under section NC 15 (1)(c), an employer is only exempt from the twice-monthly rule, and permitted to make monthly returns, when in the preceding year the aggregate of gross tax deductions and specified superannuation contribution withholding tax payable was less than $100,000. Section NC 15 (5) to (7) qualifies this rule.

Section NC 15 (1)(a) covers "the first PAYE period", i.e. PAYE deducted during the period 1st to 15th of any month, and section NC 15 (1)(b) covers "the second PAYE period", i.e. PAYE deducted during the remainder of any month. The sections are similarly worded except for references to:

- When the payment and return are to be filed. Tax deductions made in the first PAYE period must be paid by the 20th of the same month (section NC 15 (1)(a)). Tax deductions made in the second PAYE period must be paid by the 5th of the following month (section NC 15 (1)(b)).
- The first or second PAYE period.

Section NC 15 (1)(b) states:

> Subject to paragraph (c), not later than the 5th of the month following a month in which the employer has made any such deductions in the second PAYE period, pay to the Commissioner the amount of the tax deductions and deliver to the Commissioner a remittance certificate signed by the employer...

As far as the accountant's query is concerned, the key words are "in which the employer has made any such deductions in the second PAYE period". The wages are paid in the first PAYE period only: none are paid in the second PAYE period and consequently no deductions are made.

If an employer in this situation advises Inland Revenue that it pays wages monthly on a regular basis, we will send out one IR 66N form for the relevant period so the employer doesn't have to file a second, nil, IR 66N each month.

Resident Withholding Tax - payment on an annual basis

Section NF 4 (section 327E, Income Tax Act 1976) - Payments of deductions of resident withholding tax to Commissioner: A tax practitioner has a number of clients that are closely associated companies. She has asked if each could make an annual payment of RWT in June of each year.

Under section NF 4 (1), when in any year a person estimates that he or she will be required to deduct $500 or more RWT from interest in aggregate during each month, the deductions must be paid to Inland Revenue by the 20th of the following month.

Under section NF 4 (2), if a person does not expect to be required to deduct $500 or more during each month, RWT must be paid in two 6-monthly instalments, one on 20 October and the other on 20 April. However, under section NF 4 (3), if the RWT accumulates to $500 during a 6-month period, the RWT covering the period since the previous payment must be paid to Inland Revenue by the 20th of the month following the month in which the RWT exceeds $500.

There is no provision for RWT to be paid on any other basis.

Inland Revenue cannot approve the payment of RWT on an annual basis or on any basis other than that provided by the Act.

Goods and Services Tax Act 1985

Award of damages for faulty goods and lost business

Section 10 - Value of supply: A taxpayer operates a coffee and takeaway bar. She purchased pies and savouries from a pie wholesaler. After a complaint from one of her customers to a health inspector, it was found that the pies and savouries were made using kangaroo meat. The coffee bar owner sued the wholesaler, and was awarded damages of $1,500 for the return of money for previous purchases which had to be destroyed, and $2,000 for lost business. The court awarded the amounts “inclusive of GST (if any).” The taxpayer has asked how she should account for the damages for GST purposes.

In this case, the $1,500 related to the purchase of the pies and savouries. This is in fact a refund of the money paid for goods previously supplied. One-ninth of the $1,500 is GST, and should be included in the taxpayer’s return for the period in which it was received.

The $2,000 relates to losses incurred by the taxpayer and not to the supply of goods or services. As such, the $2,000 is not subject to GST.

Multiple supplies - GST invoicing requirements

Section 24(1) - More than one tax invoice: A GST registered person rents out a number of commercial properties. Each of the tenants is provided with a tax invoice, covering 12 monthly rental supplies, that includes:

- the monthly date on which payment is due
- the period covered by the tax invoice
- the amount of the GST inclusive monthly rental
- the GST inclusive total for the year covered
- the remaining details required by section 24(3) - (supplier’s name, registration number, etc.).

From time to time the landlord needs to invoice the tenants for additional costs. In these cases a new tax invoice is raised to cover the additional costs, and when the rental for that particular month is outstanding, the rental detail is also included. The landlord’s tax adviser has asked if this practice is in breach of the Goods and Services Tax Act 1985.

In cases of multiple supplies, such as commercial rentals which are paid by automatic payment authority, there is no need to issue a tax invoice for each month. One tax invoice can be prepared at the start of the contract with a schedule detailing each separate supply, the due date, and the (GST inclusive) consideration. This is because sufficient other records, such as copies of the lease and

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bank statements, exist to ascertain the correct rental, and to determine that payment has been made.

Although the tax invoice covers several supplies, the normal time of supply rules apply. GST is accounted for when each successive supply is made, (for a taxpayer accounting on the invoice or hybrid basis, this is the earlier of the due date or payment, not when the invoice is issued). The tenant can only claim an input tax deduction when each supply is made.

Under section 24(1)(a), it is not lawful to issue more than one tax invoice for each taxable supply. Therefore, if other costs are incurred that are to be passed on to tenants, a separate tax invoice must be issued for the additional costs. The new tax invoice must not contain details of the rental already included in the multiple invoice previously issued.

If the original tax invoice is lost, under section 24(1)(b) the supplier can issue a replacement tax invoice. The replacement tax invoice should be clearly marked “copy only”.

In this case, we advised the tax agent that the client’s practice was in breach of the Goods and Services Tax Act 1985.

Student Loan Scheme Act 1992

Calculation of estimated interest when student is a non-resident

Section 32 - Repayment obligations of borrowers who become wholly non-resident borrowers: A student with a Student Loan became a non-resident for tax purposes from 15 February 1995. At 31 March 1995 her loan balance was $12,448. She has read the details of her obligations as set out in TIB Volume Six, No.9 (February 1995), but has asked how estimated interest is calculated.

Under section 32, the repayment obligation of a non-resident with a Student Loan is based on the outstanding loan balance on 31 March following the date of departure, in this case $12,448 at 31 March 1995. When the loan balance is less than $15,000, the non-resident repayment obligation is, for each year following the year in which the student ceased being resident, the smaller of:

- $1,000 plus projected interest
- the loan balance plus projected interest.

For the purposes of calculating the non-resident repayment obligation, section 32B allows Inland Revenue to estimate the interest chargeable for an income year on the loan balance of a borrower. Because interest is calculated on a daily basis, the interest projection takes into account repayments made throughout the year, and assumes that they will be paid on the due date. In the calculation, the principal portion of the repayment is the same for each instalment, but the interest portion decreases as the loan is paid off. For calculation purposes, the principal portion of the non-resident repayment obligation is divided by four, i.e. the number of instalment periods.

Loan balance	$12,448
Principal payable each year	$ 1,000
Divided by 4	$ 250

Projected interest is calculated as follows (the year ending 31 March 1996 contains 366 days - 1996 being a leap year):

Period 1 - 1 April 1995 to 30 June 1995 - 91 days

Loan balance	$12,448.00	
Interest at 9%:	$ 1,120.32 x 91 / 366 =	$278.54
Principal		$250.00
		$528.54

Period 2 - 1 July 1995 to 30 September 1995 - 92 days

Loan balance	$11,919.46 ($12,448.00-$528.54)	
Interest at 9%	$ 1,072.75 x 92 / 366 =	$269.65
Principal		$250.00
		$519.65

Period 3 - 1 October 1995 to 31 December 1995 - 92 days

Loan balance	$11,399.81 ($11,919.46-$519.65)	
Interest at 9%	$ 1,025.98 x 92 / 366 =	$257.89
Principal		$250.00
		$507.89

Period 4 - 1 January 1996 to 31 March 1996 - 91 days

Loan balance	$10,891.92 ($11,399.81-$507.89)	
Interest at 9%	$ 980.27 x 91 / 366 =	$243.72
Principal		$250.00
		$493.72

Under the terms of the Student Loan Contract, interest is capitalised on 31 March.

As the non-resident repayment obligation is due in four equal instalments, the four periods are added together to obtain the total non-resident repayment obligation and this is divided by 4 to arrive at the quarterly instalments.

Period 1	$ 528.54
Period 2	$ 519.65
Period 3	$ 507.89
Period 4	$ 493.72
Total	$2,049.80

$2,049.80 divided by 4 = $512.45, due: 30 June 1995, 30 September 1995, 31 December 1995, 31 March 1996.

When an instalment is paid on a date other than the due date, the actual interest charged will differ from the interest projected, e.g., if an instalment due 30 September 1995 is paid on 12 October 1995, an additional 12 days' interest is charged. That year's non-resident repayment obligation is not altered, but on the last day of the income year, under section 32B(2) or (3) the loan balance is adjusted to reflect any disparity between interest projected and interest correctly chargeable.

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.

Timing of deductibility of warranty expenses

Rating: • • • • •

Case: CIR v Mitsubishi Motors New Zealand Limited PC 65/94

Act: Income Tax Act 1976 - sections 65(2)(a), 101, 104
(Income Tax Act 1994 - sections BB 4, BB 6, BB 7)

Keywords: *warranty expenses, incurred, definitively committed, timing of deductions*

Summary: The Privy Council dismissed the Commissioner's appeal from the decision of the Court of Appeal in *Mitsubishi Motors New Zealand Limited* (1994) 16 NZTC 11,099. It held that the taxpayer's provision for reasonably estimated warranty expenses was deductible in the year of sale. The taxpayer was definitively committed to meeting warranty claims to remedy inherent defects in vehicles at the time of sale.

The Privy Council considered it unnecessary to express any concluded view on the alternative basis upon which the Court of Appeal found for the taxpayer: the question of when income was derived. However, the Privy Council expressly stated that the resolution of the timing of deductions issue cannot alter the accounting principles which govern the recognition of income.

The Privy Council considered it did not need to examine the question of whether a contract of sale containing a warranty indemnity was a financial arrangement for the purposes of the accruals regime.

Facts: Mitsubishi Motors New Zealand Limited ("Mitsubishi") sells motor vehicles through franchised dealers. At the time of sale the franchised dealer gives a warranty to the retail customer. Mitsubishi indemnifies the franchised dealer against any warranty claims and undertakes to meet the cost of warranty claims for any defects appearing within the warranty period.

Evidence showed that some 63% of the motor vehicles sold in 1988 contained defects covered under the warranty. Mitsubishi sought to deduct the estimated costs in meeting warranty claims in the income year in which the vehicles were sold. The High Court and Court of Appeal found for Mitsubishi, but on different grounds.

The High Court held that Mitsubishi was definitively committed to the warranty expenditure at the time of sale and delivery of the vehicle. Accordingly, Mitsubishi had incurred an expenditure or loss for the warranty liability for the purposes of section 104.

The Court of Appeal accepted the Commissioner's argument that Mitsubishi was not definitively committed to the expenditure. It held that a liability to be discharged under a warranty was contingent upon a defect occurring and being reported within the warranty period. Until then, no liability had been incurred. Accordingly, estimated warranty expenditure was not deductible in the year of sale.

However, the Court of Appeal accepted Mitsubishi's submission that a part of the sale price of any vehicle must be spread over the period of the warranty; the warranty income not having been derived until the warranty period expired.

The Commissioner appealed to the Privy Council.

Decision: The Privy Council dismissed the Commissioner's appeal and held that the warranty costs were deductible in the year of sale. It found that Mitsubishi was definitively committed to the estimated warranty costs.

In reaching this conclusion their Lordships agreed with the Court of Appeal that no liability was incurred unless and until a defect appeared and was notified within the warranty period. However, in deciding whether Mitsubishi had incurred a liability at the time the vehicle was sold, it was legitimate to have regard to the evidence establishing that some 63% of the motor vehicles had defects which would manifest themselves within the warranty period. It was a fair inference that the defects were present at the time of sale.

The Privy Council considered that the relevant issue was whether, in the light of all the surrounding circumstances, a legal obligation to make a payment in the future can be said to have accrued. The percentage of vehicles which had left the assembly plant with defects were by definition likely to show themselves within the warranty period. The contingency that the owners might be content not to require remedial work would be real only in the case of the most trivial defects and would make no material difference to the accuracy of the estimated amount of expenditure to which Mitsubishi was definitively committed.

Having reached the conclusion that warranty costs were deductible, the Privy Council found it unnecessary to express any view on the treatment of the warranty income and the application of the accruals rules. However, with regard to the derivation of income issue their Lordships did say that they had some difficulty with the Court of Appeal's methodology. Their Lordships considered that unlike the question of deductions, the question of what income can be treated as "derived" during an accounting year, was a matter governed by normal accounting principles. The fact that the Court of Appeal found that warranty costs could not be deducted for income tax purposes could not, in their Lordship's view, alter the accounting principles that govern the recognition of income.

Allocation of income from a family trust

Rating: • •

Case: TRA 91/8

Act: Income Tax Act 1976 - sections 227(1), (3) and 228(1) (since repealed with effect from 1 April 1988)

Keywords: *trust income, trustees, assessable income*

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Summary: Income from a trust was assessable to the trustees, not the beneficiaries. The income was not derived by any beneficiary entitled or deemed to be entitled in possession to the receipt, in terms of the relevant provisions.

Facts: The taxpayers were the trustees of a trust, established by a farmer. His wife and two children were beneficiaries. He transferred a half share of the family farm to the trust, and paid rent to the trust for the use of its half of the farm. Drawings were taken from the farm operation for living costs and recorded as private expenditure. Later, the accountant allotted that expenditure among members of the family, including the beneficiaries. The personal expenditure attributed to the children was covered by an income allocation from the trust. At the end of the financial year, each child beneficiary of the trust had a nil current account balance.

The Commissioner assessed the income to the wife, and the taxpayer objected. Amended assessments assessed the income to the trustees, and again the taxpayer objected.

At issue was whether the income was assessable to the children as beneficiaries or to the trustees. Income assessed to the beneficiaries, rather than to the trustees would be taxed at a lower rate.

Decision: The TRA held that the income was assessable to the trustees. It described the trust as a vehicle for allocating much family living expenditure income to the beneficiaries at a lower tax rate.

The TRA could not be sure that the income was income derived by the beneficiaries entitled on possession to its receipt. The children were not able to give a valid receipt for the income, and their entitlement did not arise by operation of the trust. Further, the evidence did not show any proper exercise of an income allocation discretion by the trustees. Section 227(1) was not satisfied, and the trustees could not be deemed to be agents of the beneficiaries, and assessable accordingly.

Section 227(3) provided that income that trustees apply to beneficiaries by a bona fide transaction that places the income outside the control of the trustees, during the relevant income year or within six months from that year is beneficiaries' income. The TRA held that there had been no benefit to the beneficiaries, as there was a legal duty under the Family Proceedings Act 1980 on parents to maintain their children until 16 years. In any case, the TRA was not convinced that the trustees had applied any income to a beneficiary by any bona fide transaction. Had there been a bona fide transaction, the income did not seem to have been placed beyond the possession and control of the trustees in their role as trustees. Belated book entries and a lack of timely exercise of discretion did not meet the test of the type of bona fide transaction required by the section.

Comment: The taxpayer is not appealing this decision.

Fringe benefit tax - status of "employee" - whether application of law retrospective

Rating: • •

Case: CIR v Roma Properties Limited HC 34/95

Act: Income Tax Act 1976 - section 336N - definition of "employee"
(Income Tax Act 1994 - section OB 1 - definition of "employee")

Keywords: *fringe benefit tax, employee, shareholder-director, source deduction payment*

Summary: Fringe benefit tax was introduced on 1 April 1985. Although it cannot be applied to payments made before that date, the definition of "employee" allows the Commissioner to examine the status of a person employed prior to the introduction of the legislation in order to illuminate his or her status after that date, and to determine whether that status continues after the introduction of the tax.

Facts: By a complex series of transactions put in place just prior to the introduction of fringe benefit tax, the three shareholder-directors of the taxpayer company purported to change their status from that of employees (for the purposes of fringe benefit tax) to managers.

In their former capacity as shareholder-directors/employees, they had received low interest loans, which remained unpaid after 1 April 1985.

The Taxation Review Authority considered that it was not entitled to take into account the position prior to 1 April 1985, because of the principle that revenue statutes should not have retrospective effect unless the legislation expressly so provides. Accordingly, the Authority held that the status of the three individuals was not that of employees, and no fringe benefit tax was payable by the taxpayer company.

Decision: Reversing the decision of the TRA reported in Case Q 48 (1993) 15 NZTC 5241, Justice Cartwright held that:

- The Commissioner had not sought to impose tax on payments of directors' fees for the year ended 31 March 1985. The tax was not retrospective. But the effect of the definition of "employee" in section 336N of the Income Tax Act 1976 was to focus on the status of the employee as a person for whom fringe benefit tax might be levied. The definition enabled the Commissioner to determine whether, in spite of changes made, an employee of a company continued to hold that status after the introduction of the tax. Stripped of all the changes in nomenclature, the three directors continued to undertake much the same duties as before. The advances demonstrated clearly the ongoing nature of their employment by the taxpayer company before during and after the introduction of fringe benefit tax. The status of "employee" remained intact and the legislation introducing fringe benefit tax did not seek to interfere with that status, nor could it. The tax was to be imposed from 1 April 1985. The tax was not levied retrospectively. It was the status of employee which triggered the imposition of fringe benefit tax after 1 April 1985.
- A certain company minute dated 14 June 1985 provided evidence that the directors were entitled to a 'source deduction payment' which made them 'employees' within the meaning of section 336N (1) of the Income Tax Act 1976.
- In determining whether one of the directors was an 'employee' in terms of section 336N(1) of the Income Tax Act 1976 for fringe benefit tax purposes, it was permissible to take into account the fact that income was paid to him for the year ended 31 March 1985 from which PAYE deductions had been made. It was part of the evidential basis that the Commissioner had to establish before imposing fringe benefit tax on any payments made to that director as an employee under that tax regime.
- A series of resolutions which established a liability on the part of the taxpayer company to pay directors' fees and salaries for the year ended 31 March 1986 provided evidence of source deduction payments after 1 April 1985 for the purpose of imposing fringe benefit tax.

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

Criteria for granting extensions of time for filing points-of-objection notices

Rating: • • • •

Case: TRA 95/51

Act: Taxation Review Authority Regulations 1994 - regulation 8.

Keywords: *extension of time, points-of-objection notice*

Summary: The Authority granted an application for an extension of time for filing a points-of-objection notice, which had been lodged on 5 July 1995. The Authority also indicated the criteria that would apply in future cases and correspondingly granted a period of three months from the date of the decision, for the Commissioner to file his Case Stated.

Facts:

(a) The Commissioner received a request for a Case Stated on 4 January 1995

(b) The deadline for filing a points-of-objection notice expired on 4 April 1995.

(c) An application for extension of time to file a points-of objection notice was filed on 2 June 1995.

(d) The deadline after which "exceptional circumstances" had to exist before an order for extension of time would be made, expired on 4 June 1995.

(e) A points-of-objection notice was lodged on 5 July 1995.

Decision: In granting the extension of time to 5 July 1995, the Authority had regard to the particular facts of this case, and stated:

(i) The purpose of the new procedure providing for the filing of points-of-objection notices was to ensure that the taxpayer and the Department explained their views of the facts and analyses of the applicable law well ahead of a hearing.

(ii) Regulation 8 recognised by implication that, in the case of an application for extension of time made within two months after the date on which the points-of-objection notice should have been served, the objector was not required to meet the stringent "exceptional circumstances" test, but some lesser test.

(iii) In determining whether to grant leave to proceed or appeal out of time, the overall consideration was the justice of the case or the avoidance of injustice.

(iv) The fact that there had been no prejudice to the Commissioner was significant.

(v) The fact that if the objector was unable to proceed with its objection, it would be prejudiced in that it would be taxed by the exercise of a discretion rather than by the judicial consideration of the Commissioner's claim to appropriate its assets by way of taxation voted by Parliament, was significant.

(vi) Since the filing of the application for extension of time, delay in filing the points of objection notice had not been excessive. The applicant asked for an extension of one month three days from 2 June 1995 to 5 July 1995.

The Authority also specifically referred to the dictum of Justice Greig in *Wilson v CIR* (1995) 17 NZTC 12,047 at page 12,051 that "a paramount policy running through the [Income Tax] Act and informing all its procedural provisions is that each taxpayer's liability to tax should be correctly assessed in accordance with the substantive provisions of the Act and in accordance with law." The Authority did not consider that the non-compliance in the present case was of such a level of seriousness as to justify depriving the taxpayer of its right to have its liability to tax correctly assessed in accordance with the substantive provisions of the Act and the law. Although there would clearly be cases where the delay on the part of the taxpayer was so inordinate or inexcusable that it was appropriate that the taxpayer lost this right, this case was not one of them.

The Commissioner was given three months from the date of the decision to file his Case Stated.

Comment: Inland Revenue is not appealing this decision.

Application for summary judgment in respect of GST refund withheld by Commissioner

Rating: • • • •

Case: Paul Finance Limited v CIR CA 126/94

Act: Goods and Services Tax Act 1985 - sections 27, 28, 29
Inland Revenue Department Act 1974 - section 21D (Tax Administration Act 1994 - section 105)

Keywords: *interlocutory application, summary judgment, computer generated assessment, cheque*

Summary: The Court of Appeal held that the High Court was correct in refusing to grant the taxpayer's application for summary judgment. There was sufficient material to show that the Commissioner had an arguable defence. Accordingly the appellant was not entitled to summary judgment and the matter should go to trial.

Facts: The appellant filed a GST return dated 30 March 1993 for the period ended 28 February 1993 claiming a refund of $517,947.66. By letter of 29 April 1993 Inland Revenue advised the appellant that a routine check was being undertaken and that the refund would be delayed pending receipt of information. Copies of various information were forwarded to Inland Revenue in July 1993. Further information was requested on 23 August 1993.

On 3 March 1994 Inland Revenue became aware that a debit had been recorded for a refund cheque amounting to $417,994.12. On 4 March 1994 Inland Revenue contacted the appellant and advised that the cheque had been sent in error and that the GST refund was still under investigation. The appellant was told that the cheque had been stopped and should not be banked.

A cheque and a computer generated notice of assessment was received by the appellant on 8 March 1994. The appellant presented the cheque on the same day. The cheque was dishonoured. The appellant sought summary judgment to recover the amount outstanding on the cheque.

The High Court refused to grant summary judgment.

Decision: The Court of Appeal held that the High Court was correct in refusing to grant the appellant summary judgment.

The appellant submitted that the Commissioner had made an assessment and that the refund was properly due in terms of the notice of assessment and the cheque issued. Further, the appellant submitted that if a computer generated notice of assessment is issued it is the product of an assessment for the purposes of section 21D.

The Commissioner submitted that the Commissioner's actions did not constitute the making of an assessment. The cheque and purported notice of assessment were generated in error. No value was given for the cheque. The Commissioner did not owe any money to the appellant and there was a complete absence of consideration. Furthermore, the provisions of section 21D did not deprive the Commissioner of an arguable defence.

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Justice Richardson held that there was sufficient material before the court to show an arguable defence. In reaching this conclusion His Honour said:

- There are obvious difficulties in applying section 21D, relating to electronically generated results of data processing operations, in tandem with the general assessment provisions of the GST legislation designed for the pre-technology world of tax collecting.
- That section 21D requires that the act of the Commissioner have the character of an assessment and the assessment must be made in response to or as a result of information entered into or held in the computer, not due to an incorrect or mistaken command.

Justice Richardson further noted that the case highlights a problem in the general application of the legislation which is not designed to reflect major technological changes which have dramatically affected tax collecting in recent years.

Comment: The taxpayer is not appealing this decision.

Supply of a taxable activity as a going concern

Rating: • •

Case: Barratt Partnership v CIR HC M.644/92

Act: Goods and Services Act 1985 - section 11(1).

Keywords: *supply, taxable activity, going concern*

Summary: Land and buildings which had been leased to lessees for business purposes, were sold with vacant possession after the lease had expired. Consequently, the supply of the taxable activity as landlords was not that of a going concern, and was not entitled to zero-rating within section 11(1) of the Goods and Services Act 1985.

Facts: The taxpayers owned a motel property which they leased to moteliers. They sold the land and buildings with vacant possession. The lease expired two days before settlement. The taxpayers had expected that by selling the property to the purchasers with vacant possession, the purchasers would be able to charge a premium for the granting of a new lease to the moteliers and obtain the advantage of rent at a new rate. However, the purchasers decided to run the motel themselves, and declined to enter into a new lease with the moteliers, and bought the motel business from the moteliers.

Decision: Justice Williams considered a number of decisions of the Taxation Review Authority and the High Court, and held that although the sale was that of a taxable activity, it was not that of a taxable activity as a going concern. Prior to the expiration of the lease, the taxpayers' taxable activity was that of a landlord, and what they had available to supply was the land, the buildings erected upon it, and a lease which expired on 14 February 1987. After they had signed the contract for sale, what they were then required to supply was the land and buildings free of tenancies. Although it might have been open to the purchasers to carry on the same form of business activity in the premises as that formerly carried on by the taxpayers, it would not have been the same business as that operated in the premises by the taxpayers, because the latter had contracted to bring the business to an end two days before the purchaser took over. The purchasers did not buy the right to receive rents from the premises, but the land and buildings and the right to enter into a new lease of the premises or to operate it themselves as a motel. They could even utilise it for any other commercial purpose for which the land and buildings were suitable.

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

Payment of debts not deductible in the course of business

Rating: • •

Case: TRA No. 95/25

Act: Income Tax Act 1976 - sections 104, 106(1)(a) and (j)
(Income Tax Act 1994 - sections BB 7, BB 8(a) and (b))

Keywords: *private expenditure, deductibility, capital/revenue, income earning process*

Summary: The TRA found that payments of debts to maintain the taxpayer's reputation and good relationships with financial institutions were not made in the income earning process of the taxpayer's accountancy business. They were a capital expenditure with elements of a private nature.

Facts: The taxpayer was an accountant, who was involved in the organisation and funding arrangements of client businesses. At times, he had given guarantees to lenders in respect of funds lent to his clients He had also honoured guarantees when called upon. The taxpayer made payments to a bank in respect of two debts. The taxpayer described these payments as "guarantee payments".

One payment concerned a company ("the development company") in which his wife held 50% of the shares. She and the other shareholder had guaranteed the loan. The company failed, leaving a bank overdraft. The taxpayer paid his wife's share of the overdraft.

The second payment was in respect of a holding company, ("the holding company") the main shareholder of which was the taxpayer's best client. The holding company borrowed overseas funds of $1,200,000 and on lent $600,000 to an associated investment company in which the taxpayer and the holding company each held half the shares. There was an unsigned guarantee agreement that the investment company would indemnify the holding company for principal interest and exchange rate fluctuations regarding the loan. The taxpayer was to guarantee the holding company against losses from interest and exchange rate fluctuations on $300,000 of the loan to the investment company.

The Commissioner disallowed the taxpayer a deduction of the sum of $35,559 for payments made in respect of these debts. The taxpayer argued that he made the payments to preserve his reputation and credibility, and to maintain good relations with financial institutions and the local bank. Counsel for the Commissioner argued that the payments were not made in the course of the taxpayer's occupation as a chartered accountant.

Decision: The TRA held that the payments were capital in nature and thus not deductible. There was not a sufficient nexus with the taxpayer's income-producing activities to be deductible as revenue.

With respect to the development company, the payments were of a private or domestic nature. Because of the taxpayer's ownership of shares in the investment company, these payments were of a private nature also.

The Court recognised that the accountant needed to make the payments in order to protect his reputation and maintain his relationship with the bank. If the payment had been in respect of a defaulting client of the taxpayer, rather than a private transaction, the deduction of the expenditure incurred to honour a moral obligation to the bank and to the client to protect the taxpayer's reputation might have been allowed.

Comment: The taxpayer will not be appealing this decision.

Whether lease inducement payments subject to GST

Rating: • • •

Case: TRA No. 91/24

Act: Goods and Services Tax Act 1985 - section 57(2)

Keywords: *lease inducement payment; partners; partnership*

Summary: A payment to partners in a registered partnership to induce the partnership to enter into a lease is payment for a deemed supply by the partnership and is subject to GST.

Facts: The objector is an accounting firm which is registered for GST. The firm was looking for new offices. The partners in the firm agreed to accept a lease inducement payment from a building owner. In return the partners induced the partnership into entering a twelve year lease of the building. The Commissioner assessed the partnership for GST on the lease inducement payment.

The partnership objected. The partner acting for the partnership submitted that the payment was made to the partners as individuals in their own right, not to the partnership. He said that the payment did not relate to services supplied by the partnership but to supplies made by the partners as individuals and the partners were not required to be registered for GST.

Decision: The TRA held that the Commissioner was correct in assessing the partnership for GST on the lease inducement payment.

The issue is whether there was a supply in the course of carrying on the partnership's taxable activity.

Finding and leasing premises from which to conduct a taxable activity is part of carrying on the taxable activity. The inducement payment was for a supply made by the partners. The supply was made by the partners in the course of carrying on the partnership's taxable activity and therefore section 57(2)(b) deems it to be made by the partnership.

The alternative submission for the Commissioner was that there was a supply by the partnership because the partners were acting as partners of the firm in signing the inducement agreement. Judge Barber said that, although he did not have to consider this submission, he agreed with it. The partners were acting for the firm in leasing the premises and it is artificial to try and separate the payment to the partners from the firm leasing business premises.

Comment: The taxpayers will not be appealing this decision.

Foreign exchange loss

Rating: • •

Case: FF Brown & Others v CIR HC Auckland M 934/92

Act: Income Tax Act 1976 - sections 71, 104 and 136
(Income Tax Act 1994 - CZ 1, BB 7, DJ 11)

Keywords: *loan, foreign exchange loss, capital, cost of borrowing, contingent, incurred*

Summary: The High Court overturned the TRA decision on an appeal by the taxpayer. The Court held that a foreign exchange loss on a loan was a cost of borrowing, was incurred, was not capital expenditure and therefore was deductible.

Facts: The taxpayers owned a motel complex. They wanted to obtain finance at a lower interest rate than was being charged in 1985. They arranged a loan with a New

Zealand bank sourced in Swiss francs. The New Zealand dollar depreciated against the Swiss franc which resulted in a foreign exchange loss.

As at February 1986 the loss was $155,953 and the taxpayers, as required by agreement, made a payment of $70,000. This reduced the loss to $85,953. The partial repayment made no capital reduction off the $550,000. The amount owing was $653,953 reduced from $705,953.

Decision: Justice Temm held that in this case it was not possible to make a ruling as to whether section 71 applies without examining the security documents. He held that section 71 will apply, if the transaction is a loan by the bank to the taxpayers of foreign currency, with repayment to be made in foreign currency. Section 71 will not apply if the transaction is a loan of New Zealand dollars to be repaid in New Zealand dollars, the amount due on repayment to be measured against the value of a given number of foreign currency at the time of repayment. Counsel were able to file a memorandum if a decision was required to be made on section 71.

If the true nature of the transaction is a loan in New Zealand dollars, the cost of the loan will comprise the interest paid in the usual way, and the cost to the taxpayers of borrowing the money on terms that required them to repay at a premium. The additional cost may be "expenditure incurred by the taxpayer ... in the borrowing of money employed by the taxpayer as capital in the production of assessable income" (section 136).

Justice Temm held that the payment of $70,000 was not a capital payment but was a reduction of the costs of borrowing. The Court held that the taxpayer incurred a foreign exchange loss of $155,953 in the 1986 year. This figure included $85,953 which the taxpayer had not paid in the 1986 year. In reaching this conclusion Justice Temm considered it was not relevant that the bank did not issue an invoice. He considered it relevant that the losses were calculated, assessed and debited against the bank account. Also, although the losses were not demanded at the time by the bank they could have been and the taxpayer would have had to pay.

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

Upcoming TIB items

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

Policy statements

- Applications to retain records in Maori
- Taxation of allowances and expenditure on account of an employee
- Liability of non-resident employers for FBT in New Zealand
- GST - specified agent for incapacitated person
- RWT on matrimonial property settlement interest

Public Binding Rulings

- Financial planning fees: income tax deductibility
- GST treatment of financial planning fees
- GST and supplies paid for in foreign currency
- Employers' liability to deduct PAYE from Employment Court awards for lost wages
- Tax deductions and bonus payments
- Netherlands social security pensions received by NZ residents who are not NZ citizens
- Debt forgiveness in consideration of natural love and affection
- Serviced apartments not exempt from conveyance duty
- GST and futures contracts
- GST treatment of school and kindergarten fees

Booklets available from Inland Revenue

This list shows all of Inland Revenue's information booklets as at the date of this Tax Information Bulletin. There is also a brief explanation of what each booklet is about.

Some booklets could fall into more than one category, so you may wish to skim through the entire list and pick out the booklets that you need. You can get these booklets from any IRD office.

For production reasons, the TIB is always printed in a multiple of eight pages. We will include an update of this list at the back of the TIB whenever we have enough free pages.

General information

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

Dealing with Inland Revenue (IR 256) - Apr 1993: *Introduction to Inland Revenue, written mainly for individual taxpayers. It sets out who to ask for in some common situations, and lists taxpayers' basic rights and obligations when dealing with Inland Revenue.*

Inland Revenue audits (IR 297) - May 1995: *For business people and investors. It explains what is involved if you are audited by Inland Revenue; who is likely to be audited; your rights during and after the audit, and what happens once an audit is completed.*

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

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

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

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

Problem Resolution Service (IR 287) - Nov 1993: *An introduction to Inland Revenue's Problem Resolution Service. You can use this service if you've already used Inland Revenue's usual services to sort out a problem, without success.*

Provisional tax (IR 289) - Jun 1995: *People whose end-of-year tax bill is over $2,500 must generally pay provisional tax for the following year. This booklet explains what provisional tax is, and how and when it must be paid.*

Putting your tax affairs right (IR 282) - May 1994: *Explains the advantages of telling Inland Revenue if your tax affairs are not in order, before we find out in some other way. This book also sets out what will happen if someone knowingly evades tax, and gets caught.*

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

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

Self-employed or an employee? (IR 186) - Apr 1993: *Sets out Inland Revenue's tests for determining whether a person is a self-employed contractor or an employee. This determines what expenses the person can claim, and whether s/he must pay ACC premiums.*

Special tax codes (IR 23G) - Jan 1995: *Information about getting a special "flat rate" of tax deducted from your income, if the regular deduction rates don't suit your particular circumstances.*

Stamp duty and gift duty (IR 665) - Mar 1995: *Explains what duty is payable on transfers of real estate and some other transactions, and on gifts. Written for individual people rather than solicitors and legal firms.*

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

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

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

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

Taxpayer Audit - (IR 298): *An outline of Inland Revenue's Taxpayer Audit programme. It explains the units that make up this programme, and what type of work each of these units does.*

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

Visitors Tax Guide - (IR 294) - Nov 1995: *An explanation of how New Zealand taxes apply to visitors to this country.*

Business and employers

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

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

Employers' guide (IR 184) - 1995: *Explains the tax obligations of anyone who is employing staff, and explains how to meet these obligations. Anyone who registers as an employer with Inland Revenue will receive a copy of this booklet.*

Entertainment Expenses (IR 268) - May 1995: *When businesses spend money on entertaining clients, they can generally only claim part of this expenditure as a tax deduction. This booklet fully explains the entertainment deduction rules.*

Fringe benefit tax guide (IR 409) - Nov 1994: *Explains fringe benefit tax obligations of anyone who is employing staff, or companies which have shareholder-employees. Anyone who registers as an employer with Inland Revenue will receive a copy of this booklet.*

GST - do you need to register? (GST 605) - May 1994 *A basic introduction to goods and services tax, which will also tell you if you have to register for GST.*

GST guide (GST 600) - 1994 Edition: *An in-depth guide which covers almost every aspect of GST. Everyone who registers for GST gets a copy of this booklet. It is quite expensive for us to print, so we ask that if you are only considering GST registration, you get the booklet "GST - do you need to register?" instead.*

IR 56 taxpayer handbook (IR 56B) - Apr 1995: *A booklet for part-time private domestic workers, embassy staff, nannies, overseas company reps and Deep Freeze base workers who make their own PAYE payments.*

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

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

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

Running a small business? (IR 257) Jan 1994: *An introduction to the tax obligations involved in running your own business.*

Surcharge deduction tables (IR 184NS) - 1994: *PAYE deduction tables for employers whose employees are having national super surcharge deducted from their wages.*

Resident withholding tax and NRWT

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

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

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

Resident withholding tax on dividends (IR 284) - Oct 1993: *A guide for companies, telling them how to deduct RWT from the dividends that they pay to their shareholders.*

Resident withholding tax on interest (IR 283) - Mar 1993: *A guide to RWT for people and institutions which pay interest.*

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

Non-profit bodies

Charitable organisations (IR 255) - May 1993: *Explains what tax exemptions are available to approved charities and donee organisations, and the criteria which an organisation must meet to get an exemption.*

Clubs and societies (IR 254) - Jun 1993: *Explains the tax obligations which a club, society or other non-profit group must meet.*

Education centres (IR 253) - Jun 1994: *Explains the tax obligations of schools and other education centres. Covers everything from kindergartens and kohanga reo to universities and polytechnics.*

Gaming machine duty (IR 680A) - Feb 1992: *An explanation of the duty which must be paid by groups which operate gaming machines.*

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

Company and international issues

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

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

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

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

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

Qualifying companies (IR 4PB) Oct 1992: *An explanation of the qualifying company regime, under which a small company with few shareholders can have special tax treatment of dividends, losses and capital gains.*

Child Support booklets

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

Child Support - a parent's guide (CS 1) - Mar 1992: *An in-depth explanation of Child Support, both for custodial parents and parents who don't have custody of their children.*

Child Support - an introduction (CS 3) - Mar 1992: *A brief introduction to Child Support.*

Child Support - does it affect you? (CS 50): *A brief introduction to Child Support in Maori, Cook Island Maori, Samoan, Tongan and Chinese.*

Child Support - how to approach the Family Court (CS 51) - July 1994: *Explains what steps people need to take if they want to go to the Family Court about their Child Support.*

Child Support - the basics - a guide for students: *A basic explanation of how Child Support works, written for mainly for students. This is part of the school resource kit "What about the kids?"*

Your guide to the Child Support formula (CS 68): *Explains the components of the formula and gives up-to-date rates.*

Child Support administrative reviews (CS 69A): *Explains how the administrative review process works, and contains an application form.*

Due dates reminder

December 1995

5 Large employers: PAYE deductions and deduction schedules for period ended 30 November 1995 due.

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

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

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

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

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

Small employers: PAYE deductions and deduction schedules for period ended 30 November 1995 due.

Gaming machine duty return and payment for month ended 30 November 1995 due.

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

RWT on dividends deducted during November 1995 due.

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

31 Student Loan repayments - third instalment of 1996 non-resident assessment due. *(We will accept payments received on Wednesday 3 January 1996 as on time.)*

January 1996

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

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

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

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

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

(For all amounts due on 7 January 1996, we will accept payments received on Monday 8 January 1996 as on time.)

15 GST return and payment for period ended 30 November 1995 due.

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

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

FBT return and payment for quarter ended 31 December 1995 due.

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

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

RWT on dividends deducted during December 1995 due.

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

(For all amounts due on 20 January 1996, we will accept payments received on Monday 22 January 1996 as on time.)

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

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

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

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

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

Name ____________________________________

Address ____________________________________

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	Ruling	***Date Available***	***Comment Deadline***
☐	**2584**: GST - when the supply of leasehold land is an exempt supply	1/12/95	19/1/96

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WELLINGTON

Attention Public Rulings Consultation

Contents continued - questions and legal case notes

Questions we've been asked (pages 19-25)

Legal decisions - case notes (pages 26-35)

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