

## Interpretation statements

This section of the TIB contains interpretation statements issued by the Commissioner of Inland Revenue. These statements set out the Commissioner's view on how the law applies to a particular set of circumstances when it is either not possible or not appropriate to issue a binding public ruling.

In most cases Inland Revenue will assess taxpayers in line with the following interpretation 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 the assessment we consider that the earlier advice is not consistent with the law.

## Tax deductions from directors' fees paid to GST registered person

### Summary

Directors' fees are withholding payments under the Income Tax (Withholding Payments) Regulations 1979. A company must deduct tax from directors' fees at the rate of 33 cents in the dollar unless one or more of the following applies:

- The director is an employee and the director's fees are incorporated into the director's overall remuneration package.
- The director is a shareholder-employee of a close company for the purposes of section OB 2 (2) of the Income Tax Act 1994.
- An exemption applies (e.g., the payment is for services rendered by a company or the recipient holds a valid certificate of exemption).
- The fees are paid to a company or the partners of a partnership for directorship services performed by an employee or partner, and are business income of the company or partners.
- The director holds a valid special tax code certificate which varies the rate at which the tax deductions must be made.

The fact that a director is registered for GST does not free the company from a liability to make tax deductions from directors' fees paid to him or her.

In this item, legislative references are to the Goods and Services Tax Act 1985 (the GST Act), or the Income Tax (Withholding Payments) Regulations 1979 (the Regulations) unless otherwise stated.

### Background

There has been some confusion as to whether companies must deduct tax under the Regulations, from directors' fees paid to directors who are registered for GST. Some commentators have incorrectly suggested that when a director is GST registered the company is not required to make tax deductions.

### Legislation

#### *Cross-reference table*

Income Tax Act 1994	Income Tax Act 1976
NC 2	338
Part NC	Part XI

Regulation 4 of the Regulations states:

- (1) Subject to the provisions of these regulations, all payments of the classes specified in the Schedule to these regulations are hereby declared to be withholding payments for the purposes of Part [NC] of the Act.
- (2) Notwithstanding anything in subclause (1) of this regulation, the following payments shall not be withholding payments for the purposes of Part [NC] of the Act, namely:
  - (a) Any payment that is salary or wages or an extra emolument:
  - (b) Any payment made in respect of or in relation to work done or services rendered by any public authority, local authority, Maori authority, or company, not being a company which is a non-resident entertainer or a non-resident contractor:
  - (c) Any payment exempted by an exemption certificate under regulation 5 of these regulations which bears the signature of the person to whom it is addressed and is produced to the person making the payment at the time when he makes the payment.

Regulation 5 of the Regulations states:

- (1) The Commissioner may in his discretion issue to any person an exemption certificate addressed to that person specifying any payments to be made to that person during the period specified in the certificate in respect of which no tax deductions shall be made, being payments which, but for the certificate, would be withholding payments:

Provided that this subclause shall not apply with respect to any payment to any non-resident entertainer.

...

Regulation 6 of the Regulations states:

- (1) Subject to the provisions of these regulations, every tax deduction from a withholding payment shall be of the

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amount calculated according to the amount of the payment at the appropriate rate specified in the Schedule to these regulations or, as the case may be, the amount or at the rate specified in a special tax rate certificate issued pursuant to regulation 6A of these regulations.

- (2) Subject to the provisions of these regulations, every tax deduction from a withholding payment shall be calculated according to the gross amount of the payment ...

Provided that where the gross amount of the payment includes any amount of goods and services tax and the payer holds a tax invoice issued by the payee pursuant to section 24 of the Goods and Services Tax Act 1985, that amount of goods and services tax shall not be included as part of the gross amount of that payment.

...

Part A of the Schedule to the Regulations includes, as withholding payments, company directors' fees. It states that the rate of tax deductions from directors' fees is 33 cents in the dollar.

Section 6(1) of the GST Act defines the term "taxable activity". Section 6(3) excludes from that term:

- (b) Any engagement, occupation, or employment under any contract of service or as a director of a company:

Provided that where any person, in carrying on any taxable activity, accepts any office, any services supplied by that person as the holder of that office shall be deemed to be supplied in the course or furtherance of that taxable activity ...

## How the legislation applies

### Tax deductions from directors' fees

The effect of regulation 4 and Part A of the Schedule to the Regulations is that directors' fees are withholding payments and are therefore source deduction payments. Section NC 2 of the Income Tax Act 1994 requires the payer to make tax deductions from source deduction payments. Tax must be deducted from directors' fees at the rate of 33 cents in the dollar, unless an exemption applies or the director holds a valid special tax code certificate.

The payer must make tax deductions from directors' fees whether or not the director is GST registered. There is nothing in the Income Tax Act, the Regulations, or the GST Act which states that tax deductions do not need to be made when the director is GST registered.

The proviso to regulation 6(2) of the Regulations states that if the payer holds a tax invoice issued by the director (or by the payer under a self-billing arrangement) under section 24 of the GST Act, the payer must make tax deductions from the GST exclusive amount of the fees. If the payer does not hold such a tax invoice, the payer must deduct tax from the gross amount of the fees inclusive of any amount of GST charged by the director.

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#### Example

A GST registered accountant carries on a taxable activity of providing accountancy services as a sole practitioner.

In the course of carrying on her taxable activity, the accountant is appointed as a director of a client company. She charges GST for services performed as a director, and issues a GST tax invoice to the company for those services.

Unless the accountant holds a certificate of exemption for her activities as a director, the company must deduct withholding tax from the directors' fees at the rate of 33 cents in the dollar. As the accountant has issued a GST tax invoice to the company for her services, the company should deduct withholding tax from the GST exclusive amount of the fees.

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## When tax deductions do not need to be made

The payer of directors' fees does not have to make tax deductions under the Regulations if any of the following exemptions set out in regulation 4(2) apply to the director:

- The payment is salary or wages, i.e., the director is employed by the payer. If this is the case, the directors' fees are monetary remuneration and the payer must deduct tax at the director/employee's standard PAYE deduction rate.

Directors' fees paid to a director who is also an employee are regarded as salary or wages if they are paid "in respect of or in relation to" the director/employee's employment. Whether the fees are paid in respect of or in relation to the director/employee's employment depends on the terms of that employment and whether it includes the duties of directorship. If the director/employee is engaged and remunerated separately for his or her services as a director (e.g., if there is a separate contract in relation to the directorship and the director/employee receives the fees in the same way as the other (non-employee) directors) the directors' fees are withholding payments.

- The payment is for services rendered by a public authority, local authority, Maori authority, or company. Payments to companies are discussed further below.
- The director has an exemption certificate. Regulation 5 states that the Commissioner may issue a certificate of exemption at his discretion. In exercising his discretion, the Commissioner generally only issues a certificate of exemption to a business taxpayer who has a proven record of good accountability to Inland Revenue for returns and payments, e.g., if the applicant has a good record as a provisional taxpayer. The certificate will specify that no tax deductions are to be made from payments for the activity stated on the certificate, and will state the period for which the certificate is valid.

The payer of directors' fees does not have to make tax deductions under the Regulations if the director is a shareholder-employee in a close company for the

purposes of section OB 2 (2) of the Income Tax Act 1994. If this is the case, section OB 2 (2) deems the directors' fees not to be source deduction payments, so the payer does not have to deduct tax from the payments.

A director may apply to the Commissioner for a special tax code certificate. Under regulation 6A, the Commissioner has the discretion to issue such a certificate specifying that tax is to be deducted at the rate set out in the certificate. This rate may be lower than the standard tax deduction rate for directors' fees.

### **Directors' fees paid to a company or partnership**

Under section 151 of the Companies Act 1993 a company cannot be a director. In some cases an employee of a company ("the employer company") may be elected to the board of directors of another company as the agent or representative of the employer company. An example of when this could occur is when the employer company provides financial or other specialist advice to the other company or when the employer company is a major corporate shareholder of the other company.

Regulation 4(2) of the Regulations states that payments for work done or services rendered by a company are not withholding payments. In this case the employee who is the director is acting on the employer company's behalf, as its agent or representative, when he or she acts as director. As the employee is acting on behalf of the employer company, the directors' fees are for services rendered by the employer company and are not withholding payments.

A member of a partnership who is elected to the board of directors of a company may be required, under the partnership agreement, to have his or her directors' fees paid into the partnership account. If a company pays directors' fees to a partnership account under the terms of a partnership agreement, in return for a partner performing directorship services, the fees are business income of the partners and the Commissioner will not require the paying company to make tax deductions from the payment of directors' fees. Section NC 13 of the Act gives the Commissioner authority to reduce the amount which is required to be deducted from a source deduction payment in this way.

## 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.

### Agreements for sale and purchase of property denominated in foreign currency: discounted value of amounts payable

#### Determination G21A

This Determination may be cited as "Determination G21A: Agreements for Sale and Purchase of Property Denominated in Foreign Currency: Discounted Value of Amounts Payable".

#### 1. Explanation (which does not form part of this determination)

##### What financial arrangements does this determination apply to?

(1) This determination applies to any agreement for the sale and purchase of property (or 'ASAP') which is subject to the accrual rules, if the price for the property is denominated in a foreign currency (a 'foreign currency ASAP'), and certain other conditions are met. It does not apply to a short term ASAP or a private or domestic ASAP (as those terms are defined in the Act), because these agreements are excepted financial arrangements.

##### General principles of taxation of foreign currency ASAPs

(2) For all ASAPs (whether or not denominated in a foreign currency) which are subject to the accrual rules, you must calculate a core acquisition price. This is the total of

- (a) (i) the lowest price that you and the other party would have agreed upon for the property at the time the ASAP was entered into, on the basis of payment in full at the time the first right in the specified property is to be transferred; or
  - (ii) if there is no such lowest price, the discounted value of the amounts payable for the property as determined under a determination; or
  - (iii) if there is no such lowest price, and no applicable determination, the value of the property provided by the seller; and
- (b) any other amounts paid by the seller to the buyer (for purposes of explanation, these can safely be ignored).

(3) This determination prescribes the method for determining the discounted value, in the foreign currency, of the amounts payable for the property, as set out in paragraph (2)(a)(ii).

(4) For these purposes any amount determined in a currency other than NZ\$ is required to be discounted

using an interest rate appropriate to the currency. This determination requires the use of a foreign currency interest rate ascertained as at the rights date using a method consistent with *Determination G13A: Prices or Yields* - this interest rate is the interbank offer rate for the currency and the term of the foreign currency ASAP.

(5) The amounts payable are then discounted to the rights date, using the interest rate so ascertained and present value calculation Method A in Determination G10B: Present Value Calculation Methods or an alternative method producing not materially different results.

(6) Once this amount has been determined, you must convert it into NZ\$, using one of the following rates:

- forward rate to rights date (Rate A);
- forward rate to settlement date (Rate B);
- spot rate at rights date (Rate C);
- spot rate at contract date (Rate D); or
- spot rate at settlement date (Rate E);

as set out in paragraph (5) of Method. Use of these rates is subject to certain restrictions, set out in paragraphs 3(2),(3),(4) and (5) below.

(7) Having calculated the NZ\$ value of the core acquisition price, you must calculate your income or expenditure from the foreign currency ASAP using the corresponding method in Determination G29.

(8) The NZ\$ value of the foreign currency lowest price is also the price at which the property is deemed to have been sold or acquired by you for income tax purposes (under section EH 8 (2)).

##### How does this determination differ from G21?

(9) This determination differs from Determination G21 by:

- (a) removing the option to discount future amounts payable under a foreign currency ASAP using a NZ\$ interest rate;
- (b) removing the requirement to convert the discounted value of amounts payable using the spot rate on the rights date.

#### 2. Reference

(1) This determination is made pursuant to section 90 (1)(h) of the Tax Administration Act 1994.

(2) This determination rescinds and replaces *Determination G21: Discounted Value of Amounts Payable in Relation to Deferred Property Settlements Denominated in a Foreign Currency*, with effect from the 1996/97 income year.

### 3. Scope of determination

(1) Subject to paragraphs (2), (3), (4) and (5), this determination applies to the calculation of income or expenditure under any foreign currency ASAP:

- (a) if there is no lowest price; and
- (b) with respect to which you become a party in your 1996-97 income year or a subsequent income year.

(2) This determination does not apply:

- (a) To any deferred property settlement where more than 20% of the sum of all the amounts payable is due before 31 days prior to the rights date; or
- (b) Where in relation to any deferred property settlement any amount payable, or the date on which any amount is payable, is not known at the first balance date of the person after the transfer date; or
- (c) Where the term of the deferred property settlement is not known at the first balance date after the transfer date.

(3) You may use Rate B only if the period between the rights date and the settlement date (date of final payment) of the foreign currency ASAP is not more than five years.

(4) You may use Rates C and D only if the property that is the subject of the foreign currency ASAP is trading stock in relation to you, other than land or shares.

(5) You may use Rate E only if the aggregate of your gross income (as defined in the Act) and that of all associated persons, in the income year you became a party to the foreign currency ASAP, does not exceed \$2,500,000. For this purpose, gross income should be adjusted by excluding any income from foreign currency ASAPs which are subject to section EH 1 in the income year.

### 4. Principle

(1) Under the qualified accrual rules a foreign currency ASAP gives rise to income or expenditure equal to the difference between the NZ\$ value of the acquisition price of the ASAP and the NZ\$ value of the price.

(2) The acquisition price is equal to the core acquisition price less (in the case of the holder) or plus (in the case of the issuer) any non-contingent fees paid by that party that qualify as item z in the definition of core acquisition price in the Act.

(3) The core acquisition price is defined in section OB 1. In the case of an ASAP, the definition provides that in certain circumstances, the core acquisition price should be the discounted value of the amounts payable for the property, determined under a determination made by the Commissioner.

(4) This determination provides for the determination of the discounted value of the amounts payable for the property under a foreign currency ASAP. The discounted value must be calculated.

(a) in the base currency as if it were New Zealand \$;

(b) using an interest rate appropriate for the currency, the rate being a rate ascertained using a method consistent with Determination G13A, Prices or Yields, that is the foreign interbank offer rate appropriate to the term of the foreign currency ASAP;

(c) by then converting that amount to NZ\$ using an appropriate rate as set out in paragraph (5) of Method.

(5) You will have to spread any income or expenditure arising from the ASAP using the method in Determination G29 which is applicable to the rate you have used.

### 5. Interpretation

In this determination:

(1) a reference to the 'Act' is a reference to the Income Tax Act 1994;

(2) 'Acceptable present value calculation method' means calculation Method A in Determination G10B: Present Value Calculation Methods, or an alternative method producing not materially different results:

'ASAP' means an agreement for sale and purchase of property which is subject to the accrual rules;

'Foreign currency ASAP' means an ASAP under which the price for the property the subject of the ASAP is denominated in a foreign currency;

'Forward rate' means the rate for a forward contract as defined in paragraph 6(4) of Determination G6D: Foreign Currency Rates;

'Interbank offer rate' in relation to a term means the rate at which a bank makes funds available to another bank which is a highly reliable credit risk and a trader in the market for such funds and for such a term; and includes, according to the circumstance, the rates collectively referred to as "LIBOR" and "SIBOR";

'Lowest price' is the lowest price referred to in paragraph (c) of the definition of 'core acquisition price';

'Price' means the Foreign Currency price agreed to be paid in consideration for the property under an ASAP, including any agreed interest charges;

'Rights date' is the day on which the first Right in the specified property subject to an ASAP is to be transferred;

'Specified property' means property that is acquired or sold pursuant to a deferred property settlement;

'Spot rate' means the exchange rate for a spot contract as defined in *Determination G6D: Foreign Currency Rates*;

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- (3) all other terms used have the same meaning given to them for the purposes of the qualified accruals rules in the Act.

*As an aid to interpretation only, and not as a definitive list, the following are the terms defined in the Act that are of particular note: right in the specified property, agreement for the sale and purchase of property.*

## 6. Method

(1) For the purposes of paragraph (ii) of the definition of "w" in the definition of the core acquisition price in section OB 1, you must calculate the discounted value of the foreign currency amounts payable for the property subject to a foreign currency ASAP to which this determination applies by summing -

- (a) Every amount payable to or, as the case may be, by you for the property on or before the rights date expressed in the foreign currency; and
- (b) The amount of foreign currency equal in value to the present value as at the rights date of amounts payable to or, as the case may be, by the person for the property after the rights date.

(2) For the purposes of this determination, the present value as at rights date of amounts payable shall be calculated by applying an acceptable present value calculation method to the interest rate determined under subclause (3).

(3) The annual rate of interest at which the present value of the amounts payable is required to be calculated shall be: the interbank offer rate for the currency and the term of the foreign currency ASAP at rights date, being a market yield determined in a manner consistent with Determination G13A: Prices or Yields. For this purpose the spot rate and the forward rate are to be determined in accordance with Determination G6D: Foreign Currency Rates.

(4) The present value of the amounts payable together with any deposit or other amounts paid on or before the rights date is the amount "w" to be used to calculate the core acquisition price.

(5) This amount is then converted to NZ\$ using one of the following rates as appropriate;

- (a) the rate, on the contract date, available to the taxpayer from a New Zealand registered bank for the exchange of NZ\$ for that foreign currency on the rights date (Rate A); or
- (b) the rate, on the contract date, available to the taxpayer from a New Zealand registered bank for the exchange of NZ\$ for that foreign currency on the settlement date (Rate B); or
- (c) Spot rate on the rights date (Rate C)
- (d) Spot rate on the contract date (Rate D)
- (e) Spot rate on payment (Rate E).

(6) The core acquisition price shall be used to determine the acquisition price of a foreign currency ASAP in accordance with section OB 1.

(7) In a year before the year in which you are required to do a base price adjustment for the foreign currency ASAP, calculate your income or expenditure by applying the Method in Determination G29 which corresponds with the rate you use to determine the NZ\$ value of the core acquisition price.

## 7. Example

(1) A commercial property is sold for US\$1,400,000 under a sale and purchase agreement subject to certain repairs being made to the building. An initial deposit of \$140,000 is made on 1 February 1989. On 1 March 1989 repairs on the building are complete and the sale becomes unconditional. The balance of US\$1,260,000 is due six months after the date possession passes. Possession of the property passes on 15 March 1989. Therefore the term of the arrangement is 15 March 1989 to 15 September 1989 - 184 days.

The purchaser's balance date is 31 March.

The USD/NZD exchange rates for the various dates are -

1 February 1989	0.5600
15 March 1989	0.5800
31 March 1989	0.5750
15 September 1989	0.5700

In this case the purchaser is the "issuer" for the purposes of the accruals legislation.

(2) The US interbank offer rate on 15 March 1989 for a period of six months is 8.0 percent ascertained using a method consistent with Determination G13A: Prices or Yields.

(3) Method A of Determination G10B: Present Value Calculation Methods, is applied to calculate the present value as at 15 March 1989 (the "specified date") as follows -

$$\begin{aligned}
 R &= 8.0 \text{ percent (the specified rate)} \\
 N &= 2 \text{ (since the payments are at half yearly intervals)} \\
 F &= \frac{R}{100 \times N} \\
 &= 0.04
 \end{aligned}$$

(a) At 15 March 1989:

$$\begin{aligned}
 A &= 0 \\
 B &= \$1,260,000 \\
 C &= 0
 \end{aligned}$$

Therefore present value at 15 March 1989

$$\begin{aligned}
 &= \frac{A + B - C}{1 + F} \\
 &= \text{US\$1,211,538}
 \end{aligned}$$

(b) To this total must be added US\$140,000 deposit, giving a total present value of US\$1,351,538, which is the item "w" used in calculating the core acquisition price.

Determination signed the 16th day of September 1996

Robin Oliver  
General Manager  
Policy Advice Division

# Agreements for sale and purchase of property denominated in foreign currency: exchange rate to determine the acquisition price and method for spreading income and expenditure

## Determination G29

This Determination may be cited as “Determination G29 : Agreements for Sale and Purchase of Property Denominated in Foreign Currency: Exchange Rate to Determine the Acquisition Price and method for spreading income and expenditure”.

### 1. Explanation (which does not form part of this determination)

#### What financial arrangements does this determination apply to?

(1) This determination applies to any agreement for the sale and purchase of property (or ‘ASAP’) which is subject to the accrual rules, if the price for the property is denominated in a foreign currency (a ‘foreign currency ASAP’), and certain other conditions are met. It does not apply to a short term ASAP or a private or domestic ASAP (as those terms are defined in the Act), because these agreements are excepted financial arrangements.

#### General Principles of taxation of foreign currency ASAPs

(2) For all ASAPs (whether or not denominated in a foreign currency) which are subject to the accrual rules, you must calculate a core acquisition price. This is the total of:

(a) the lowest price that you and the other party would have agreed upon for the property at the time the ASAP was entered into, on the basis of payment in full at the time the first right in the specified property is to be transferred; or

if there is no such lowest price, the discounted value of the amounts payable for the property, calculated in accordance with Determination G21A;

and

(b) any other amounts paid by the seller to the buyer (for purposes of explanation, these can safely be ignored).

(3) The difference, if any, between the NZ\$ value of the core acquisition price (plus or minus certain non-contingent fees) and the NZ\$ value of the amount paid by the buyer to the seller (the price) is income or expenditure, under the accrual rules. This difference may arise for a number of reasons:

(a) In the case of an ASAP where the price is fixed in NZ\$, the reason for this difference will generally be the time value of money. If the buyer pays in advance for the goods, the buyer will often require a

discount from the cash price. If the buyer pays on a deferred basis, the seller will often require an additional amount as compensation for the deferral. This can be equivalent to:

- a loan from the buyer to the seller in the case of a pre-payment, with the discount to the purchase price representing interest payable by the seller; or
- a loan from the seller to the buyer in the case of a deferred settlement, with the additional amount required by the seller representing interest payable by the buyer.

(b) In the case of a foreign currency ASAP, there can be another reason for the difference between the NZ\$ value of the core acquisition price and the NZ\$ value of the price paid by the buyer to the seller. That is that different exchange rates could be used to convert these amounts into NZ\$. The price must be converted into NZ\$ using the spot exchange rate on payment date, while the core acquisition price is converted into NZ\$ using the forward exchange rate from the contract date to either the date of payment or the date of transfer of the property. If the exchange rates are different, then there will be a difference between the NZ\$ value of the core acquisition price and the NZ\$ value of the price, even if the amounts are identical when determined in the foreign currency.

(4) Regardless of why it arises, this difference will be recognised:

- under section EH 1 (5) of the Act, if you are a party to the ASAP at the end of an income year, by way of an allocation of income or expenditure to that income year;
- under the base price adjustment in section EH 4 of the Act, when the ASAP matures or is transferred by you.

(5) Section OB 7 (1) deals with the calculation of the core acquisition price in the case of a foreign currency ASAP. It provides that the lowest price is the lowest price the parties would have agreed to in the foreign currency, converted into NZ\$ using:

- the forward exchange rate, on the contract date, for exchange of the foreign currency into NZ\$ on the rights date (this is the date on which first rights in the property pass to the buyer, and will often be the date on which goods are delivered) under the foreign currency ASAP (Rate A); or
- the forward exchange rate, on the contract date, for exchange of the foreign currency into NZ\$ on the

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final payment date under the foreign currency ASAP (Rate B); or

- such other rate as is approved by the Commissioner by determination.

### What this determination does

(6) This determination approves the adoption of three alternative exchange rates for converting the foreign currency lowest price into NZ\$. This is in accordance with paragraph (c) of section OB 7 (1) (which clarifies the calculation of the 'core acquisition price' in the case of a foreign currency ASAP) and section 90 (1)(k) of the Tax Administration Act 1994. This determination also prescribes the method you must use to calculate income or expenditure from a foreign currency ASAP under section EH 1 (5). The method you must use depends on the exchange rate you have used. The rates approved by this determination are:

- **Spot rate on the rights date** (Rate C). The effect of using this rate is that currency fluctuations between the rights date and the payment date will give rise to income or expenditure under the accrual rules. This rate can only be used for ASAPs which are for trading stock (excluding land or shares). If you use this rate you must apply Method C to calculate income or expenditure from the ASAP under section EH 1 (5).
- **Spot rate on the contract date** (Rate D). The effect of using this rate is that currency fluctuations between the contract date (the date on which you enter into the ASAP) and the payment date will give rise to income or expenditure under the accrual rules. This rate can only be used for ASAPs which are for trading stock (excluding land or shares). If you use this rate you must apply Method D to calculate income or expenditure from the ASAP under section EH 1 (5).
- **Spot rate on payment date** (Rate E). The effect of using this rate is to ensure that foreign currency fluctuations do not give rise to accrual income or expenditure under the foreign currency ASAP. You can only use Rate E if your annual gross income is less than \$2,500,000 in the income year you become a party to the ASAP. In calculating that amount, you should exclude income from foreign currency ASAPs not completed at balance date. As an anti-avoidance measure, in calculating the \$2,500,000 you must also take into account the annual gross income of associated persons. If you use this rate you must apply Method E to calculate income or expenditure from the ASAP under section EH 1 (5).

(7) The NZ\$ value of the foreign currency lowest price is also the price at which the property is deemed to have been sold or acquired by you for income tax purposes (under section EH 8 (2)). If you use Rate E and Method E, you may have to convert the relevant payments into NZ\$ using the spot rate at the first balance date following acquisition of the property. This ensures that the price can be established in the year the property is transferred to you.

## 2. Reference

This determination is made under paragraphs (c) and (k) of section 90 (1) of the Tax Administration Act 1994.

## 3. Scope

### General

(1) Subject to (3), (4) and (5) below, this determination applies to the calculation of income or expenditure under any foreign currency ASAP with respect to which you either:

- become a party in your 1996-97 income year or a subsequent income year; or
- calculate the core acquisition price using section OB 7 (1)(a),(b) or (c), under section EZ 10 (2).

(2) Method A is available to all taxpayers for all foreign currency ASAPs if they use Rate A.

(3) Method B is available to all taxpayers who use Rate B, which may only be used if the period between the rights date and the settlement date (date of final payment) is not more than five years.

(4) Rates C and D, and Methods C and D

You may use rates C or D, and Methods C or D only if the property that is the subject of the ASAP is trading stock in relation to you, other than land or shares.

(5) Rate E and Method E

You may apply Rate E and Method E only if the aggregate of your gross income (as defined in the Act) and that of all associated persons, in the income year you became a party to the foreign currency ASAP, does not exceed \$2,500,000. For this purpose, gross income should be adjusted by excluding any income from foreign currency ASAPs which are subject to section EH 1 in the income year.

(6) Where both this determination and Determination G9A could apply to an ASAP, you should apply this determination, and not Determination G9A to the ASAP. You may however apply G9A to a loan which is part of the ASAP (see paragraph 6(4)).

## 4. Principle

(1) Under the qualified accrual rules a foreign currency ASAP gives rise to income or expenditure equal to the difference between the NZ\$ value of the acquisition price of the ASAP and the NZ\$ value of the price.

(2) The acquisition price is equal to the core acquisition price, less (in the case of the holder) or plus (in the case of the issuer) any non-contingent fees paid by that party that qualify as item z in the definition of acquisition price in section OB 1.

(3) The core acquisition price is defined in section OB 1. The main component of the core acquisition price is, broadly, the lowest price the parties would have



agreed upon, assuming payment in full at the time of delivery. You should refer to the detailed definition of core acquisition price contained in the Act.

(4) In the case of a foreign currency ASAP, the lowest price is denominated in a foreign currency, and must be converted into NZ\$. Section OB 7 allows the use of two forward rates, Rates A and B (contained in paragraphs (a) and (b) of section OB 7 (1) and described in paragraph 1(5) of this determination), but not all taxpayers will wish to use forward rates. This determination approves the use of the spot rate on certain alternative dates.

(5) If you are a party to an ASAP you will have to determine the lowest price, using either one of the statutory rates, or one of the rates prescribed by this determination. You will then have to spread any income or expenditure arising from the ASAP using the method described in this determination which is applicable to the rate you are using.

## 5. Interpretation

In this determination:

(1) a reference to the "Act" is a reference to the Income Tax Act 1994.

(2) 'ASAP' means an agreement for sale and purchase of property which is subject to the accrual rules;

'Contract date' means the date on which the foreign currency ASAP was entered into;

'Foreign currency ASAP' means an ASAP under which the price for the property the subject of the ASAP is denominated in foreign currency;

'Forward rate' means the rate for a forward contract as defined in paragraph 6(4) of *Determination G6D: Foreign Currency Rates*;

'Lowest price' is the lowest price referred to in paragraph (c) of the definition of "core acquisition price";

'Payment date' means a date on which any part of the price for the property transferred under an ASAP is paid by the buyer;

'Price' means the foreign currency price agreed to be paid in consideration for the property under an ASAP, including any agreed interest charges;

'Rights date' is the day on which the first right in the specified property subject to an ASAP is to be transferred;

'Settlement date' means the day on which final payment is to be made under the financial arrangement;

'Spot rate' means the rate for a spot contract as defined in paragraph 6(3) *Determination G6D: Foreign Currency Rates*.

(3) all other terms used have the same meaning given to them for the purposes of the qualified accruals rules

in the Act.

*As an aid to interpretation only, and not as a definitive list, the following are the terms defined in the Act that are of particular note: right in the specified property, trading stock, associated persons, agreement for the sale and purchase of property.*

## 6. Rate and method - general

(1) All the methods approved by this determination require you to treat yourself as a party to a foreign currency loan or loans. The nature of the foreign currency loan or loans is set out in paragraphs (2) to (4).

(2) To the extent that the price is paid before the rights date, treat yourself as a party to a loan:

- from the buyer to the seller;
- of an amount equal to the amount of the price paid before the rights date;
- advanced on the date the amounts are paid;
- repaid on the rights date;
- with a repayment amount equal to the amount of the lowest price, less any amount paid on the rights date, and less the amount attributable to the advance under any loan referred to in (3).

(3) To the extent that the price is paid after the rights date, treat yourself as a party to a loan:

- from the seller to the buyer;
- of an amount equal to the lowest price, less any amount paid on the rights date, and less any amount attributable to the repayment of any loan referred to in (2);
- advanced on the rights date;
- repaid on the payment date or payment dates occurring after the rights date;
- with a repayment amount equal to the price, less any amount paid on or before the rights date.

(4) In many cases you may be able to apply Determination G9A to the loan.

## 7. Method A - forward rate to rights date

(1) If you adopt method A you must use Rate A to calculate the NZ\$ value of the lowest price.

(2) In a year before the year in which you are required to do a base price adjustment for the foreign currency ASAP, calculate your income or expenditure by applying an available method under the qualified accruals rules as if you were party to a loan or loans as set out above in 'Method - General'.

Also take into account, as income or expenditure in any year up to and including the year in which the rights date occurs, the amount

*continued on page 10*

from page 9

a - b

where

'a' is the NZ\$ value of the lowest price converted using either

- (i) if the rights date is after the end of the year, the forward rate from the last day of the relevant income year to the rights date;
- (ii) in any other case, the spot rate on rights date.

'b' is the NZ\$ value of the lowest price converted using the forward rate to the rights date from whichever is the later of:

- (i) the last day of the previous income year;
- (ii) the contract date.

using a reasonable estimate of the rights date at that time (unless a(ii) applies).

(3) If a - b is a negative, this amount will be income if you are the buyer, and expenditure if you are the seller. If a - b is a positive, the amount will be income if you are the seller, and expenditure if you are the buyer.

## 8. Method B - forward rate to settlement date

(1) If you adopt method B, you must use Rate B to calculate the NZ\$ value of the lowest price.

(2) In a year before the year in which you are required to do a base price adjustment for the foreign currency ASAP, calculate your income or expenditure by applying an available method under the qualified accruals rules to calculate the foreign currency income or expenditure you would have if you were party to a foreign currency loan or loans as set out above in 'Method - General'.

(3) In calculating this income or expenditure, treat the foreign currency loan or loans as if they were in NZ\$. In particular, do not apply Determination G9A to the loan contract. Then convert the foreign currency income or expenditure into NZ\$ using the spot rate on the payment date. If there is more than one payment date, use the weighted average of the spot rates. For payment dates occurring after the last day of the year, use the spot rate on that day.

(4) Also take into account as income or expenditure in any year up to and including the year in which the settlement date occurs, the amount

a - b

where

'a' is the NZ\$ value of the lowest price converted using either

- (i) if the settlement date is after the end of the year, the forward rate from the last day of the relevant income year to the settlement date;
- (ii) in any other case, the spot rate on settlement date.

'b' is the NZ\$ value of the lowest price converted using the forward rate to the settlement date from whichever is the later of:

- (i) the last day of the previous income year;
- (ii) the contract date.

using a reasonable estimate of the settlement date at that time (unless a(ii) applies).

(5) If a - b is a negative, this amount will be income if you are the buyer, and expenditure if you are the seller. If a - b is a positive, the amount will be income if you are the seller, and expenditure if you are the buyer.

## 9. Rate C and method C - spot rate at rights date

(1) If you adopt Method C, you must use rate C to calculate the NZ\$ value of the lowest price.

(2) In a year before the year in which you are required to do a base price adjustment for the foreign currency ASAP, calculate your income or expenditure by applying an available method under the qualified accruals rules as if you were party to a loan or loans as set out above in 'Method - General'.

(3) Because you are using the spot rate at rights date to convert the foreign currency core acquisition price to NZ\$, you will not have any income or expenditure for tax purposes in the period between the contract date and the earlier of the rights date or the first payment date.

## 10. Rate D and method D - spot rate at contract date

(1) If you adopt Method D, you must use Rate D to calculate the NZ\$ value of the lowest price.

(2) If you adopt Method D, then even if there is no difference between the foreign currency price and the foreign currency lowest price, you will have income/expenditure if there is a change in the spot rate from the contract date to the payment date.

(3) In a year before the year in which you are required to do a base price adjustment for the Foreign currency ASAP, calculate your income or expenditure by applying an available method under the qualified accruals rules as if you were party to a loan or loans as set out above in 'Method - General'.

(4) Because you are using the spot rate at contract date to convert the foreign currency core acquisition price to NZ\$, you must take into account as income or expenditure, in any year up to and including the year in which the rights date occurs, the amount

a - b

where:

'a' is the NZ\$ value of the lowest price converted using the spot rate on the earlier of the last day of the relevant income year and the rights date

'b' is the NZ\$ value of the lowest price converted using the spot rate on whichever is the later of the last day of the previous income year and the contract date.

(5) If a - b is negative, this will be income if you are the buyer, and expenditure if you are the seller. If a - b is positive, this will be income if you are the seller, and expenditure if you are the buyer.

## 11. Rate E and method E- spot rate at payment date

(1) If you adopt Method E, you must use Rate E to calculate the NZ\$ value of the lowest price, subject to (2)(ii) below. If there is more than one payment date, you must use the weighted average of the spot rates on the payment dates.

(2) If you need to know the NZ\$ price of the property for the purpose of calculating your assessable income for an income year (other than under the qualified accrual rules), and any payments under the foreign currency ASAP are made after the end of the relevant year, you must determine the NZ\$ value of the lowest price by converting those payments into NZ\$ at either:

(i) the spot rate on the payment date if the agreement is completed before you are required to file your income tax return for the relevant year, and you elect to use that rate; or

(ii) the spot rate on the last day of the relevant year.

(3) If you choose to use Method E, and if there is no difference between the foreign currency price and the foreign currency lowest price (plus any amount comprised in item x in the core acquisition price definition), you will have no income or expenditure under the qualified accruals rules from the foreign currency ASAP (unless paragraph 2(ii) applies).

(4) In a year before the year in which you are required to do a base price adjustment for the foreign currency ASAP, calculate your income or expenditure from the ASAP as the result of

$$a - b - c$$

where:

'a' is the NZ\$ value of the price. Determine this NZ\$ value by converting the price into NZ\$ using the spot rate on the payment date or payment dates. Convert any payments required to be made after the end of the year:

at the spot rate on the last day of the year; or

if the agreement matures before the date on which you must file your tax return for the year, at the spot rate on the relevant payment date, if you elect to use that rate;

'b' is the NZ\$ value of the lowest price. Determine this NZ\$ value by converting the lowest price into NZ\$ using the spot rate used to calculate 'a', or the

weighted average of the spot rates if there is more than one payment date. However, if you have taken the cost of the property into account in calculating your assessable income (other than under the qualified accrual rules) in a previous income year, you must calculate the NZ\$ value of the lowest price using the same exchange rate used to calculate the lowest price in that previous income year.

'c' is the NZ\$ value of the unaccrued difference between the price and lowest price, calculated in accordance with paragraph (6).

(5) If the result of the calculation in paragraph (4) is positive, that amount will be income if you are the seller of the property and expenditure if you are the buyer. If the result is negative, the amount will be income if you are the buyer of the property and expenditure if you are the seller.

(6) 'c' in paragraph (4) is calculated as follows:

Apply an available method under the accrual rules to calculate the foreign currency income or expenditure you would have if you were a party to a foreign currency loan or loans as set out above in "Rate and Method - General". In calculating this expenditure, treat the foreign currency loan or loans as if they were in NZ\$. In particular, do not apply Determination G9A to the loan contract;

Convert this foreign currency income or expenditure into NZ\$ using the exchange rate used to calculate 'a' in paragraph (4).

## 12. Example

(1) A US resident agrees to sell a quantity of plate glass to a New Zealand resident glass wholesaler for US\$140,000. The parties agree that the price will be paid six months after the glass is landed in Auckland, and will remain the seller's risk until it is landed. The parties also agree that if the price were paid at the time the glass is landed, the price would be US\$130,000.

(2) The New Zealand resident wholesaler must calculate the 'lowest price' by converting the US\$130,000 to NZ\$ using one of the rates set out in section OB 7 (1) of the Act, or in this determination. The difference between that amount in NZ\$, and US\$140,000 at the spot rate on payment date, will be income or expenditure to the New Zealand resident. It must then apply the appropriate method to spread that income or expenditure over the life of the ASAP.

Determination signed the 16th day of September 1996.

Robin Oliver  
General Manager  
Policy Advice Division

The appendix to this TIB contains examples of how this determination applies.

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## Summary flowchart - calculating accrual income from foreign currency agreements for sale and purchase

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This chart is included for illustration purposes only. It does not form part of the determination.

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### **FBT prescribed interest rate increased to 11.5%**

The prescribed rate of interest used to calculate the fringe benefit value of low-interest employment-related loans has been increased to 11.5% for the quarter starting on 1 October 1996. This rate will continue to apply to subsequent quarters until any further adjustment is made.

This prescribed rate, up from 10.6% for the quarter starting on 1 July 1996, is a reflection of the recent rise in market rates.

## 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.

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## Income Tax Act 1994

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### Non-resident withholding tax on interest and swap payments

**Section NG 2 (section 311, Income Tax Act 1976) - Non-resident withholding income and swap payments:** Taxpayers have asked us whether payments made to non-residents under swaps are non-resident withholding income subject to non-resident withholding tax (NRWT) or approved issuer levy. This issue turns on whether the swap payments are "interest" and the swaps themselves are "money lent" under section OB 1 (section 2, Income Tax Act 1976).

For conventional swaps, such as Interest Rate Swaps, Interest Swaps, Currency Swaps, Interest Rate and Currency Swaps, or Interest and Currency Swaps as defined in accruals rules *Determination G27: Swaps*, NRWT or approved issuer levy will not be payable. The Commissioner accepts that conventional swaps do not involve money advanced, deposited, or let out; or credit given or any other form of "money lent". Swap payments on such swaps are accordingly not "interest" for NRWT or approved issuer levy purposes. This applies even when swaps involve actual, as opposed to notional, exchanges of principal.

However, swaps are flexible financial instruments. One or a combination of swaps can be used to create what is effectively a loan from a non-resident to a resident.

For example, a non-resident may make what is effectively a floating rate loan to a resident by entering into a fixed to floating interest rate swap that provides for the non-resident to make fixed rate swap payments and the resident to make floating rate swap payments. The parties may have intended from the outset, and arrange, for the swap to be converted into a synthetic loan by the non-resident pre-paying its fixed rate obligations before the first payment is made.

The Commissioner generally expects NRWT or approved issuer levy to be paid for such a synthetic loan. Depending on the particular circumstances, the Commissioner may consider applying the general anti-avoidance provision in section BB 9 (section 99, Income Tax Act 1976) when NRWT is not paid.

Certain submissions to the Commissioner have argued that the wording of the current section NG 3 (section 317, Income Tax Act 1976) prevents the Commissioner from applying section BB 9 to impose NRWT. The Commissioner disagrees with that view. The legislative ambiguity that gave rise to this argument has been removed by the Taxation (Core Provisions) Act 1996. The issues will be discussed in a forthcoming Tax Information Bulletin on the Act.

Similar considerations apply with respect to swaps transacted between residents and the resident withholding tax regime.

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## Legal decisions - case notes

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

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

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

### Losses carried forward not deductible when calculating Family Support

- Case:** TRA 96/17, 96/20
- Act:** Income Tax Act 1976 - sections 188 and 374B, D, E
- Keywords:** Assessable income, losses
- Summary:** The objector was not able to deduct losses carried forward from previous years when determining her assessable income, nor could she deduct them when calculating her entitlement to Family Support and guaranteed minimum family income. In any case, the objector was not entitled to Family Support and guaranteed minimum family income beyond 1992 as her child had turned 18 years old.
- Facts:** The objector had rental losses from previous years. The Commissioner excluded these losses from the objector's assessable income when calculating her family support and guaranteed minimum family income entitlement.
- Decision:** The TRA applied the decision of *Case S10*, in which it was held that "assessable income cannot include losses carried forward because assessable income and losses are mutually exclusive ... as is recognised by section 188." The TRA held that the application of section 188, which allows losses to be offset against future profits, is limited to cases in which relief is sought from income tax liability; it is irrelevant for the purpose of determining assessable income, and in calculating a taxpayer's entitlement to Family Support and guaranteed minimum family income.
- The objector was not entitled to Family Support or guaranteed minimum family income beyond 1992 as her child had turned 18 years old in that year. In addition, the Commissioner's discretion under sections 374D (1) and 374E(2) of the Income Tax Act 1976 to permit entitlement beyond that date had not been exercised.

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### Property sale not zero-rated as supply of a going concern

- Case:** TRA No 96/34
- Act:** Goods and Services Act 1985 - section 11(1)(c)
- Keywords:** *Zero-rated supply of a going concern*
- Summary:** The TRA found that the sale of the objector's property was not a sale of a "going concern". The sale was not a zero-rated supply under section 11 and therefore was subject to output tax.
- Facts:** The objector is a registered person carrying on a business as a market gardener. The objector entered into an agreement to sell a piece of property to a horticulturist who was a registered person. The settlement date was 1 September 1994.

The objector did not return output tax on the sale of the property, but the purchaser claimed and was allowed an input credit.

**Decision:** The objector submitted that it had transferred a tomato growing business to the purchaser as a “going concern”.

The TRA did not accept the objector’s submission, and held there was no evidence to suggest an intention that the vendor agreed to sell, and the purchaser agreed to buy such a business. Moreover, the evidence indicated that there was no sale of a business. The agreement form was not a usual one used for the sale of a business. There was no reference to the sale of the business in the agreement, nor was there any reference to goodwill, restraint of trade, inspection of accounts, or other similar references usually included in an agreement for the sale of a business. The TRA also put some weight on the fact that the purchaser now uses the land and structures for carrying out his own business, growing pot plants and shrubs for hire.

### Property sale not zero-rated as supply of a going concern

**Case:** TRA No 96/16

**Keywords:** *Supply of a taxable activity as a “going concern”*

**Summary:** The TRA found that there was no business activity going on at a property at the time of its transfer to the objector, so there was no supply of a taxable activity in the form of a “going concern”.

**Facts:** The objector entered into a sale and purchase agreement with the vendor in April 1993 for a piece of commercial property. The objector settled and took possession of the property in June 1993.

The property had been leased by the vendor prior to the agreement for a period of 3 years with a termination date in October 1993. The tenants of the lease had been in default, and the vendors sued them for rental for the months of April 1993, May 1993, and June 1993. The tenants vacated the property in May 1993.

**Decision:** The TRA found that there was no supply of a taxable activity in the form of a “going concern” as there was no undertaking of a business or commercial nature in existence at the time of the agreement. The business undertaking had ceased before the sale, and therefore did not pass to the objector. The transfer of assets capable of being used for some business activity is not in itself the transfer of a “going concern”.

The TRA found the relevant time for determining whether a “going concern” exists is the date at which the purchaser takes over the assets as per the agreement between the parties. At settlement, the commercial element of the relationship, a sitting tenant, ready, willing, and able to pay rent for the property was absent.

### Time limit for amending assessments - when it runs from

**Case:** TRA No 93/103, TRA No 95/21

**Act:** Income Tax Act 1976 - section 25 and section 99

**Keywords:** *Statute bar, time limit for reassessments, tax avoidance*

**Summary:** The TRA found that the Commissioner could not re-open the objector’s assessment. The four year time limit under section 25 applies to the first assessment

made and the last reassessment in time to be made. The last assessment increased the tax payable, and as it was made out of time it was illegal and a nullity.

**Facts:**

1. Inland Revenue issued an income tax assessment in June 1990 for \$311,270.40. This was amended in March 1994 to \$428,246.56 and again in August 1994 to \$750,246.56. After Inland Revenue received an objection from the taxpayer the assessment was further amended to \$428,246.56 in June 1995.
2. The objector borrowed \$10 million from Company A and paid interest in advance of \$417,772. The objector then purchased shares in a subsidiary company which on-lent the share price to another subsidiary. This money was advanced to Company C (who issued a debenture) and paid interest in advance of \$375,860. Company C then purchased a "bearer bond" with a face value of \$10 million in the name of Company A. This bearer bond was ultimately transferred to Company A. The debenture was transferred to the objector's account with Company A, and the bearer bond was used to extinguish the objector's loan with Company A.

The interest paid by Company C was a non-taxable receipt which ultimately was paid to the objector. Therefore, the objector received a deduction of \$417,772 at an actual cost of \$41,912.

**Decision:**

1. The TRA held that the Commissioner was unable to reopen the assessment because section 25 only applies to the first assessment made and the last reassessment in time to be made. The last assessment increased the tax payable from \$311,270.46 to \$428,246.56, so it was made out of time, and was illegal and a nullity.

Earlier assessments were cancelled by subsequent amended assessments. Although, the TRA concluded that it may follow that an unlawful assessment cannot have any legal effect including the effect of amending any earlier assessment, nevertheless, the Commissioner did not seek to rely on the assessment dated 31 August 1994.

2. The TRA held that the arrangements entered into by the objector were for the purposes of tax avoidance. The transaction was circular and lacked economic reality. The tax effect was not incidental as the profit on the transaction was the tax saved. However, given that the assessment was unlawful such conclusions are obiter and may not be enforced.

The Commissioner is appealing this decision.



## Due dates reminder

### October 1996

- 5 Large employers: PAYE deductions and deduction schedules for period ended 30 September 1996 due.
- 7 Provisional tax and/or Student Loan interim repayments: first 1997 instalment due for taxpayers with June balance dates.  
Second 1997 instalment due for taxpayers with February balance dates.  
Third 1997 instalment due for taxpayers with October balance dates.  
  
1996 end of year payments due (income tax, Student Loans, ACC premiums) for taxpayers with November balance dates.  
  
Annual income tax returns due to be filed for all non-IR 5 taxpayers with June balance dates.  
  
QCET payment due for companies with November balance dates, if election is to be effective from the 1997 year.
- 20 Large employers: PAYE deductions and deduction schedules for period ended 15 October 1996 due.  
  
Small employers: PAYE deductions and deduction schedules for period ended 30 September 1996 due.  
  
FBT return and payment for quarter ended 30 September 1996 due.  
  
Gaming machine duty return and payment for month ended 30 September 1996 due.  
  
RWT on interest deducted during September 1996 due for monthly payers.  
  
RWT on interest deducted 1 April 1996 to 30 September 1996 due for six-monthly payers.  
  
RWT on dividends deducted during September 1996 due.  
  
Non-resident withholding tax (or approved issuer levy) deducted during September 1996 due.
- 30 GST return and payment for period ended 30 September 1996 due.

### November 1996

- 5 Large employers: PAYE deductions and deduction schedules for period ended 31 October 1996 due.
- 7 Provisional tax and/or Student Loan interim repayments: first 1997 instalment due for taxpayers with July balance dates.  
Second 1997 instalment due for taxpayers with March balance dates.  
Third 1997 instalment due for taxpayers with November balance dates.  
  
Annual income tax returns due to be filed for all non-IR 5 taxpayers with July balance dates.  
  
1996 end of year payments due (income tax, Student Loans, ACC premiums) for taxpayers with December balance dates.  
  
QCET payment due for companies with December balance dates, if election is to be effective from the 1997 year.
- 20 Large employers: PAYE deductions and deduction schedules for period ended 15 November 1996 due.  
  
Small employers: PAYE deductions and deduction schedules for period ended 31 October 1996 due.  
  
Gaming machine duty return and payment for month ended 31 October 1996 due.  
  
RWT on interest deducted during October 1996 due for monthly payers.  
  
RWT on dividends deducted during October 1996 due.  
  
Non-resident withholding tax (or approved issuer levy) deducted during October 1996 due.
- 29 GST return and payment for period ended 31 October 1996 due.




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

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

We must receive your comments by the "Comment deadline" shown if we are to take them into account in the finalised item. 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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 <b>Public binding rulings</b>	<b>Comment Deadline</b>
<input type="checkbox"/> <b>3009:</b> Taxation of payments under the Local Government Act 1974 to local authority members	31/10/96
<input type="checkbox"/> <b>3105:</b> GST - Time of supply when payments made by cheque, credit card, or charge card	31/10/96
<input type="checkbox"/> <b>3123:</b> FBT - value of the benefit of subsidised transport provided by employers to employees	31/10/96
<input type="checkbox"/> <b>3549:</b> Deductibility of interest repayments imposed as a result of the early repayment of a financial arrangement	31/10/96



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September 1996

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### Questions we've been asked

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

### Legal decisions - case notes

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

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