

TAX INFORMATION BULLETIN

Volume Eight, No.6

October 1996

Contents

Interpretation statements

| | |
|--------------------------------------------------------------------|---|
| GST - Supplies of dwellings and other real property | 1 |
| Long service leave - when expenditure on account is incurred | 5 |

Legislation and determinations

| | |
|----------------------------------------------------------|----|
| Marquees - depreciation determination DEP18 | 8 |
| Scaffolding - draft depreciation determination | 9 |
| Tags (security) - draft depreciation determination | 10 |

Binding rulings

| | |
|------------------------------------------------------------------|----|
| NZ Guardian Trust Company Ltd's NZGT30 Fund (BR Prd 96/25) | 12 |
| NZ Guardian Trust Company Ltd's NZGT30 Fund (BR Prd 96/28) | 14 |
| Binding ruling BR Prd 96/9 withdrawn | 16 |

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.

General interest items

| | |
|---------------------------------------------------------------------------------------------------------------|----|
| Booklets available from Inland Revenue | 20 |
| Due dates reminder | 22 |
| Public binding rulings and interpretation statements: your chance to comment before we finalise them | 23 |

This TIB has no appendix



Inland Revenue
Te Tari Taake

ISSN 0114-7161

This is an Inland Revenue service to people with an interest in New Zealand taxation.

Contents continued - legal case notes

| | | |
|--------------------------------------|-----------------------------------------------------------------|----|
| High Court CP 1287/95, 1288/95 | Lump sum tenancy inducement payments - assessability | 17 |
| TRA 95/013 | Letter of credit - time of payment for GST taxable supply | 17 |
| TRA 96/114 and 96/059 | Severance of employment payments - assessability | 18 |
| TRA 93/WN/029 | Company strike-off - effect on case stated proceedings | 19 |

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.

GST - Supplies of dwellings and other real property

Summary

This item deals with the apportionment of consideration between, and the valuation of, supplies of dwellings and other real property for GST purposes.

Sections 5(15) to 5(19) essentially reverse the decision in *Coveney v CIR* (1995) 17 NZTC 12,193 (see page 32, TIB Volume Seven, No.9 - February 1996). If a supply includes a dwelling, section 5(15) deems the supply of the dwelling to be a separate supply from the supply of any other real property included in the supply.

A dwelling includes that area surrounding the dwelling that is necessary for its enjoyment. Any apportionment of the consideration for the supply of a dwelling and other real property must reflect the true respective values of the dwelling and the surrounding land.

The onus of proof that an apportionment is correct is on the person seeking to rely on the apportionment. To satisfy this onus it may be necessary to support the apportionment with a valuation. In cases of doubt and/or involving significant amounts of consideration, Inland Revenue may require a valuation from a registered valuer.

When the supplier and recipient are both GST registered, the same apportionment, as set out in the tax invoice, will apply to both parties. Ideally, this should be negotiated between the parties and agreed at the time of supply.

For GST registered purchasers, the same dwelling valuation applies for GST and stamp duty purposes.

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

Background

Sections 5(15) to 5(19) were inserted into the Act by the Goods and Services Tax Amendment Act (No. 2) 1995, and essentially apply to all supplies made on or after 11 August 1995. Those provisions reverse the decision in *Coveney v CIR* (1995) 17 NZTC 12,193 and expressly provide that if a dwelling forms part of a wider supply, the supply of the dwelling is a separate supply.

This position is consistent with the Commissioner's policy before the *Coveney* decision: see page 2 of TIB Volume Three, No. 5 (March 1992).

For GST purposes the supply of the dwelling and the other real property must be separately valued. Certain issues have arisen as to when and how dwellings are valued. In particular, instances have arisen when suppliers and recipients have adopted different valuations. There have also been cases when purchasers of dwellings have used different valuations for GST and stamp duty purposes.

Legislation

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

Section 2 defines "dwelling" as:

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

Section 5 defines the meaning of "supply". Section 5(15) states:

Where a dwelling is included in a supply, the supply of that dwelling is deemed to be a separate supply from the supply of any other real property included in the supply.

Section 5(16) deals with the situation when a registered person has claimed an input tax deduction for a dwelling (before the introduction of the amending legislation), and then supplies that dwelling or any part of that dwelling. It states:

Where a registered person has claimed a deduction in accordance with section 20(3) of this Act in respect of the supply of a dwelling, any subsequent supply by the registered person of -

- (a) The dwelling; or
- (b) Any land or other part of the dwelling that has ceased or will by reason of the supply cease to be appurtenant to or enjoyed with the dwelling, -

will, for the avoidance of doubt but subject to subsections (17), (18), and 19(b) of this section, be deemed to be a taxable supply.

Section 5(16) does not apply when before the supply of the dwelling the registered person has taken either of these actions:

continued on page 2

from page 1

- made a one-off adjustment under section 21(1) (and no further one-off adjustment under section 21(5)): section 5(17)
- elected to treat the dwelling as being supplied by the registered person before 1 August 1996: section 5(19).

Under section 5(18), if a registered person has claimed an input tax deduction for only a proportion of a dwelling, then any subsequent supply of the dwelling is only a taxable supply to the extent that the proportion claimed bears to the whole dwelling.

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

“Input tax”, in relation to a registered person, means-

- (a) Tax charged under section 8(1) of this Act on the supply of goods and services made to that person:....
- (c) Any amount equal to the tax fraction (being the tax fraction applicable at the time of supply within the meaning of section 9 or any other provision of this Act) of the consideration in money for the supply, being a supply by way of sale that is not a taxable supply, to a registered person of any secondhand goods situated in New Zealand,... -

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

Provided that where, in relation to any supply to which paragraph (c) of this definition applies, the supplier and recipient are associated persons, or the supply is not the only matter to which the consideration relates, the consideration in money for that supply shall, for the purposes of this definition, be deemed to be the lesser of the purchase price or the open market value of that supply:

Under section 10(18), if a taxable supply is not the only matter to which a consideration relates, the supply is deemed to be for such part of the consideration as is properly attributable to it.

Section 24(3) sets out the particulars to include within a tax invoice. Section 24(3)(g) requires that a tax invoice includes either:

- the total amount of the tax charged, the consideration, excluding tax, and the consideration, inclusive of tax for the supply; or
- when the amount of tax charged is the tax fraction of the consideration, the consideration for the supply and a statement that it includes a charge in respect of the tax.

Application

Section 5(15) deems the supply of a dwelling forming part of a wider supply to be a separate supply. For example, the supply of farm land that includes a farmhouse, and the supply of a commercial office building with a penthouse apartment. If a dwelling is supplied along with other real property it is necessary to identify the physical area of the dwelling, and the consideration that relates to the dwelling, and the area and consideration that relates to the other real property.

Definition of “dwelling”

The definition of dwelling, and in particular what is meant by the words “together with any appurtenances belonging thereto and enjoyed with it” has been considered by the courts.

In *Norfolk Apartments Ltd v CIR* (1995) 17 NZTC 12,212 the Court of Appeal held that common areas and facilities offered within a retirement village complex were appurtenances to the individual dwellings within the complex. The whole of the land surrounding the apartments was laid out in driveway, paths, gardens and landscaped grounds for the use and enjoyment of residents. All of the land was integral to and within the curtilage of the building. In the course of its judgment the Court considered authorities on the meaning of “appurtenances” for single, domestic dwellings: *Trim v Sturminster Urban District Council* [1938] 2 All ER 168, and *Methuen-Campbell v Walters* [1979] 1 All ER 606.

The *Trim* case considered the word “appurtenances” in a statutory definition of “house”. It held that it has its natural meaning and could not extend to cover land outside the curtilage of the house. Farm land adjacent to the house was not an appurtenance.

In *Methuen-Campbell* the issue was whether a paddock adjoining the garden of a dwelling-house was an appurtenance to the house. A fence separated the paddock from the garden, although access had once been available through a now boarded-up gate in the fence. The defendant argued that an appurtenance included anything used and occupied with or for the benefit of the principal land.

Reviewing the development of the law in this area, the Court in *Methuen-Campbell* concluded that “appurtenances” equates to the curtilage of a house. The Oxford English Dictionary defines “curtilage” as “a small court, yard, or piece of ground attached to a dwellinghouse and forming one enclosure with it”. What is within the curtilage is essentially a question of fact in each case. The paddock did not form part of the curtilage, being well apart from the house and physically separated from the garden. The paddock did not form an integral whole with the dwelling.

Case M64 (1990) 12 NZTC 2,363 also considered the definition of “dwelling”. Bathgate DJ stated (at page 2,368) that the definition:

... would normally apply only to the land upon which the dwelling stood, and that, perhaps, immediately adjacent thereto, including, depending on the circumstances, land for access to and from the dwelling. It would not under the definition of “dwelling”, in the Act, include necessarily the whole of the allotment on which the dwelling was erected. As a rule appurtenances apply more to rights affecting the land, such as easements, rather than land itself. An appurtenance is something that belongs to another, an accessory to a principal. Normally with regard to a house, the word “appurtenance” will pass with the house, the rights, privileges and accessories thereto, such as gardens and orchards close by and used by the houseowner, but not the land - *Trim v Sturminster Rural District Council* (*supra*).

Determining what part of a wider supply is the supply of a dwelling will involve an examination of the facts of the case to ascertain what is the curtilage, i.e., the physical area belonging to and enjoyed with the place of residence.

Output tax on supplies of dwellings and other real property

Section 5(15) deems that if a dwelling forms part of a wider supply, the supply of the dwelling is a separate supply. This means that the applicability of GST to the supply of the dwelling is considered separately from the other supply. Generally, GST will not be chargeable on the supply of the dwelling because it will not be supplied in the course or furtherance of the supplier's taxable activity. It will generally be the supply of a private or exempt asset.

The exceptions are:

- The dwelling is supplied in the course or furtherance of the supplier's taxable activity, e.g. a builder or property developer;
- An input tax deduction has been claimed for all or a part of the dwelling (and sections 5(17) to 5(19) do not apply): section 5(16).

If a dwelling is a supply of a private or exempt asset, no GST will be payable on the part of the total consideration that relates to the dwelling.

When the other real property is supplied in the course or furtherance of the supplier's taxable activity, GST will be payable on that supply. In such a case, section 24(3)(g) requires the tax invoice relating to the supply of the other real property to state the consideration for that supply. As a consequence, the supplier needs to determine what part of the total consideration is for the dwelling and what part is for the other real property. Ideally, this should be negotiated between the parties and agreed at the time of supply.

When a sale and purchase agreement does not apportion the consideration for the supply of a dwelling and other real property, the tax invoice issued by the supplier will determine the amount of GST payable on the supply of the other property. Under section 10(18) that consideration must be that part of the total consideration that is properly attributable to it. The onus of proof that the apportionment is correct is on the person seeking to rely on the apportionment. The GST supplier may need to support the apportionment with a valuation. As discussed below, in cases of doubt and/or involving significant consideration, Inland Revenue may require a valuation from a registered valuer.

Input tax on supplies of dwellings and other real property

A GST registered purchaser of a dwelling and other real property may wish to claim an input tax deduction for the consideration paid. Input tax deductions are only available for supplies of goods or services acquired for the principal purpose of making taxable supplies - "the

principal purpose test". By virtue of section 5(15), this test applies separately to the supply of the dwelling and the supply of other real property.

Generally, a dwelling will not be acquired for the principal purpose of making taxable supplies: it will be a private or exempt asset. For example, the purchase of a farm that includes a farmhouse. When the other real property satisfies the principal purpose test, an input tax deduction is only available for the consideration paid for that property.

If the supplier is GST registered, the tax invoice will indicate the amount of GST that is claimable in relation to the supply of the other real property (section 20(2)(a)). This is an important point for GST registered purchasers and their advisers. The amount of input tax that may be claimed by a GST registered purchaser is limited to the amount of GST shown on the tax invoice as having been paid for the other real property. Accordingly, as noted above, ideally the apportionment of the total consideration should be negotiated between the parties and agreed at the time of supply to circumvent later disputes over what part of the consideration is properly attributable to the other real property.

If a purchaser acquires, by way of sale, a dwelling and other real property from a non-registered vendor, or from a GST registered vendor who is not supplying the property in the course or furtherance of a taxable activity, no GST will be payable on the supplies. However, by virtue of paragraph (c) of the definition of "input tax" in section 2, the purchaser may claim an input tax deduction if real property is acquired by way of sale for the principal purpose of making taxable supplies. Again, the principal purpose test applies separately to the supply of the dwelling and the supply of the other real property.

In such cases, the proviso to the definition of "input tax" deems the consideration for the supply of the other real property to be the lesser of the purchase price or the open market value of that supply. (This is because the supply of the other real property is not the only matter to which the consideration relates.) If the sale and purchase agreement apportions the total consideration between the dwelling and the other real property, the consideration for the other real property is the lesser of the apportioned amount and its open market value. If the sale and purchase agreement does not apportion the total consideration, the consideration for the other real property is equal to its open market value.

As noted, the onus of proof that an apportionment is correct is on the person seeking to rely on the apportionment. A GST registered purchaser may need to support the apportionment with a valuation. As discussed below, in cases of doubt and/or involving significant consideration, Inland Revenue may require a valuation from a registered valuer.

When the purchaser intends to use a part of the curtilage for the making of taxable supplies, or part of the other real property for the dwelling, on-going periodic section 21 adjustments will apply to that part.

continued on page 4

Stamp duty

The Stamp and Cheque Duties Act 1971 (“SCD Act”) imposes conveyance duty on instruments of conveyance for certain transfers of real property. Conveyance duty is borne by the purchaser. Under section 24(1) of that Act, a transfer of a dwellinghouse is exempt from conveyance duty. The section 24(3) definition of “dwellinghouse” is defined in very similar terms to the GST definition of “dwelling”, being:

a building, or part of a building, that is a house, flat, townhouse, home unit, or similar dwelling erected primarily and principally as a residence, and includes any land, improvements, or appurtenances belonging to the dwellinghouse or usually enjoyed with it.

Section 24(2) of the SCD Act provides that if conveyed property consists partly of a dwellinghouse and partly of other property:

such proportion of the value of the property conveyed as the Commissioner determines is not attributable to the purposes of occupation as a dwellinghouse shall be subject to conveyance duty as if the instrument of conveyance related to that proportion of the property only.

The same area is “appurtenant” to a dwelling for GST and stamp duty purposes. The definitions of “dwelling” (in the SCD Act) and “dwellinghouse” (in the GST Act) do not differ in any material way. The definition of “dwellinghouse” expressly includes “land”, “improvements”, and “appurtenances”. However, these features are only included to the extent that they belong and are usually enjoyed with the dwellinghouse. The definition of “dwelling” includes all appurtenances that belong to the dwelling and are enjoyed with it. As seen, the courts have interpreted “appurtenances” to include land and improvements as well as rights affecting land.

Therefore, for both stamp duty and GST purposes the relevant area will be the curtilage, i.e. the physical area belonging to and enjoyed with the place of residence. Accordingly, purchasers who acquire dwellings and other real property should adopt the same valuation of the dwelling for both purposes.

Section 24(2) also provides an exemption from conveyance duty for conveyances of residential property up to 4,500 square metres. This exemption does not apply to conveyances of residential property with other property. In the case of conveyances of residential property with other property, purchasers cannot adopt a curtilage of 4,500 square metres as a matter of right. The exemption for conveyances of residential property with other property applies to the actual curtilage. The same curtilage area applies for both stamp duty and GST purposes.

Under section 24(2) of the SCD Act, stamp duty is payable on the proportion of the value of the property conveyed that the Commissioner determines is not attributable to the purposes of occupation as a dwellinghouse.

Method of valuation

If a dwelling is supplied with other real property, a valuation may be necessary when:

- A GST registered supplier and recipient cannot agree on the value of the dwelling and the other real property;
- A GST registered supplier needs to issue a tax invoice and the sale and purchase agreement does not apportion the consideration;
- A GST registered recipient wishes to claim an input tax deduction for the other real property under paragraph (c) of the definition of “input tax”.

In some cases a valuation may also be necessary for the calculation of on-going periodic section 21 adjustments.

As noted, the onus of proof that a particular apportionment and the method adopted to reach that apportionment are correct, is on the party seeking to rely on the apportionment. The method of valuation depends on the circumstances of the case. The method adopted should reflect the true value of the property. Different circumstances may require different methods. For example, the item on page 2 of TIB Volume Two, No. 8 (April 1991) acknowledges that an area apportionment may not always be appropriate. In some cases it may be more appropriate to value residential land on farm properties by comparison with sales of residential properties in nearby rural townships.

Ideally, the valuation should be made by a registered valuer. In cases of doubt and/or significant consideration, Inland Revenue may insist on a valuation by a registered valuer. If registered persons are in doubt as to whether they need to obtain a valuation from a registered valuer, they should contact their local Inland Revenue office.

Any valuation relied upon needs to identify the method of valuation and reasons for adopting that method.

Example

A GST registered farmer negotiates to sell a 225 hectare farm that includes two farmhouses. The farmer and his family occupy the main farmhouse. A fenced garden area of 4,000 square metres surrounds the farmhouse. There is an adjacent paddock of 5,000 square metres, known as the “home paddock” that includes a chicken coop, the vegetable garden and various small sheds.

Farm employees and their families occupy the second farmhouse from time to time. It is fenced on two sides, has a hedge on one side and a stream running along the fourth side. The area within these boundaries measures 4,750 square metres. The area includes a garage, a few trees and a washing line. There is no garden.

Section 5(15) applies to the supply of the farm property. It deems each supply of a dwelling to be separate from the supply of the balance of the farm land.

The farmer has not claimed an input tax deduction in accordance with section 20(3) in the case of either farmhouse. Neither supply of a farmhouse is a taxable supply. The main farmhouse is a private asset, being principally used for private accommodation. The second farmhouse is an exempt asset, being either let or licensed to farm employees (section 14(c)(i) and (ii)) or occupied under a service occupancy agreement by farm employees (section 14(c)(iii)). Accordingly, only the supply of the farm land is subject to GST.

The physical area of the dwelling in each case is:

- Main farmhouse - 4,000 square metres. The home paddock is not part of the curtilage of the farmhouse. Although enjoyed in part with the farmhouse (vegetable garden and chicken coop), it is predominantly an area relating to the farm. The area is physically divided off from the farmhouse. It is reasonable to treat the fenced area immediately surrounding the farmhouse as its curtilage.
- Second farmhouse - 4,750 square metres. Although fairly large, it is reasonable to treat this area as appurtenant and enjoyed with the farmhouse. This area is physically divided off from the surrounding farm land by both artificial and natural features.

Anticipating selling the property, the farmer has recently had the farm independently valued by a registered valuer. The valuation (exclusive of GST) shows:

| | |
|-----------------------------------|------------------|
| Farm (land and farm improvements) | \$700,000 |
| Dwellings | <u>\$150,000</u> |
| Total value | \$850,000 |

The farmer negotiates to sell the farm for \$875,000 plus GST, to a GST registered purchaser who is acquiring the farm to carry on a taxable activity of farming. The sale is not a sale of a going concern.

In finalising the terms of the sale and purchase agreement, the parties agree that the purchase price shall be apportioned between the farm as to \$725,000 and the dwellings as to \$150,000. (The purchaser is prepared to accept this price and the apportionment, having received his own valuation.)

The sale and purchase agreement includes the following details:

| | |
|--------------------------------------|------------------|
| Consideration | \$875,000 |
| GST (\$725,000 x 12.5%) | <u>\$ 90,625</u> |
| Total purchase price (including GST) | \$965,625 |

Apportionment of consideration:

| | |
|-----------|-----------|
| Farm | \$725,000 |
| Dwellings | \$150,000 |

The farmer issues a tax invoice to the purchaser for the taxable supply of the farm. In accordance with section 24(3)(g) the tax invoice shows:

| | |
|-------------------------------------------------|------------------|
| The total amount of the tax charged | \$ 90,625 |
| The consideration, excluding tax | <u>\$725,000</u> |
| The consideration for the supply, including GST | \$815,625 |

The purchaser is entitled to claim an input tax deduction of \$90,625.

The purchaser must pay conveyance duty on the value of the property not attributable to the purposes of occupation as a dwellinghouse. Accordingly, conveyance duty is payable on \$815,625 (the GST inclusive value).

Long service leave - when expenditure on account is incurred

Summary

This item states the Commissioner's new policy on when an employer "incurs" expenditure on account of long service leave. Under the new policy, the Commissioner accepts that an employer incurs expenditure for long service leave in the income year that an employee becomes unconditionally entitled to payment for the leave.

Note that section EF 1 will apply to expenditure on account of long service leave which is incurred in income years starting from 1 April 1990. The effect of this provision is that expenditure on account of long service leave is deductible in the year that it is incurred, but that deduction must be added back to the employer's assessable income until the income year that the long service leave payments are made to the employee.

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

Background

Public Information Bulletin 111 (May 1981) set out the Commissioner's previous policy on when an employer incurred expenditure on account of long service leave. Under the previous policy, an employer incurred such expenditure and could claim a deduction for that expenditure only when the employee took the leave, died, or had his or her service terminated. The Commissioner's policy as stated in PIB 111 no longer applies.

The Commissioner's policy in PIB 111 has been amended following the Commissioner's decision not to appeal the High Court decision of *Colonial Mutual Life Assurance Society Limited (Life Branch) v CIR* (1994) 16 NZTC 11,341 ("CML"). In CML the Court considered the issue of when a liability for long service leave was incurred by an employer under the previous life insurance regime, and held that the expenditure was incurred by CML when an employee became unconditionally entitled to payment for the leave. The High

continued on page 6

from page 5

Court's approach in CML was confirmed in another High Court decision, *King Country Electric Power Board v CIR* (1995) 17 NZTC 12,122.

Legislation

Cross-reference table

| Income Tax Act 1994 ¹ | Income Tax Act 1994 ² | Income Tax Act 1976 |
|----------------------------------------|-------------------------------------|----------------------------|
| BD 2 | BB 7 | 104 |
| EF 1 | EF 1 | 104A |
| OB 2 (2) | OB 2 (2) | 6(2) |
| Tax Administration Act 1994 | | Income Tax Act 1976 |
| 37(5) | | 17(6) |
| 126(2) | | 30(2) |

1. as amended by the Taxation (Core Provisions) Act 1996

2. prior to amendment by the Taxation (Core Provisions) Act 1996

Section BB 7 is the general deductibility section which allows an employer to deduct any expenditure incurred in gaining or producing assessable income or in carrying on a business for the purposes of gaining or producing assessable income.

The timing of such deductions was modified in certain situations by the insertion of section EF 1 with effect from the income year starting on 1 April 1990. The effect of section EF 1 is that employers have to include the "unexpired portion" of monetary remuneration (such as expenditure on account of long service leave) in their assessable income. The "unexpired portion" of expenditure on account of long service leave is expenditure incurred for long service leave which has not been paid to the entitled employee in the income year or further specified period.

Section EF 1 (6) deems monetary remuneration (such as expenditure on account of long service leave) to be paid in an income year in either of the following situations:

- For payments made to employees (other than shareholder-employees to whom section OB 2 (2) applies), if the money is **actually paid to the employee** in that income year, or if the money is paid to the employee within 63 days after the end of that income year.
- For payments made to shareholder-employees to whom section OB 2 (2) applies (close company shareholder-employees), if the money is **actually paid to the shareholder-employee** in that income year or, if the company has obtained an extension of time for filing its income tax return under section 37(5) of the Tax Administration Act 1994, if the money is paid to the shareholder-employee no later than 31 March of the year succeeding the relevant income year. This time extension for filing tax returns gives a period of 6 to 18 months to claim a deduction for such expenditure, depending on the company's balance date.

How the legislation applies

Expenditure on account of long service leave is incurred by an employer in the income year that an employee becomes unconditionally entitled to payment for such leave, even if payment for the long service leave is not actually made until some time later. An employee becomes unconditionally entitled to payment for long service leave when the employee has the right to demand payment.

The fact that an employee may lose the right to long service leave if his or her employment is terminated for misconduct etc., does not operate to defer the time when the expenditure is incurred by an employer.

No deductions allowable while long service leave is accruing

Expenditure accrued by an employer on account of employees who are in the process of qualifying for long service leave is not incurred by or deductible to the employer in the year it accrues, because an employee has no right to demand payment of the long service leave at that stage. An employee only has the right to demand payment when he or she has satisfied the conditions of employment under which a right to long service leave arises.

Post-1990 expenditure in respect of long service leave

The practical effect of section EF 1 is that, while an employer may have incurred expenditure on account of long service leave, a deduction for such expenditure is delayed until such time as payments for the long service leave are paid to the entitled employee. Section EF 1 applies to expenditure incurred from the income year commencing 1 April 1990.

Applying the change in policy on "incurred"

The Commissioner's new policy on when expenditure on account of accrued long service leave is "incurred" is applicable to all current claims and objections to assessments. Taxpayers may also apply to the Commissioner under section 126(2) of the Tax Administration Act 1994 for a late objection to be considered.

Examples

Example 1

Employee A's employment contract with Company Y states that she is entitled to 10 days' long service leave after 15 years' employment with Company Y.

On 15 February 1987, Employee A celebrated 15 years' employment with Company Y, and became entitled to take long service leave. She had the right to demand immediate payment at that time. However, because of work commitments she decided to take her long service leave in June later that year.

Company Y incurred, and was entitled to deduct, the leave expenditure on 15 February 1987, even though it was not required to make payment on account of the long service leave until June later that year. Section EF 1 did not apply to this expenditure because it was incurred before 1 April 1990.

Example 2

Employee B's employment contract with Company Y states that he is entitled to 5 days' long service leave after 5 years' employment with Company Y.

Employee B started employment with Company Y on 14 March 1995. On 14 March 1996 he has had one year's service with Company Y.

Company Y is not entitled as at 14 March 1996 to make a proportionate deduction for expenditure on account of Employee B's accruing leave. This is because Employee B is in the process of qualifying as a long service employee and does not have any present right to demand payment. Company Y must wait until Employee B has satisfied the conditions of employment under which a right to long service leave arises (i.e. the condition that he has been employed with Company Y for 5 years).

Example 3

Employee C's employment contract with Company Y states that he is entitled to 10 days' long service leave after 10 years' employment with Company Y.

On 28 February 1996, Employee C celebrated 10 years' employment with Company Y, and became entitled to take long service leave. He has the right to demand immediate payment. However, because of sporting commitments he decided to take his long service leave in July of that year.

Company Y has a 31 March balance date. Although Company Y has incurred the long service leave expenditure on 28 February 1996, the deduction for the long service leave must be added back to Company Y's assessable income for the 1996 income year because the payment for long service leave does not occur in the 1996 income year or within 63 days of the end of that income year (i.e. within 63 days after 31 March 1996). Company Y can deduct the long service leave expenditure in the 1997 income year because it makes the payment for long service leave to the employee in that income year.

Legislation and determinations

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

Marquees - depreciation determination DEP18

In TIB Volume Eight, No. 2 (August 1996) at pages 5 and 6 the Commissioner published a second draft general depreciation determination for marquees.

No submissions were received on this second draft. Accordingly, the Commissioner has now issued the determination. It may be cited as “Determination DEP18: Tax Depreciation Rates General Determination Number 18”.

The determination is reproduced below. The new depreciation rates are based on the EULs set out in the determination below and residual values of 13.5% of cost.

General Depreciation Determination DEP18

This determination may be cited as “Determination DEP18: Tax Depreciation Rates General Determination Number 18”.

1. Application

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

This determination applies to “depreciable property” other than “excluded depreciable property” for the 1996/97 and subsequent income years.

2. Determination

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

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

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

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

| Leisure | Estimated useful life (years) | DV banded dep'n rate (%) | SL equivalent banded dep'n rate (%) |
|-----------------------------------------------------------------------------------------------------|-------------------------------|--------------------------|-------------------------------------|
| Marquees (canvas roofs and walls, ropes/tie-downs where permanently attached) | 8 | 22 | 15.5 |
| Marquees (roofs and walls of fabrics other than canvas, ropes/tie-downs where permanently attached) | 5 | 33 | 24 |
| Marquee poles (wood) | 15.5 | 12 | 8 |
| Marquee poles & frames (metal) | 10 | 18 | 12.5 |
| Marquee poles & frames (metal with integral winching mechanism) | 8 | 22 | 15.5 |
| Marquee accessories (other than poles and frames) | 5 | 33 | 24 |

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

| Hire Equipment (Where on short term hire of 1 month or less only) | Estimated useful life (years) | DV banded dep'n rate (%) | SL equivalent banded dep'n rate (%) |
|-----------------------------------------------------------------------------------------------------|--------------------------------------|---------------------------------|--------------------------------------------|
| Marquees (canvas roofs and walls, ropes/tie-downs where permanently attached) | 8 | 22 | 15.5 |
| Marquees (roofs and walls of fabrics other than canvas, ropes/tie-downs where permanently attached) | 5 | 33 | 24 |
| Marquee poles (wood) | 15.5 | 12 | 8 |
| Marquee poles & frames (metal) | 10 | 18 | 12.5 |
| Marquee poles & frames (metal with integral winching mechanism) | 8 | 22 | 15.5 |
| Marquee accessories (other than poles and frames) | 5 | 33 | 24 |

3. Interpretation

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

This determination is signed by me on the 1st day of October 1996.

Jeff Tyler
Assistant General Manager (Adjudication & Rulings)

Scaffolding - draft depreciation determination

Currently there is one asset class for all types of scaffolding, with a depreciation rate of 12% DV.

The Commissioner proposes to issue a general depreciation determination which will set two new asset classes for scaffolding. The draft determination is reproduced below. The determination will set a new depreciation rate of 22% DV for the asset class “Scaffolding (Aluminium)”. The other asset class will clarify that the existing rate of 12% DV continues to apply, but to “Scaffolding (Other than aluminium)”, rather than to all scaffolding.

The proposed new depreciation rate for “Scaffolding (Aluminium)” of 22% DV is based on an estimated useful life (“EUL”) of 8 years and a residual value of 13.5% of cost.

Exposure Draft - General Depreciation Determination DEPX

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

1. Application

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

This determination applies to “depreciable property” other than “excluded depreciable property” for the 1996-97 and subsequent income years.

2. Determination

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

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

continued on page 10

| Contractors, Building and Quarrying | Estimated useful life (years) | DV banded dep'n rate (%) | SL equivalent banded dep'n rate (%) |
|--------------------------------------------|--------------------------------------|---------------------------------|--------------------------------------------|
| Scaffolding | 15.5 | 12 | 8 |

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

| Contractors, Building and Quarrying | Estimated useful life (years) | DV banded dep'n rate (%) | SL equivalent banded dep'n rate (%) |
|--------------------------------------------|--------------------------------------|---------------------------------|--------------------------------------------|
| Scaffolding (other than aluminium) | 15.5 | 12 | 8 |
| Scaffolding (aluminium) | 8 | 22 | 15.5 |

3. Interpretation

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

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

Assistant General Manager
 Adjudication & Rulings
 National Office
 Inland Revenue Department
 P O Box 2198
 WELLINGTON

We need to receive your submission by 12 November 1996 if we are to take it into account in the final determination.

Tags (security) - draft depreciation determination

The Commissioner has been made aware that there is currently no general depreciation rate for the security tags used in the retail sector as part of the electronic security systems used by retailers in helping to prevent shoplifting.

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

- Insert a new asset class “Tags (security)” with an estimated useful life of 3 years and a general depreciation rate of 50% D.V. and 40% S.L., under the “Shops” Industry Category.
- Insert the asset class “Security systems”, currently included in the Asset Categories “Building Fit-out (when in books separately from building cost)” and “Office Equipment and Furniture”, into the “Shops” Industry Category with an estimated useful life of 10 years and a general depreciation rate of 18% D.V. and 12.5% S.L.

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

Exposure Draft - General Depreciation Determination DEPX

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

1. Application

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

This determination applies to “depreciable property” other than “excluded depreciable property” for the 1995/96 and subsequent income years.

2. Determination

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

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

| Asset class | Estimated useful life (years) | DV banded dep'n rate (%) | SL equivalent banded dep'n rate (%) |
|--------------------|----------------------------------------------|-----------------------------------------|----------------------------------------------------|
| Tags (security) | 3 | 50 | 40 |
| Security systems | 10 | 18 | 12.5 |

3. Interpretation

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

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

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

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

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.

NZ Guardian Trust Company Ltd's NZGT30 Fund

Product ruling - BR Prd 96/25

Note: Product ruling BR Prd 96/25 applies from 30 September 1996 to the end of the 1996-97 income year. BR Prd 96/28 is identical to BR Prd 96/25, except that it incorporates section reference changes brought about by the passing of the Taxation (Core Provisions) Act 1996 and applies from the beginning of the 1997-98 income year to 31 March 2001.

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

Taxation Laws

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

This Ruling applies in respect of sections BB 9, CF 2 (3), CF 2 (3A) and LE, CF 3 (1)(b), GB 1 (3), and HH 3 of the Income Tax Act 1994.

The Arrangement to which this Ruling applies

The Arrangement is the establishment of the NZGT30 Fund ("the Fund"), pursuant to the Deed of Trust dated 5 September 1996, to act as a specialist investment fund to hold a portfolio of shares and other securities that match the composition and weighting of the NZSE 30 Capital Share Price Index ("Index").

The trustee and manager of the Fund is The New Zealand Guardian Trust Company Limited. It is registered as a trustee company under the Trustee Companies Act 1967. The Fund is established under the Trustee Companies Act 1967 and meets the definition of "group investment fund" contained in section OB 1. The beneficial interest in the Fund is divided into units. Each unit confers an equal interest in the Fund, but does not confer any interest in any particular investment of the Fund.

Income derived by the Fund comprises of dividends, interest on convertible notes, gains on futures contracts and interest on deposited funds. This income is distributed to investors holding units in the Fund as at the income distribution date, which is semi-annually.

Each investor subscribes for the issue of units in the Fund. The issue price is determined by dividing the total market value of the net assets of the Fund by the number of units issued in the Fund ("current unit value").

It is possible for investors to transfer similar securities to the Fund in lieu of a cash payment.

The majority of the investors in the Fund are from "designated sources" as defined in section HE 2 (3) ("category A units"). However, some units may be

acquired with funds from “designated sources” as defined in section HE 2 (3) (“category B units”). These category B units are subject to the same rules regarding income distribution and redemption of units as apply to category A unit holders.

Investors are able to redeem their units at any valuation time (weekly) by giving notice to the fund manager. Their units are redeemed in cash at a price equal to the current unit value.

It is possible for the fund manager, in the ordinary course of the fund manager’s activities, to purchase the units from the unit holders as an alternative to redemption.

The purchase price of the units paid by the fund manager is determined according to the current unit value.

Other facts of the Arrangement and relevant information are as set out in the prospectus of the Fund dated 30 September 1996.

Assumptions made by the Commissioner

This Ruling is based on the assumptions that:

- The Fund will be a “qualifying trust” as defined in section OB 1; and
- All cancellation of units by the Fund will be in whole but not in part; and
- None of the units will be a “non-participating redeemable share” as defined in section CF 3 (14); and
- Any relevant cancellation will not be, or form part of, a “pro rata cancellation” as defined in section CF 3 (14); and
- The Fund will be an “unlisted trust” as defined in section CF 3 (14); and
- The units will be issued on such terms that their redemption is subject to section CF 3 (1)(b)(iv)(B); and
- No election will be made by the Fund to treat the category A units issued as shares of a separate class; and
- Any relevant cancellation will not be an “on-market acquisition”; and
- At the date of redemption there is no arrangement for the units redeemed to be replaced by the subsequent issue of new units where the arrangement is intended to effect a substitution for the payment of dividends; and
- Any cancellation of units will only be effected in order to allow unit holders to exit the Fund; and
- The unit holders will not in anyway retain any interest in the units which are sold to the fund manager.

How the Taxation Laws apply to the Arrangement

Subject in all respects to the assumptions above, the Taxation Laws apply to the Arrangement as follows:

- In the case of a payment or transaction with an investor in the Fund that is a dividend under section CF 2 (3), section CF 2 (3A) will treat the Fund as if it were a company for the purposes of section LE; and
- The entire amount paid to category A unit holders on the redemption of their units will be excluded from the definition of dividend by section CF 3 (1)(b) to the extent it does not exceed the available subscribed capital per share cancelled; and

continued on page 14

- In respect of category B income distributed to category B unit holders semi-annually, this will be treated as “beneficiary income” for tax purposes and subject to section HH 3; and
- Any gain on the redemption of category B units by a category B unit holder will not be assessable for income tax to the extent that it does not include beneficiary income, under section HH 3 (5). The accrued income component representing beneficiary income on distribution will be taxable to the category B unit holder; and
- In the absence of other factors relating to the circumstances of any particular category A unit holder, any gain on the sale of the category A units to the fund manager will not of itself give rise to the application of section GB 1 (3) and section BB 9; and
- In the absence of other factors relating to the circumstances of any particular category B unit holder, any gain on the sale of the category B units to the fund manager will not of itself give rise to the application of section BB 9.

The period for which this Ruling applies

This Ruling will apply for the period from 30 September 1996 to the end of the 1996/97 income year.

This Ruling is signed by me on the 30th day of September 1996.

Martin Smith
General Manager (Adjudication and Rulings)

NZ Guardian Trust Company Ltd's NZGT30 Fund

Product ruling - BR Prd 96/28

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

Taxation Laws

All legislative references are to the Income Tax Act 1994, as amended by the Taxation (Core Provisions) Act 1996, unless otherwise stated.

This Ruling applies in respect of sections BG 1, CF 2 (3), CF 2 (3A) and LE, CF 3 (1)(b), GB 1 (3), and HH 3 of the Income Tax Act 1994.

The Arrangement to which this Ruling Applies

The Arrangement is the establishment of the NZGT30 Fund (“the Fund”), pursuant to the Deed of Trust dated 5 September 1996, to act as a specialist investment fund to hold a portfolio of shares and other securities that match the composition and weighting of the NZSE 30 Capital Share Price Index (“Index”).

The trustee and manager of the Fund is The New Zealand Guardian Trust Company Limited. It is registered as a trustee company under the Trustee Companies Act 1967. The Fund is established under the Trustee Companies Act 1967 and meets the definition of “group investment fund” contained in section OB 1. The beneficial interest in the Fund is divided into units. Each unit confers an equal interest in the Fund, but does not confer any interest in any particular investment of the Fund.

Income derived by the Fund comprises of dividends, interest on convertible notes, gains on futures contracts and interest on deposited funds. This income is

distributed to investors holding units in the Fund as at the income distribution date, which is semi-annually.

Each investor subscribes for the issue of units in the Fund. The issue price is determined by dividing the total market value of the net assets of the Fund by the number of units issued in the Fund ("current unit value").

It is possible for investors to transfer similar securities to the Fund in lieu of a cash payment.

The majority of the investors in the Fund are from "designated sources" as defined in section HE 2 (3) ("category A units"). However, some units may be acquired with funds from "designated sources" as defined in section HE 2 (3) ("category B units"). These category B units are subject to the same rules regarding income distribution and redemption of units as apply to category A unit holders.

Investors are able to redeem their units at any valuation time (weekly) by giving notice to the fund manager. Their units are redeemed in cash at a price equal to the current unit value.

It is possible for the fund manager, in the ordinary course of the fund manager's activities, to purchase the units from the unit holders as an alternative to redemption.

The purchase price of the units paid by the fund manager is determined according to the current unit value.

Other facts of the Arrangement and relevant information are as set out in the prospectus of the Fund dated 30 September 1996.

Assumptions made by the Commissioner

This Ruling is made on the assumptions that:

- The Fund will be a "qualifying trust" as defined in section OB 1; and
- All cancellation of units by the Fund will be in whole but not in part; and
- None of the units will be a "non-participating redeemable share" as defined in section CF 3 (14); and
- Any relevant cancellation will not be, or form part of, a "pro rata cancellation" as defined in section CF 3 (14); and
- The Fund will be an "unlisted trust" as defined in section CF 3 (14); and
- The units will be issued on such terms that their redemption is subject to section CF 3 (1)(b)(iv)(B); and
- No election will be made by the Fund to treat the category A units issued as shares of a separate class; and
- Any relevant cancellation will not be an "on-market acquisition"; and
- At the date of redemption there is no arrangement for the units redeemed to be replaced by the subsequent issue of new units where the arrangement is intended to effect a substitution for the payment of dividends; and
- Any cancellation of units will only be effected in order to allow unit holders to exit the Fund; and
- The unit holders will not in anyway retain any interest in the units which are sold to the fund manager.

How the Taxation Laws apply to the Arrangement

Subject in all respects to the assumptions above, the Taxation Laws apply to the Arrangement as follows:

- In the case of a payment or transaction with an investor in the Fund that is a dividend under section CF 2 (3), section CF 2 (3A) will treat the Fund as if it were a company for the purposes of section LE; and
- The entire amount paid to category A unit holders on the redemption of their units will be excluded from the definition of dividend by section CF 3 (1)(b) to the extent it does not exceed the available subscribed capital per share cancelled; and
- In respect of category B income distributed to category B unit holders semi-annually this will be treated as “beneficiary income” for tax purposes and subject to section HH 3; and
- Any gain on the redemption of category B units by a category B unit holder will not be liable for income tax to the extent that it does not include beneficiary income, under section HH 3 (5). The accrued income component representing beneficiary income on distribution will be taxable to the category B unit holder; and
- In the absence of other factors relating to the circumstances of any particular category A unit holder, any gain on the sale of the category A units to the fund manager will not of itself give rise to the application of section GB 1 (3) and section BG 1; and
- In the absence of other factors relating to the circumstances of any particular category B unit holder, any gain on the sale of the category B units to the fund manager will not of itself give rise to the application of section BG 1.

The period for which this Ruling applies

This Ruling will apply for the period from the beginning of the 1997/98 income year to 31 March 2001.

This Ruling is signed by me on the 3rd day of October 1996.

Martin Smith
General Manager (Adjudication and Rulings)

Binding ruling BR Prd 96/9 withdrawn

In compliance with section 91FJ(2) of the Tax Administration Act 1994, the Commissioner hereby notifies the withdrawal of product ruling 96/9. The following notice appeared in the New Zealand Gazette of 3 October 1996.

Notice of withdrawal of product ruling

1. This is a notice of a withdrawal of a product ruling made under section 91FJ of the Tax Administration Act 1994.

2. Product ruling 96/9 is hereby withdrawn.
3. Product ruling 96/9 originally applied to a superannuation scheme for the period 16 April 1996 to 31 March 1999, and notice of its making appeared in the New Zealand Gazette of 2 May 1996.
4. Product ruling 96/9 is withdrawn on and from 3 October 1996.

Martin Smith
General Manager (Adjudication & Rulings)

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.

Lump sum tenancy inducement payments - assessability

| | |
|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Case: | High Court CP 1287/95, CP 1288/95 |
| Act: | Income Tax Act 1976 - sections 65 (2)(a) and (l). |
| Keywords: | <i>Inducement payments, assessability</i> |
| Summary: | The High Court found that lump sum payments made to induce potential tenants to sign lease agreements were assessable income, as the objectors' ordinary business operations did not include the acquisition or disposition of leases. |
| Facts: | The objectors were partners in a partnership which leased a number of premises in various locations. In one of the locations, the leases were due to expire. Over a period of ten months the objectors negotiated to enter a lease for new premises. As well as the Agreement to Lease, a Collateral Deed was signed which provided for a number of inducements to the objectors as tenants. These included a rental subsidy, hard and soft fit out and a lump sum payment. There was no restriction on the use of the lump sum payment. |
| Decision: | It was found, as a matter of fact, that the partnership's ordinary business operations did not include the acquisition or disposition of leases. The lump sum payment was found to essentially be a form of rent subsidy and as such it was assessable as income in the year of its receipt. |

Letter of credit - time of payment for GST taxable supply

| | |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Case: | TRA No 95/013 |
| Act: | Goods and Services Tax Act 1985 - section 20 (3)(b)(i) |
| Keywords: | <i>Payment</i> |
| Summary: | The TRA found that an irrevocable letter of credit redeemable at some time in the future was just as valid a means of payment as if the objector had handed over cash. The giving of the letter of credit by the objector to the ANZ Bank was a payment for the purposes of section 20 (3)(b)(i). |
| Facts: | The objector entered into an agreement to buy a building for \$706,000. The objector paid a deposit of \$106,000 on the date of signing. The remainder of the purchase price was top paid on settlement. This was to be effected by the objector giving the vendor an ANZ Bank irrevocable letter of credit for \$600,000. The payment date specified on this letter was six months after settlement. When the objector took possession, in November 1993, it gave the vendor the irrevocable letter. The ANZ subsequently honoured the letter of credit on the due date which was May 1994 (six months later). The objector contended it was entitled to |

continued on page 18

an input tax in the period ending November 1993. The Commissioner contended the objector was entitled to the credit in the GST period ending May 1994.

Decision:

The TRA held that the parties had stipulated that the balance of the purchase price be paid by the ANZ Bank, not the objector. This was regarded as a means by which the vendor could safely allow the purchaser to go into possession before payment of all moneys due under the agreement. Judge Willy found it was crucial to that arrangement that the vendor felt it would not have to rely on the objector's ability to pay the remainder of the purchase price on the deferred date, six months from settlement. He was satisfied that in those circumstances the letter of credit was irrevocable and unconditional. The vendor had rights against the bank only. Its rights against the objector had been extinguished by the letter of credit. Thus the transaction became complete in November 1993.

Judge Willy found the parties' agreement to an irrevocable letter of credit which was redeemable at some time in the future was just as valid a means of payment as if the purchaser had paid with cash. The consideration agreed upon was a payment both at common law and for the purposes of section 20 (3)(b)(i) of the GST Act. The correct taxable period was therefore November 1993, not May 1994.

Severance of employment payments - assessability

Case: TRA Nos 96/114 and 96/059

Act: Income Tax Act 1976 - section 65 (2)(b)

Keywords: *Monetary remuneration, personal grievance - employment issues*

Summary: The TRA found that, on the balance of probability, it could not find that the entire payment made to each objector for severance of employment was related to humiliation, loss of dignity and injury to their respective feelings. Clearly the major ingredient of the payment was for loss of earnings and Judge Barber apportioned the respective parts of each payment accordingly, so that a portion of each payment was taxable while the remaining portion was not.

Facts: This case involved two separate cases stated which were heard together. The two objectors, M and S, were both employed by an insurance company. In 1992 they were both informed that their positions were to be downgraded in terms of earning potential and status. The objectors responded by bringing personal grievance claims in the Employment Tribunal. They both received severance of employment payments under a Settlement Agreement. S received \$79,769.89 and M received \$136,546.53. Their focus at the settlement meeting was on the amount of the payment rather than its components.

After the settlement meeting the taxpayers realised that only \$10,000 of the payments was attributable to loss of dignity and injury to feelings and therefore non-taxable. They sought to increase this amount. Their evidence is that the entire payment was for loss of dignity and injury to feelings and that they both accepted their settlement on that basis. However the final signed agreements were lost in transit and there are no copies of them.

Decision:

Judge Barber accepted that it was Inland Revenue's policy that payments for loss of earnings are assessable income under section 65 (2)(b) because they are 'monetary remuneration'. He also accepted Inland Revenue's policy that payments for humiliation, loss of dignity and injury to feelings are not assessable. He could not find, on the balance of probability, that the entire payment to each objector was related to the latter. It was clear that the major ingredient of the settlement payment was loss of income. Judge Barber therefore apportioned the settlement payment appropriately between non-assessable and assessable income.

Company strike-off - effect on case stated proceedings

Case: TRA No 93/WN/029

Keywords: *Strike off, dissolution*

Summary: This is an interlocutory matter concerning the effect striking an objector company off from the Companies Register has upon existing case stated proceedings. The TRA applied the High Court decision in *Suzy Speed Holdings Limited v CIR* (1994) 16 NZTC 11,108.

Facts: The Objector was a company incorporated in July 1984. As a result of disallowed objections, a case stated was requested in December 1992, and was filed in July 1993. The Objector's agent requested that the Objector be struck off the Companies Register under section 366 of the Companies Act 1955. The strike off was advertised in the Gazette on 26 January 1995 and the company was eventually struck off on 14 March 1995.

Judge Barber addressed three issues at the hearing. They were:

1. Once the Objector was struck off, could it (or anyone else) continue the case stated?
2. What is the effect of an invalid removal of the Objector from the Companies Register (less than three months had passed from the date of advertising in the Gazette to the date of strike off)?
3. What is the effect of the Objector failing to show up at the earlier Directions hearing?

Decision: The TRA confirmed the decision in *Suzy Speed Holdings Limited v CIR*. Judge Barber decided the three issues as follows:

1. From the time the Objector was removed from the Companies Register under the Companies Act 1955, the company is dissolved and must be treated as if it no longer exists. The TRA can not look behind the certificate saying the company had been struck off, as to do so was outside the taxpayer's jurisdiction. Neither the taxpayer's agent nor any former officer of the Objector has the power to represent the company once it is dissolved and before it is resolved to the Register (if that occurs).
 2. Judge Barber would not consider this question as to do so would be outside the ambit of the TRA's jurisdiction. He could only consider the papers in front of him which included a certificate that the Objector had been struck off.
 3. The case was deemed to be withdrawn under regulation 9 (6) of the TRA Regulations 1994, as a result of the Objector failing to appear at the Directions hearing. However Judge Barber did adjourn the matter to 22 November 1996 for the resumption of the directions hearing to allow the parties to consider the implications of the ruling. If there was no valid appearance at that date the case would be deemed withdrawn.
-

Booklets available from Inland Revenue

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

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

The TIB is always printed in a multiple of four pages. We will include an update of this list at the back of the TIB whenever we have enough free pages.

General information

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

Disputing a notice of proposed adjustment (IR 210K) - Oct 1996: If we send you a notice to tell you we're going to adjust your tax liability, you can dispute the notice. This booklet explains the process you need to follow.

Disputing an assessment (IR 210J) - Oct 1996: Explains the process to follow if you want to dispute our assessment of your tax liability, or some other determination.

How to tell if you need a special tax code (IR 23G): Information about getting a special "flat rate" of tax deducted from your income, if the regular deduction rates don't suit your particular circumstances.

If you disagree with us (IR 210Z) - Sep 1996: This leaflet summarises the steps involved in disputing an assessment.

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

Independent Family Tax Credit (FS 3) - Sep 1996: Introducing extra help for families, applying from 1 July 1996.

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

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

Maori Community Officer Service (IR 286) - Apr 1996: Introduces our tax help service for the Maori community.

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

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

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

Overseas social security pensions (IR 258) - Jul 1996: 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 1996: People whose end-of-year tax bill is \$2,500 or more 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.

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

Student Loans - how to get one and how to pay one back (SL 5) - 1996: We've published this booklet jointly with the Ministry of Education, to tell students everything they need to know about getting a loan and paying it back.

Superannuitants and surcharge (IR 259) - Jul 1996: A guide to the surcharge for national superannuitants who also have other income.

Tax facts for income-tested beneficiaries (IR 40C) - Jun 1996: Vital information for anyone who receives an income-tested benefit and also has some other income.

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

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

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

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

Business and employers

ACC premium rates - Mar 1996: *There are two separate booklets, one for employer premium rates and one for self-employed premium rates. Each booklet covers the year ended 31 March 1996.*

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

Direct selling (IR 261) - Aug 1996: *Tax information for people who distribute for direct selling organisations.*

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

Employer's guide (IR 184) - 1996: *Explains the tax obligations of anyone who is employing staff, and explains how to meet these obligations. Anyone who registers as an employer with Inland Revenue will receive a copy of this booklet.*

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

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

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

GST - do you need to register? (GST 605) - March 1996: *A basic introduction to goods and services tax, which will also tell you if you have to register for GST.*

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

IR 56 taxpayer handbook (IR 56B) - Apr 1996: *A booklet for part-time private domestic workers, embassy staff, nannies, overseas company reps and Deep Freeze base workers who make their own PAYE payments.*

PAYE deduction tables - 1997

- Weekly and fortnightly (IR 184X)

- Four-weekly and monthly (IR 184Y)

Tables that tell employers the correct amount of PAYE to deduct from their employees' wages from 1 July 1996.

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

Retiring allowances and redundancy payments (IR 277) - Jun 1996: *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.*

Smart Business (IR 120) - Jul 1996: *An introductory guide to tax obligations and record keeping, for businesses and non-profit organisations.*

Surcharge deduction tables (IR 184NS) - 1997: *PAYE deduction tables for employers whose employees are having NZ Super surcharge deducted from their wages.*

Taxes and the taxi industry (IR 272) - Feb 1996: *An explanation of how income tax and GST apply to taxi owners, drivers, and owner-operators.*

Resident withholding tax and NRWT

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

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) - Jul 1996: *A guide to RWT for people and institutions which pay interest.*

Resident withholding tax on investments (IR 279) - Jun 1996: *An explanation of RWT for people who receive interest or dividends.*

Non-profit bodies

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

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

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

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

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

Company and international issues

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

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

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

Foreign dividend withholding payments (IR 274A) - Mar 1995: *Information for NZ companies that receive dividends from overseas companies. This booklet also deals with the attributed repatriation and underlying foreign tax credit rules.*

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

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

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

Child Support booklets

Child Support - a custodian's guide (CS 71B) - Nov 1995: Information for parents who take care of children for whom Child Support is payable.

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

Child Support - a liable parent's guide (CS 71A) - Nov 1995: Information for parents who live apart from their children.

Child Support administrative reviews (CS 69A) - Jul 1994: How to apply for a review of the amount of Child Support you receive or pay, if you think it should be changed.

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

Child Support - estimating your income (CS 107G) - July 1996: Explains how to estimate your income so your Child Support liability reflects your current circumstances.

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

Child Support - how the formula works (CS 68) - 1996: Explains the components of the formula and gives up-to-date rates.

What to do if you have a problem when you're dealing with us (CS 287) - May 1995: Explains how our Problem Resolution Service can help if our normal services haven't resolved your Child Support problems.

Due dates reminder

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.

December 1996

- 5 Large employers: PAYE deductions and deduction schedules for period ended 30 November 1996 due.
- 7 Provisional tax and/or Student Loan interim repayments: first 1997 instalment due for taxpayers with August balance dates.
Second 1997 instalment due for taxpayers with April balance dates.
Third 1997 instalment due for taxpayers with December balance dates.
Annual income tax returns due to be filed for all non-IR 5 taxpayers with August balance dates.
1996 end of year payments due (income tax, Student Loans, ACC premiums) for taxpayers with January balance dates.
QCET payment due for companies with January balance dates, if election is to be effective from the 1997 year.
(We will accept returns and payments received on Monday 9 December as on time for 7 December.)
- 20 Large employers: PAYE deductions and deduction schedules for period ended 15 December 1996 due.
Small employers: PAYE deductions and deduction schedules for period ended 30 November 1996 due.
Gaming machine duty return and payment for month ended 30 November 1996 due.
RWT on interest deducted during November 1996 due for monthly payers.
RWT on dividends deducted during November 1996 due.
Non-resident withholding tax (or approved issuer levy) deducted during November 1996 due.
- 31 Third instalment of 1997 Student Loan non-resident assessment due.
(We will accept payments received on Friday 3 January 1997 as on time for 31 December 1996.)

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 _____

✓ Interpretation statements

- 3976:** GST: Zero-rating of trophies and animal products derived from the tourist, hunting and safari industry

**Comment
Deadline**

30/11/96

✓ Public binding rulings

- 1647:** Assessability of payments under the Employment Contracts Act for humiliation, loss of dignity, and injury to feelings

**Comment
Deadline**

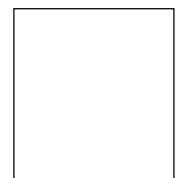
30/11/96

- 3495:** Charitable organisations and fringe benefit tax

30/11/96



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



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