TAX INFORMATION BULLETIN

Volume Eight, No.8 November 1996

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Inland Revenue
Te Tari Taake

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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 pubic 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.

Transfers of depreciable property between 100% commonly owned companies - withdrawal of Commissioner's practice

Summary

Currently, the Commissioner has an administrative practice that allows assets to be transferred between commonly owned companies at book value. The Commissioner considers that, with the consolidation and depreciation regimes now in place, such a practice is no longer appropriate. Accordingly, it is withdrawn with effect from 1 April 1997.

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

Background

For a long time the Commissioner has allowed companies with 100% identical shareholding to transfer assets to each other at book value (under the current legislation referred to as "adjusted tax value"), provided that certain conditions are met. Essentially, these conditions are that an assurance is given by the purchasing company that, in the event of any sale, any depreciation allowed the vendor company would, if recovered, be returned as assessable income of the purchasing company.

In Tax Information Bulletin, Volume Four, No. 9 (May 1993) at page 11 we stated that this practice was under review, but would continue in the meantime.

There is no legislative basis for allowing 100% commonly owned companies which are not part of a consolidated group to transfer property at adjusted tax value. Under section FD 10 (1) and (2), companies included in a consolidated group are required to transfer property at adjusted tax value. At the time this legislation was introduced, submissions were made to the Finance and Expenditure Select Committee asking for the retention of the Commissioner's administrative practice, irrespective of whether a company chose to be a member of a consolidated group. The Committee rejected these submissions.

Legislation

Cross-reference table

Income Tax Act 1994	Income Tax Act 1976
EG 17	111
EG 19	117
FD 10	191N
Schedule 17	Twenty-Second Schedule

In the current depreciation regime, sections EG 17 and EG 19 are relevant to the transfer of property between associated persons.

Under section EG 17, when a taxpayer has acquired depreciable property from an associated person:

- Under subsection (1), the taxpayer is not allowed any greater deduction for depreciation than would have been allowed to the associated person, if the associated person had retained the property. If any amount so allowed as a deduction to the associated person has been dealt with under section EG 19, a deduction is allowed based on the aggregate of the amounts so allowed and the depreciated value of the property immediately before it was acquired by the taxpayer.
- Under subsection (2), subsection (1) does not apply when the Commissioner is of the opinion that the depreciation of the property should be based on the actual price or other consideration given for the property. Following an amendment made by the Income Tax Act 1994 Amendment (No. 4) 1995, subsection (1) does not apply to intangible property if the acquisition price of the property is assessable income to the associated person.

When the disposal is at market value:

- Section EG 19 (2) applies so as to assess the lesser of the depreciation allowed in respect of the property or the excess over the adjusted tax value; or

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- If the market value is less than the adjusted tax value, section EG 19 (3) allows a deduction for the difference between the adjusted tax value and market value.

Under section EG 19 (7), when the Commissioner believes the disposal is not at market value, he shall deem the property to have been disposed of for market value or, if the market value cannot be specified, for a consideration that he specifies.

The vendor will, therefore, be deemed to have disposed of the property at market value. Although the Act does not expressly deem the purchaser to have acquired depreciable property from the associated person for a particular value, this would normally be cost, i.e., the price agreed to by the parties. In cases when the Commissioner deems the vendor to have disposed of the property for market value under section EG 19 (7), the Act does not expressly deem the purchaser to have acquired the property for that same value, but the intention of the legislation seems clear and the purchaser would be permitted to use that value to calculate depreciation, subject to the limitations imposed by section EG 17.

A continuation of the previous practice of allowing the transfer of depreciable property at book value would be inconsistent with Parliament's aims in enacting the formal consolidation regime.

Policy

The Commissioner's practice of allowing 100% commonly owned companies , which are not part of a consolidated group, to transfer depreciable property to each other at adjusted tax value is withdrawn with effect to any disposals of depreciable property from 1 April 1997. After 1 April 1997, the vendor company should calculate depreciation recovered/loss on disposal:

- On the actual sale price; or
- When the Commissioner believes that the property has been disposed of for a consideration that is not market value, and, under section EG 19(7), deems the property to have been disposed of for market value, on the market value.

The purchasing company should value the property at the cost it incurred, or the value the Commissioner deems the vendor to have disposed of that property for, to calculate the depreciation to be claimed, subject to the limitations imposed by section EG 17.

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.

Aluminium scaffolding - depreciation determination DEP19

In TIB Volume Eight, No. 6 (October 1996) at pages 9 and 10 the Commissioner published a draft general depreciation determination for aluminium scaffolding.

No submissions were received on this draft. Accordingly, the Commissioner has now issued the determination. It may be cited as "Determination DEP19: Tax Depreciation Rates General Determination Number 19".

The determination is reproduced below. The 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.

General Depreciation Determination DEP19

This determination may be cited as "Determination DEP19: Tax Depreciation Rates General Determination Number 19".

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:

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.

This determination is signed by me on the 13th day of November 1996.

Jeff Tyler
Assistant General Manager (Adjudication & Rulings)

Horizontal directional drilling machines - draft depreciation determination

The Commissioner has been made aware that there is currently no general depreciation rate for horizontal direction drilling machines used in the civil contracting industry chiefly in the installation of pipes (water or gas) or cables (telecommunication or electrical) underground, without having to dig ditches.

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

- insert a new asset class "Drilling machines (Horizontal Directional)" with an estimated useful life of 6.66 years and a general depreciation rate of 26% DV and 18% SL, under the "Contractors, Builders and Quarrying" industry category.
- insert the asset class "Drilling machine components, underground, (Horizontal Directional)" in the "Contractors, Builders and Quarrying" industry category with an estimated useful life of 2 years and a general depreciation rate of 63.5% DV and 63.5% SL.

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 1996/97 and subsequent income years.

2. Determination

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

- Inserting into the "Contractors, Builders 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 (%)
Drilling machines (Horizontal Directional)	6.66	26	18
Drilling machine components, underground (Horizontal Directional)	2	63.5	63.5

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 31 December 1996 if we are to take it into account in the final 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.

Taxation of commissions received by life agents on own policies and family policies

Public ruling - BR Pub 96/9

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

Taxation Law

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

This Ruling applies in respect of sections BB 4 and CI 1 (h) of the Income Tax Act 1994.

The Arrangement to which this Ruling applies

This Ruling considers the various ways in which a life agent may benefit from taking out a policy on his or her own life ("own policies") or from selling a policy to family members ("family policies").

The Arrangement is as follows:

- The receipt by life agents of cash commissions on their own policies or family policies, or the set off of commissions on such policies against premiums payable on the life agents' own policies.
- The receipt of discounted premiums by life agents on own policies or the receipt of discounted premiums by members of their families on family policies.

"Set off" and "Life insurer" have the following meanings for the purposes of this Ruling:

- **Set off** means that the life agent's obligation to pay the full amount of premium for his or her own policy is set off against commission entitlement so that only the net amount of premium is paid.
- **Life insurer** means a life insurance company who engages life agents as either employees or independent contractors.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- Cash commissions received by life agents on own policies or family policies are assessable income under section BB 4 (a) (if the life agent is an independent contractor) and section BB 4 (b) (if the life agent is an employee). When life agents set off commissions on such policies, the amount of commission set off is assessable income under section BB 4.

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- When life agents receive discounted premiums on own policies, or persons associated with the life agents receive discounted premiums on family policies, the discounted premium will be a fringe benefit under section CI 1 (h). The life insurer will be liable for fringe benefit tax (FBT) on the value of the benefit.

The period for which this Ruling applies

This Ruling will apply for the period from 1 January 1997 to 30 September 1997 to the receipt of cash commissions, the set off of commissions, or the receipt of discounts by life agents or by members of their families, occurring within that period.

This Ruling is signed by me on the 13th day of November 1996.

Martin Smith
General Manager (Adjudication & Rulings)

Taxation of commissions received by life agents on own policies and family policies

Public ruling - BR Pub 96/9A

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

Taxation Law

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

This Ruling applies in respect of sections CD 3, CH 3, and CI 1 (h) of the Income Tax Act 1994 as amended by the Taxation (Core Provisions) Act 1996.

The Arrangement to which this Ruling applies

This Ruling considers the various ways in which a life agent may benefit from taking out a policy on his or her own life ("own policies") or from selling a policy to family members ("family policies").

The Arrangement is as follows:

- The receipt by life agents of cash commissions on their own policies or family policies, or the set off of commissions on such policies against premiums payable on the life agents' own policies.
- The receipt of discounted premiums by life agents on own policies or the receipt of discounted premiums by members of their families on family policies.

"Set off" and "Life insurer" have the following meanings for the purposes of this Ruling:

- **Set off** means that the life agent's obligation to pay the full amount of premium for his or her own policy is set off against commission entitlement so that only the net amount of premium is paid.
- **Life insurer** means a life insurance company who engages life agents as either employees or independent contractors.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- Cash commissions received by life agents on own policies or family policies are gross income under section CD 3 (if the life agent is an independent contractor) and section CH 3 (if the life agent is an employee). When life agents set off commissions on such policies, the amount of commission set off is gross income under section CD 3 or CH 3.
- When life agents receive discounted premiums on own policies, or persons associated with the life agents receive discounted premiums on family policies, the discounted premium will be a fringe benefit under section CI 1 (h). The life insurer will be liable for fringe benefit tax (FBT) on the value of the benefit.

The period for which this Ruling applies

This Ruling will apply for the period from 1 January 1997 to 31 December 1999 to the receipt of cash commissions, the set off of commissions, or the receipt of discounts by life agents or by members of their families, occurring within that period.

This Ruling is signed by me on the 13th day of November 1996.

Martin Smith
General Manager (Adjudication & Rulings)

Commentary on public rulings BR Pub 96/9 and 96/9A

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Rulings BR Pub 96/9 and 96/9A ("the Rulings").

The Taxation (Core Provisions) Act 1996 amended a large number of sections in the Income Tax Act 1994. It has done this, in the main, by repealing those provisions and replacing them with new amended provisions. The new provisions take effect from the commencement of each taxpayer's 1997-98 income year (i.e. from 1 April 1997 for standard balance date taxpayers).

Given that the repealed provisions will no longer apply from the commencement of each taxpayer's 1997-98 income year, the Commissioner has produced two rulings. BR Pub 96/9 applies for the period from 1 January 1997 to 30 September 1997. BR Pub 96/9A applies for the period from 1 January 1997 to 31 December 1999.

For example, if a taxpayer has a standard balance date, i.e. 31 March 1997, BR Pub 96/9 will apply to that taxpayer for the period from 1 January 1997 to 31 March 1997. From 1 April 1997 the new provisions take effect and BR Pub 96/9A will apply to that taxpayer for the period from 1 April 1997 to 31 December 1999.

The commentary refers to the Income Tax Act 1994 as amended by the Taxation (Core Provisions) Act 1996. In particular, it refers to sections CD 3 and CH 3 (previously sections BB 4 (a) and BB 4 (b)) and to the concept of "gross income" (previously in the context of these Rulings "assessable income").

The subject matter of the Rulings was previously considered in TIB Volume Four, No.10 (May 1993) at pages 4 and 5. The Rulings replace that earlier statement.

Background

The item *Commissions on Life Insurance sold to Agent's Family* in TIB Volume Four, No.10 (May 1993) stated that:

Commissions received by agents or employees of Life Insurance Offices who take out life insurance policies on their own lives or on the lives of their immediate family members should be regarded as reductions or discounts from the premiums payable under the policies, and not as assessable income. In this context "immediate family" means the agent's or employee's spouse and dependent children. The provision of such benefits by the employer will be subject to FBT, unless excluded from the definition of Fringe Benefit by section 336N(1)(j)(ii)(B) of the Income Tax Act 1976 ("the Act").

A number of taxpayers asked the Commissioner to reconsider this policy.

The Commissioner now takes a different view. Cash commissions received by life agents on own policies or family policies are gross income.

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The payment of a commission arises from an arrangement between the life agent and the life insurer. The life agent receives the commission for introducing business to the life insurer, not for taking out the policy and paying the premiums.

Legislation

Cross-reference table

Income Tax Act 1994[1]	Income Tax Act 1994[2]	Income Tax Act 1976
CD 3	BB 4 (a)	62(2)(a)
CH 3	BB 4 (b)	62(2)(b)
CI 1	CI 1	336N
CI 3	CI 3	336O
GC 15 (1)	GC 15 (1)	336N(3)
OD 7 (1)	OD 7 (1)	8(1)

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

Section CD 3 states:

The gross income of any person includes any amount derived from any business.

Section CH 3 states:

All monetary remuneration derived by a person is gross income.

Section OB 1 defines "employer" and "employee" for the purposes of the FBT rules. "Employee" means:

...a person who will receive, receives, or has at any time received, or who will be, is, or has at any time been entitled to receive, a source deduction payment...

"Employer" means:

...a person who will pay, pays, or has at any time paid, or who will be, is, or has at any time been liable to pay, a source deduction payment...

"Source deduction payment" is defined in section OB 2 as:

...a payment by way of salary or wages, an extra emolument, or a withholding payment.

Section CI 1 defines "fringe benefit". Under section CI 1 (h), a fringe benefit includes any benefit that consists of:

Any benefit of any other kind whatever, received or enjoyed by the employee in the quarter or...income year,-

being, as the case may be...a benefit that is used, enjoyed, or received, whether directly or indirectly, in relation to, in the course of, or by virtue of the employment of the employee (whether that employment will occur, is occurring, or has occurred) and which is provided or granted by the employer of the employee;...

Section CI 3 provides the methods for calculating the value of a fringe benefit. When services are provided to an employee, and the services are provided as part of the employer's business, the fringe benefit is valued in accordance with section CI 3 (10)(a):

Where the services were provided by the employer of the employee where the employer of the employee, as part of that employer's business, normally provides such services for payment, the price for which, at the time when the services were so provided to the employee, services identical or similar to those services were customarily provided by the employer of the employee to a member of the general public in the open market in New Zealand on ordinary trade terms between buyers and sellers independent of each other:

Section GC 15 (1) states:

For the purposes of the FBT rules, where any benefit which, if it were provided for or granted to an employee would be a fringe benefit, is provided or granted by the employer of the employee,...for or to a person other than the employee of the employer, the employee of the employer and the other person being associated persons, that benefit shall be deemed to be a benefit provided for or granted to the employee by the employer of the employee.

For the purposes of section GC 15 "associated person" is defined in section OD 7 (1). That section states that:

For the purposes of this Act, unless the context otherwise requires, at any time associated persons or persons associated with each other are-

...

(c) Two persons who are at the time relatives;...

"Relative" is defined in section OB 1:

(a) Except in the international tax rules, in relation to any person, means any other person connected with the first-mentioned person by blood relationship, marriage, or adoption; and includes a trustee of a trust under which a relative has benefited or is eligible to benefit; and for the purposes of this paragraph-

(i) Persons are connected by blood relationship if within the fourth degree of relationship:

(ii) Persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other:

(iii)Persons are connected by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other:

Application of the Legislation

1. Cash commissions received by life agents on their own policies or family policies

"Income" is not a term of art and has to be examined in accordance with ordinary concepts and usages (*Scott v C of T* (1935) 35 SRNSW 215 at page 219). The courts have identified several criteria that are considered to be the hallmarks of receipts of an income nature. The High Court in *Reid v CIR* (1983) 6 NZTC 61,624 at page 61,629 described the criteria as follows:

- Income is something which comes in; and
- Income imports the notion of periodicity, re-occurrence and regularity; and
- Whether a particular receipt is income depends upon its quality in the hands of the recipient.

An important feature of income is that it is something which comes in. This was emphasised in *Lambe v IR Commrs* (1933) 18 T.C. 212 where Finlay J said at page 217:

> Of course income may be of various sorts,...but none the less the [income] tax is a tax on income. It is a tax on what in one form or another goes into a man's pocket. That is the general principle.

Cash commissions received by life agents on own policies or family policies come in, in the same way that commissions from the sale of policies to unrelated third parties come in.

The major determinant in many cases is the periodic nature of the payment. Generally, commission income is periodic in nature. However, this in itself is not enough. It is necessary to consider the relationship between the life insurer and the life agent to determine the quality of the commission in the hands of the life agent.

Alternative arguments

One possible argument is that commissions received by life agents on their own policies are not income but are the proceeds from mutual transactions.

Mutual transactions

The general principle of income tax known as mutuality starts from the premise that a person cannot make a profit from trading with himself or herself, or with a body or association of persons of which the person is a member. In *Sydney Water Board Employees' Credit Union Ltd v FC of T* (1973) ATC 4,129 Barwick J said:

> The description "mutuality principle" is used, unfortunately as I think, to express the reason for the conclusion that the return to a taxpayer of a share of the surplus of a fund to which he has contributed in common with others after its use for a purpose agreed between them is not income...**What distinguishes the amount refunded in such circumstances from profit or income is that the payment is made out of moneys which are in substance the moneys of the contributors**. (At page 4,131.)

Prima facie the profits from mutual transactions are not gross income.

There are numerous cases discussing the mutuality principle. Most discuss the situation where a person trades with a body or association of persons of which he or she is a member. There was some discussion of the principle that a person cannot trade with himself or herself in *Dublin Corporation v M'Adam* 2 T.C. 387 at page 397. The Court stated that:

> There must be, at least, two parties...If these two parties are identical, in my opinion there can be no trading. No man, in my opinion, can trade with himself; he cannot, in my opinion, make, in what is its true sense or meaning, taxable profit by dealing with himself; and in every case of this description it appears to be a question on the construction of the Act whether the two bodies - the body that supplies and the body or class that has to pay - were either identical, or, upon the true construction of the Act, must be admitted to have been held by the Legislature to be identical...

Does the mutuality principle apply?

Although the life agent is the person who enters into the policy which *causes* the commission to be paid, the commission is not a return of the life agent's own money. The commission comes from a source outside of the life agent, i.e. from the funds of the life insurer. The life agent is paid the commission for introducing business to the life insurer, not for taking out the policy and paying the premiums.

Case law indicates that the mutuality principle only applies when a person trades with himself or herself, i.e. there is only one party to the transaction giving rise to the income. Here there are two parties to the transaction. The commission arises from the sale of a life insurance product by one party (the life insurer) to another party (the life agent). It does not matter that the life insurance product is sold by the life insurer through the life agent. There are still two parties to the transaction.

Mutuality principle - conclusion

The mutuality principle does not apply to commissions received by life agents on their own policies.

Discount on premiums

It may also be argued that cash commissions received by life agents on own policies should be regarded as discounts from the premiums payable under the policy and not as gross income. For example, a life agent takes out a policy on his or her life. The premium is $1,000. The life agent receives a cash commission of $200. The $200 can be seen as a discount, i.e. the 'real' cost of the policy is $800.

As discussed in the background to the Rulings, this was the view taken in *Commissions on Life Insurance sold to Agent's Family* in TIB Volume Four, No.10 (May 1993).

The treatment of cash commissions as reductions or discounts from the premiums payable under the policies is not supported by the legislation.

The commission payment arises from an arrangement between the life agent and the life insurer. The life agent receives the commission for introducing business to the life insurer, not for taking out the policy and paying the premiums.

Conclusion

Cash commissions received by life agents on own policies or family policies are gross income under section CD 3 or CH 3.

2. Life agents' commission is set off

Life agents may set off commissions on own policies or family policies against the premiums payable on their own policies.

Under section EB 1 (1), an amount is deemed to have been derived by a person although it has not actually been paid to the taxpayer, or received by the person, or already become due or receivable, if that amount:

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...has been credited in account, or reinvested, or accumulated, or capitalised, or carried to any reserve, sinking, or insurance fund, or otherwise dealt with in the person's interest or on the person's behalf.

Case law has established that income is derived under section EB 1 when the taxpayer does not receive a payment of that income, but some other benefit moves to the taxpayer. This has been found to occur when income that would otherwise have been paid to the taxpayer is diverted for uses that are of benefit to the taxpayer (*Dunn v C of IR* (1974) 1 NZTC 61,245).

When life agents set off the commission, the amount of commission is gross income under section CD 3 or CH 3. The commission (which would otherwise have been paid to the agent) is diverted for uses that are of benefit to the life agent, i.e. payment of the premiums on own policies.

The practice of setting off commissions on policies may also occur in respect of policies sold to third parties. For example, a life agent sells a policy to an unrelated third party and becomes entitled to a commission. Instead of being paid the commission, the life agent sets the commission off against premiums payable on own policies. Here, the commission, although not paid to the life agent, is derived by the life agent and is therefore gross income.

3. Receipt of discounted premiums by life agents on own policies or by members of life agents' families on family policies

It is common for life insurers to allow life agents to receive lower commissions in order to discount premiums to prospective clients. The Commissioner understands that if a life agent does not charge a commission on the sale of a policy, there is a corresponding reduction in the premiums payable under that policy.

The Commissioner also understands that when life agents do not charge commissions on their own policies or on family policies, the premiums payable under those policies are reduced.

Life agents who do not charge commissions on policies sold to third parties are not assessable on any notional commission, i.e. the amount of commission which would have been received. As discussed, an important feature of income is that it is something which comes in. When a life agent does not charge commission no income comes in.

This must also be the case when life agents do not charge commission on their own policies or family policies. As the life agent receives no commission, no income arises.

Alternative arguments

An important feature of income is that it is something which comes in. When life agents do not charge commission on their own policies no money comes in. They do not receive a cash commission. However, if life agents have the option of receiving a commission, or not receiving a commission and receiving a discounted premium, the issue of convertibility arises. In particular, does the existence of the option (to receive the commission in lieu of the discounted premium) mean that the discounted premium is convertible into money, and therefore assessable?

Case law

The principle of convertibility was initially laid down in *Tennant v Smith* [1892] 3 T.C. 158. *Tennant* involved a bank employee who received a benefit in the form of rent free accommodation. The issue was whether the accommodation was assessable under Schedule E of the UK legislation (by virtue of the words "salaries, fees, wages, perquisites or profits payable"). The Court held that the taxpayer would only be taxable if what he received was convertible into money, i.e. was money or money's worth. Because the taxpayer could not sublet the accommodation or turn it to pecuniary account in any other way, he was not taxed.

The principle of convertibility has been discussed and applied by the New Zealand courts on a number of occasions. See *C of IR v Parson* (No. 2) (1968) NZLR 574, *Stagg v Inland Revenue Commissioner* (1959) NZLR 1,252, and *Dawson v Commissioner of Inland Revenue* (1978) 3 NZTC 61,252.

The convertibility test is normally satisfied by demonstrating that the benefit may be sold or exchanged for money. (In *Stagg* the value of holiday airfares given to an employee were held not to be assessable income of the employee. The employee could not sell the fares or require the company to give him the equivalent cash value.)

However, it is clear from case law that there are other ways in which convertibility can be satisfied. See *Abbott v Philbin* [1961] 2 All E.R. 763 and *Heaton (Inspector of Taxes) v Bell* [1969] 2 All E.R. 70.

The principle of convertibility was considered by the New Zealand Supreme Court in *Dawson.* The taxpayer subscribed for debenture stock under a debenture holders' colour television plan. Under that plan a person could subscribe for debenture stock and would receive in return a TV free of hire for five years. No interest was payable on the debentures.

The Commissioner argued that the use of the TV set was the substitution of one form of a benefit for another, i.e. interest, and that in taking the hire of the set rather than the payment of interest, the taxpayer received a benefit which could be valued in terms of money.

McMullin J said at page 61,258:

In the view which I take of this matter, it is of some importance to note that Objector did not apply for a television set as an alternative to an interest-bearing investment. It is true that it was open to him initially to choose to invest in interest-bearing stock as, I have no doubt, many other investors did, but he completed his application for a television set and a television set only.

The Court held that the benefit which the taxpayer received was that he did not have to pay rental for the TV. That benefit did not constitute income in the ordinary sense because the benefit received by the taxpayer was not in monetary form, nor was it capable of being sold, surrendered, assigned, or mortgaged for money or money's worth.

Arguably *Dawson* provides some support for the view that the receipt of a discounted premium is convertible into money or money's worth, the discounted premium being a substitution for the commission. It may be implied from the Court's comments in *Dawson* that if the taxpayer had the option of investing and receiving either a TV set or an interest-bearing investment, and in fact received a TV set, the benefit would be convertible into money.

However, the better view is that discounted premiums are not convertible into money or money's worth.

The fact that a life agent initially has the choice of receiving a commission, or not receiving a commission and receiving a discounted premium, is not relevant. The issue of convertibility is considered at the time the taxpayer receives the benefit.

If a life agent chooses to receive a commission, no question of convertibility arises as the commission is money.

However, when a life agent chooses to receive a discounted premium, it is the discounted premium itself which must be convertible into money or money's worth. At the time the discounted premium is received it cannot be converted into money. Therefore, the convertibility principle does not apply.

Conclusion

When life agents receive discounted premiums on own policies or members of their families receive discounted premiums on family policies, the amount of the discount is not gross income of the life agent.

4. FBT and discounted policies

A life insurer who provides discounted premiums to life agents on own policies or to members of their families on family policies may be liable to FBT.

For the purposes of FBT a life agent is an "employee", regardless of whether the life agent is an employee or an independent contractor at common law.

Employee vs independent contractor

The terms "employee", "employer" and "employment" are defined for FBT purposes by reference to the PAYE system.

Section OB 1 defines "employee" for the purposes of the FBT rules as:

...a person who will receive, receives, or has at any time received, or who will be, is, or has at any time been entitled to receive, a source deduction payment...

Section OB 2 defines "source deduction payment" as:

...a payment by way of salary or wages, an extra emolument, or a withholding payment.

"Withholding payment" is defined in section OB 1 as:

...a payment which is declared by regulations under this Act to be a withholding payment for the purposes of the PAYE rules:

Under section 4 of the Income Tax (Withholding Payments) Regulations 1979, all payments of the classes specified in the Schedule to the regulations are withholding payments for the purposes of the PAYE rules. Included in Part A of the Schedule are commissions or other remuneration to insurance agents or sub-agents, or to salesmen.

A life agent who is an employee at common law is an "employee" for the purposes of FBT because of receiving a source deduction payment, namely salary and wages. A life agent who is an independent contractor at common law is also an "employee" for the purposes of FBT because of receiving a source deduction payment, namely withholding payments.

Discounts on family policies

If an employer provides a benefit to an associated person of any of the employer's employees, i.e. a member of the life agent's immediate family (and the benefit would have been a fringe benefit if provided to an employee), section GC 15 (1) deems the benefit to be a benefit provided to the employee.

For the purposes of section GC 15, "associated person" is defined in section OD 7 (1).

An "associated person" includes two persons who are at the time relatives.

A relative of a life agent is any person connected with the life agent:

- By blood relationship (if within the fourth degree of relationship); or
- By marriage (persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other); or
- By adoption (persons are connected by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other).

Is there a fringe benefit?

As discussed above, when a life agent does not charge a commission and receives a discounted premium, that discounted premium is not gross income of the life agent.

A discounted premium which represents a reduction is charges other than commission and is also not gross income. A discount is not regarded as gross income. Income is something which comes in, not something that is saved from going out (see *Tennant* Lord Halsbury at page 165).

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The issue then is whether discounted premiums received by life agents on own policies or discounted premiums received by members of their families on family policies constitute fringe benefits.

Analysis

Section CI 1 defines "fringe benefit" for the purposes of the FBT rules:

> In the FBT rules, "fringe benefit", in relation to an employee and to any quarter...or income year, means any benefit that consists of-
>
> ...
>
> Any benefit of any other kind whatever, received or enjoyed by the employee in the quarter or...income year,-
>
> being, as the case may be...a benefit that is used, enjoyed, or received, whether directly or indirectly, in relation to, in the course of, or by virtue of the employment of the employee (whether that employment will occur, is occurring, or has occurred) and which is provided or granted by the employer of the employee;...

It is clear from these opening words that in order to be a fringe benefit there must be some *benefit* to the employee, provided or granted by the employee's employer.

It may be argued that when life agents do not charge a commission on their own policies and receive discounted premiums, no benefit arises to the life agents because the benefit is also available to members of the public. (Life agents have a discretion to reduce their commission in order to reduce premiums on policies sold to members of the public).

If a life agent purchases a life insurance policy at full value, i.e. the full amount of premiums are payable, there is no benefit to the life agent or his or her family. However, when a commission is not charged the full amount of premium is not paid. If a life agent does not charge commission, be it on an own policy or a policy sold to a member of the public, the amount of premium payable under the policy is reduced. This reduction in premium is clearly a benefit to the life agent and the public alike.

A life agent who receives a discounted premium, when the discount represents a reduction in charges other than commission, clearly receives a benefit. The benefit being the receipt of the services of the employer (the life insurance policy) for less than market value.

Therefore, discounted premiums received by life agents on own policies and discounted premiums received by members of their families on family policies are fringe benefits under section CI 1 (h).

Note that sections CI 1 (e) and CI 1 (f) do not apply to discounts received by life agents (or associated persons) on own policies or family policies. The policies sold by the life agent are not "sick, accident, or death benefit funds" as defined in section

CB 5 (2) (see CI 1 (e)), nor is the discount a "specified insurance premium" as defined in section OB 1. The life insurer does not pay the life insurance premiums of the life agent or the agent's family on the life agent's own policies or family policies (see section CI 1 (f)).

Value of the benefit

The Act provides methods for valuing a fringe benefit.

Specific provisions exist for determining the value of services provided to an employee when they are provided as part of the employer's business.

Here the benefit is the provision of a life insurance policy at less than market value. The life insurer is in the business of selling such life insurance policies to the general public. Therefore, section CI 3 (10)(a) applies to determine the value of the benefit.

The extent to which the benefit is subject to FBT will depend on the extent to which the discounts provided to life agents or members of life agents' family are greater than the discounts available to members of the general public.

It is a question of fact whether the price paid for the policy by the life agent is the same as is customarily paid by a member of the general public in the open market on ordinary trade terms between buyers and sellers independent of each other. There will be no taxable value if the amount paid by the employee is the same as, or exceeds, the price customarily paid by a member of the general public in the open market on ordinary trade terms between buyers and sellers independent of each other.

Expenditure on account of an employee

The Rulings cover the situation when an employer (the life insurer) provides a benefit to the employee or associated person (the life agent or relative) by discounting the premiums payable by the life agent on the insurance policy. It does not seek to address the situation when the life insurer pays the life insurance premium of a life agent.

When a life insurer pays a life agent's insurance premiums, that expenditure will be expenditure on account of an employee if the employee is liable to pay the insurance premiums. Expenditure on account of an employee is monetary remuneration and is assessable income to the employee.

When a life insurer pays a life agent's insurance premiums, and the life insurer is liable for those premiums, that expenditure is a fringe benefit (unless expressly excluded from the definition of fringe benefit in section CI 1).

GST - advertising space and advertising time sold to non-residents

Public ruling - BR Pub 96/10

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

Taxation Laws

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

This Ruling applies in respect of sections 11(2)(e) and 60(2).

The Arrangement to which this Ruling applies

The Arrangement is the supply of advertising space in a publication, or the supply of advertising time on radio or television (or other broadcasting service) by a GST registered person to a non-resident person who is outside New Zealand at the time the services are performed.

For the purposes of this Ruling, the supply of advertising space or advertising time means the service of communicating an advertising message, and includes all steps involved in providing this service by the supplier of the advertising space or time.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows.

Section 11(2)(e)

The supply of the service of providing advertising space in a publication or advertising time on radio or television (or other broadcasting service) is zero-rated under section 11(2)(e) if the service is supplied contractually for and to a non-resident who is outside New Zealand at the time the service is performed. The supply is zero-rated irrespective of whether a New Zealand resident also otherwise benefits from the supply.

The supply of advertising space in a publication or advertising time on radio or television (or other broadcasting service) is not supplied "directly in connection with" any land (or improvement thereto) or moveable personal property situated in New Zealand for the purposes of section 11(2)(e). This is because:

- The provision of advertising space in a publication or advertising time on radio or television (or other broadcasting service) is not supplied directly in connection with the subject matter of the advertisement; and
- Where the supply is one of advertising space in a publication, the services are not supplied directly in connection with the publication itself.

Section 60(2)

If the supply is made to a New Zealand resident person who is acting as an agent for a non-resident principal, section 60(2) deems the supply to be made to the non-resident principal and not the resident agent. Section 11(2)(e) will apply to zero-rate the supply of services, provided that all the other requirements of section 11(2)(e) are satisfied.

If services are supplied to a non-resident person who is acting as an agent for a New Zealand resident principal, section 11(2)(e) does not apply to zero-rate the supply of services. Section 60(2) deems the supply to be made to the New Zealand resident principal.

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The period for which this Ruling applies

This Ruling will apply for the period from 1 December 1996 and 30 November 1999.

This Ruling is signed by me on the 13th day of November 1996.

Martin Smith
General Manager (Adjudication & Rulings)

Commentary on public ruling BR Pub 96/10

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Ruling BR Pub 96/10 ("this Ruling").

The subject matter covered in this Ruling was previously dealt with in TIB Volume Six, No.2 (August 1994) at page 14. This Ruling supersedes that earlier policy.

Background

In July 1994, the High Court delivered its judgment in *Wilson & Horton v CIR*(1994) 16 NZTC 11,221. The case dealt with the circumstances in which a newspaper publisher should account for GST on the services of placing advertisements for non-resident clients. The High Court held that:

- To qualify for zero-rating under section 11(2)(e), services must be provided "contractually to" and "beneficially for" a non-resident person. If a New Zealand resident receives the benefit of the advertising services, the services are not zero-rated; and
- The provision of advertising space and related services is not supplied directly in connection with the subject matter of the advertisements.

Wilson & Horton appealed this decision to the Court of Appeal (*Wilson & Horton v CIR*(1995) 17 NZTC 12,325). The Court of Appeal held in favour of the taxpayer, and concluded that the supply of advertising space in New Zealand by Wilson & Horton to non-resident clients is zero-rated under section 11(2)(e) of the Goods and Services Tax Act 1985, irrespective of whether a New Zealand resident also benefits from the supply. The Commissioner did not appeal this decision.

Legislation

Section 11(2)(e) zero-rates a supply of services when:

> The services are supplied for and to a person who is not resident in New Zealand and who is outside New Zealand at the time the services are performed, not being services which are supplied directly in connection with -
>
> (i) Land or any improvement thereto situated inside New Zealand; or
>
> (ii) Moveable personal property (other than choses in action, and other than goods to which paragraph (ca) of this subsection applies) situated inside New Zealand at the time the services are performed; -

Section 60 sets out the GST agency provisions. Section 60(2) states:

> Subject to this section, for the purposes of this Act, where any registered person makes a taxable supply of goods and services to an agent who is acting on behalf of another person who is the principal for the purposes of that supply, that supply shall be deemed to be made to that principal and not to that agent:

Court of Appeal decision

The Court of Appeal held that the supply of the publication of advertisements by Wilson & Horton to non-resident clients qualified for zero-rating under section 11(2)(e), irrespective of whether a New Zealand resident obtains a benefit from the supply.

"For and to"

The Court of Appeal rejected the High Court's interpretation of "for" in section 11(2)(e), as meaning "beneficially for". The Court of Appeal questioned whether this "benefit" test was workable. The Court noted that there are many parties who may potentially benefit from an advertisement placed by a non-resident, and that it was unlikely that the legislature would have intended a wide group of possible beneficiaries of a service to determine the GST treatment of the service.

In discussing the "for and to" wording in section 11(2)(e), the Court of Appeal examined the possible meanings of "for" that may have been intended by the legislature and rejected the Commissioner's interpretation of "for" as meaning "beneficially for". The Court concluded that "for" in section 11(2)(e) was used for emphasis only. Justice Richardson noted that legislative drafters often convey emphasis through the use of a combination of words and said that (at 12,330):

> I am inclined to think that the framers of s11(2)(e) employed both expressions to convey emphasis and perhaps to bring out the intent that the contract must be genuine and so the services must be supplied under that contract to and for the other contracting party.

As a matter of statutory interpretation, the Court said that section 11(2)(e) would have been worded quite differently if the intent had been to preclude zero-rating, unless a non-resident recipient of a supply was the only person who could benefit from the services supplied.

Justice Penlington considered that this result was consistent with one of the underlying themes of zero-

rating - the preservation of New Zealand's competitiveness in world trade. It was also recognised that if advertised merchandise is sold in New Zealand, GST will be imposed on the sale at that time.

"Directly in connection with"

The Court of Appeal did not discuss whether the supply was made directly in connection with land or moveable personal property in New Zealand for the purposes of section 11(2)(e). The High Court had accepted that the supply of advertising space in a newspaper was not "directly in connection with" the subject matter of the advertising. During the Court of Appeal hearing, the potential argument that the services are supplied directly in connection with the newspapers themselves was also raised.

However, the Court of Appeal did not allow the Commissioner to introduce this new line of reasoning as it would have changed the basis upon which the assessment was made and objected to. The publishing industry has asked the Commissioner to clarify the application of the "directly in connection with" exclusion in section 11(2)(e) in this context.

Application of the Legislation

The key features of section 11(2)(e) are the phrases "for and to" and "directly in connection with".

"For and to"

The Commissioner accepts the Court of Appeal's interpretation of "for and to" in *Wilson & Horton* for the purposes of section 11(2)(e). In this context, "for and to" is a composite phrase. "For" simply emphasises "to" and does not connote any requirement that services must be provided for the exclusive benefit of the recipient of the supply. If services are supplied pursuant to a contract with a non-resident and are for that non-resident, section 11(2)(e) will apply to zero-rate the supply regardless of any other benefits also arising to a New Zealand resident (provided that the other requirements of the section are satisfied).

The Court of Appeal's interpretation of "for and to" is not restricted to the supply of advertising space in a newspaper. It also applies to the supply of advertising space in all forms of publication and to the supply of advertising time on radio or television (or other broadcasting service).

This Ruling discusses the application of section 11(2)(e) to the supply of advertising space in publications, such as newspapers and magazines. The Ruling also covers the supply of advertising time on radio and television, or by way of any other broadcasting service, e.g. the internet. For the purposes of the Ruling, the supply of advertising space or advertising time means the service of communicating an advertising message, and includes all steps involved in providing this service by the supplier of the advertising space or time.

"Directly in connection with"

A supply of services to a non-resident will not be zero-rated under section 11(2)(e) if the services are supplied "directly in connection with" any land (or improvement to the land) or moveable personal property (other than choses in action and goods which are referred to in section 11(2)(ca)) situated in New Zealand at the time the services are performed. The Court of Appeal in *Wilson & Horton* did not discuss the meaning of "directly in connection with" in section 11(2)(e), nor resolve whether advertising space is supplied directly in connection with the newspapers in which advertisements are placed.

Case law

The determination of whether or not services are supplied "directly in connection with" land or moveable personal property depends on the circumstances in which the services are supplied. In *Case E84* (1982) 5 NZTC 59,441, the TRA considered the meaning of the phrase "in connection with" in the context of section 165 of the Income Tax Act 1976 (section DJ 5 of the Income Tax Act 1994) and noted that (at 59,446):

> It is a matter of degree whether, on the interpretation of a particular statute, there is a sufficient relationship between subject and object to come within the words "in connection with" or not. It is clear that no hard and fast rule can be or should be applied to the interpretation of the words "in connection with". Each case depends on its own facts and the particular statute under consideration.

In the context of GST, the meaning of "directly in connection with" for the purposes of section 11(2)(a), prior to its amendment in 1988, has been judicially considered by the High Court in *Auckland Regional Authority v CIR* (1994) 16 NZTC 11,080 and the Taxation Review Authority (TRA) in *Case P78* (1992) 14 NZTC 4,532. Before amendment, section 11(2)(a) provided for zero-rating of services supplied "directly in connection with" transportation. The High Court and TRA cases concerned the application of section 11(2)(a) to various charges (landing dues, international terminal charges, and rubbish disposal charges) levied on overseas airlines.

The High Court and the TRA adopted similar interpretations of the words "directly in connection with" under section 11(2)(a). The *Auckland Regional Authority* case summarises the reasoning of the TRA in *Case P78* (at 11,084):

> There, the Taxation Review Authority, Judge Barber, held that "airport dues" were zero-rated for GST because passengers cannot realistically be transported to New Zealand by air unless a plane lands and parks on the tarmac; that charges for those services can be regarded as provided for international passengers who are in a sense "outside New Zealand" until they pass through customs. The services are fundamental to and directly connected with the transportation of passengers;

The High Court and the TRA focus on whether a supply of services is fundamental or integral to transportation to determine whether the "directly in connection with"

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test in section 11(2)(a) is satisfied. This reasoning is not strictly relevant for the purposes of interpreting "directly in connection with" in section 11(2)(e). This is because the focus of section 11(2)(a) was on services directly connected with transportation services, and the identification of a direct connection between a service and another service, and a service and an item of property, involves different considerations.

However, the TRA has recently applied the proviso to section 11(2)(e) and considered the words "directly in connection with" in *Case S88* (1996) 17 NZTC 7,551. The objector in Case S88 purchased motor vehicles from its non-resident parent company and then sold the vehicles to independent dealers, who on-sold them to the public. The parent company provided a contractual warranty to the objector. The objector agreed with the dealers that if a vehicle was repaired under warranty the objector would reimburse the dealer. The objector would then register a claim with the parent company under the warranty and receive payment pursuant to that claim.

The TRA was required to consider whether the repair services provided by the objector pursuant to its contract with the non-resident parent were zero-rated under section 11(2)(e). The TRA concluded that section 11(2)(e) could not apply to zero-rate this supply as the services were supplied "directly in connection with" moveable personal property (the vehicles) situated in New Zealand at the time the services were provided. Although, the TRA did not examine the meaning of "directly in connection with" in great detail, it did state (at 7,558):

> The moveable personal property in question is the repaired vehicle. There is a direct relationship or connection between the service of the repairs and the vehicle. Accordingly, the said "proviso" to s 11(2)(e) must apply to the facts of this case and prevent the objectors from relying on the zero-rating provisions of s 11(2)(e). The repair service could not be performed but for the existence of the vehicle.

[Please note that *Case S88* is currently under appeal by the taxpayer.]

Therefore, the case law discussing "in connection with" and "directly in connection with" indicates that the interpretation of the test will be dictated by the particular context involved. The Commissioner considers that the "directly in connection with" proviso in section 11(2)(e) should be interpreted narrowly, and that there must be a clear and direct relationship with moveable personal property or land in New Zealand before a supply will be standard rated. This is consistent with the approach of the TRA in Case S88 in identifying on the facts of that particular case a "direct relationship or connection" between the repair services and the vehicles under repair.

Advertising space and advertising time

The supply of advertising space in a publication is the supply of the service of communicating an advertising message, involving all the steps required to achieve communication of the advertisement. This service is not supplied directly in connection with the *subject matter of the advertisement*. In the words of the High Court in *Wilson & Horton* v CIR (1994) 16 NZTC 11,221 (at 11,224):

> The supply of space and services rendered by Wilson & Horton are directly connected with the advertising but not with the goods advertised. The goods are, as it were, at least one step removed from the services supplied by the newspaper proprietor.

The Commissioner agrees with this view. There is no direct relationship or connection between the provision of advertising space and the subject matter of the advertisement. The same reasoning also applies to the supply of advertising space in all types of publication as well as advertising time on radio or television (or other broadcasting service). The supply of advertising space or time in these media cannot be described as "directly in connection with" the advertised commodity.

Similarly, when advertising space is supplied in a publication, the services are not supplied directly in connection with the *publication* in which the advertisements are published. The High Court judgment in *Wilson & Horton* concluded that the provision of advertising space was supplied directly in connection with (if anything) the advertising itself. The advertised goods were considered to be at least one step removed from the services. The Commissioner considers the same logic applies in respect of a newspaper or other publication. The service of communicating an advertising message is directly connected with that message and not the publication. The publication is at least one step removed from the service and is merely the medium in which the advertising message is publicised. Accordingly, the service is not supplied directly in connection with the publication produced by the publishers.

Consequently, the supply of advertising space in either a publication or by way of broadcast will be treated in the same way for GST purposes. The supply will qualify for zero-rating, provided that the services are supplied for and to a non-resident who is outside New Zealand at the time the services are performed.

Supplies through agents

The application of section 60(2) may also need to be considered to determine whether a supply is zero-rated under section 11(2)(e). Section 60(2) deems a taxable supply of goods and services made by a registered person to an agent who is acting on behalf of a principal to be a supply made to the principal.

Therefore, if a supply of advertising space or time is made to a New Zealand resident person who is acting as an agent for a non-resident principal, section 60(2) deems the supply to be made to the non-resident principal and not the resident agent. Section 11(2)(e) will apply to zero-rate the supply of services, provided that all the other requirements of section 11(2)(e) are satisfied. A common example of this is where a resident advertising agency acts as an agent for a non-resident person in purchasing advertising space or time in New Zealand.

Conversely, if a supply is made to a non-resident person who is acting as an agent for a New Zealand resident in relation to the supply, section 11(2)(e) will not apply to zero-rate the supply even if the criteria in section 11(2)(e) are otherwise satisfied. The supply will be deemed to be made to the resident principal and it will not be for and to a non-resident person.

Examples

For the purposes of these examples, it is assumed that:

- A person referred to as a resident is a "resident" as defined in section 2 of the Goods and Services Tax Act 1985. The converse applies to non-residents; and
- If the services are supplied to a non-resident, the non-resident is outside New Zealand at the time of performance of the services.

Example 1

A UK resident manufacturing company contacts a New Zealand magazine publisher and books advertising space for a newly developed product. The UK company has a GST registered subsidiary in New Zealand that sells the advertised product.

The supply of advertising space by the magazine publisher to the UK manufacturer is zero-rated under section 11(2)(e). This is because:

- The publisher supplies the services contractually for and to a non-resident. The fact that the New Zealand resident subsidiary potentially may benefit from the supply through increased sales does not preclude zero-rating.
- The services are not supplied directly in connection with either the products for sale in New Zealand or the magazines in which the advertisements are shown.

Example 2

A US resident distributor of soft drinks contracts for the supply of radio time on a national radio station in New Zealand. The soft drinks are available from all chains of supermarkets throughout New Zealand.

The supply of radio time by the New Zealand radio station to the US distributor is zero-rated under section 11(2)(e). This is because:

- The radio station supplies its services contractually for and to a non-resident. The fact that New Zealand resident retailers throughout New Zealand may potentially benefit from the supply through increased sales does not preclude zero-rating.
- The services are not supplied directly in connection with the products for sale in New Zealand.

Example 3

An Australian computer distributor plans to advertise its product range in New Zealand. The computers will be available through all major computer distributors in New Zealand. The Australian company contacts a New Zealand resident advertising agency to arrange an advertising campaign. The agency, acting in the capacity as agent for the Australian company, purchases air time on a New Zealand resident television channel.

The supply of air time by the television station to the Australian company is zero-rated under section 11(2)(e). This is because:

- The television channel supplies the air time services contractually for and to a non-resident. Section 60(2) deems the supply to be made to the Australian company, as principal. The New Zealand resident advertising agency receives the supply as agent only.
- The fact that New Zealand resident distributors may potentially benefit from the supply through increased sales does not preclude zero-rating.

The services are not supplied directly in connection with the products for sale in New Zealand.

Hunter Premium Funding Ltd: service of arranging loans is GST-exempt as a financial service

Product ruling - BR Prd 96/30

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

Taxation Law

All legislative references are to the Goods and Services Tax Act 1985 (the Act) unless otherwise stated.

This Ruling applies in respect of section 3(1)(l), as it relates to sections 3(1)(c) and 3(1)(f).

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The Arrangement to which this Ruling applies

The Arrangement is the supply of services to Hunter Premium Funding Limited (HPF), for which commissions are paid by HPF, by insurance brokers who act as intermediaries to negotiate and document loans which are "credit contracts" and/or which give rise to "debt securities", as those terms are defined in the Act. Those loans, which are advanced by HPF, are applied for by borrowers to finance insurance premiums payable on policies entered into by the borrowers.

The supplies made by brokers to HPF will consist of negotiating and documenting loan applications. The activities of the broker, in making that supply, will usually include:

- Acting as an intermediary between HPF and the client seeking funds.
- Calculating and notifying the cost of finance to the client. This may be done independently or in conjunction with HPF.
- Collecting information from the client and assisting the client to complete application forms.
- Collecting the first repayment instalment from the client.
- Documenting details of the insurance that will be used as security for the loan.

Assumption made by the Commissioner

This Ruling is based on the assumption that:

- The insurance broker will be resident in New Zealand for GST purposes.

How the Taxation Law applies to the Arrangement

Subject in all respects to the assumption above, the Taxation Law applies to the Arrangement as follows:

- The services provided by insurance brokers acting as intermediaries who negotiate and document loan agreements which are credit contracts and/or give rise to debt securities in respect of funds to be advanced by HPF to borrowers are exempt financial services pursuant to section 3(1)(l), in that the activities of the brokers constitute the arranging of activities specified in sections 3(1)(c) or 3(1)(f).

The period for which this Ruling applies

This Ruling will apply for the period 1 June 1996 to 30 June 1999.

This Ruling is signed by me on the 22nd day of October 1996.

Martin Smith
General Manager (Adjudication & Rulings)

Questions we've been asked

This section of the TIB sets out the answers to some day-to-day questions that people have asked. We have published these as they may be of general interest to readers.

These items are based on letters we've received. A general similarity to items in this package will not necessarily lead to the same tax result. Each case will depend on its own facts.

Income Tax Act 1994

Whether franchise agreements are depreciable

Section EG 2 (section 108A, Income Tax Act 1976) - Formula for calculating depreciation deduction: A taxpayer has asked in what circumstances payments under a franchise agreement are depreciable.

Franchise agreements can confer a variety of rights and obligations, and may require initial lump-sum payments, ongoing payments, or a combination of both from the franchisee. Ongoing payments are usually linked to the level of sales made each year.

Franchise agreements are not a category of intangible asset that is property of a type listed in Schedule 17 (Twenty-second Schedule, Income Tax Act 1976), and accordingly they are not normally depreciable intangible property.

However, any particular franchise agreement may give rise to specific rights that are listed in the Schedule. Note that it is the rights that are the depreciable intangible property, and not the franchise agreement.

If a franchise agreement gives rise to a mixture of rights, and a particular right is specifically listed in the Schedule and capable of being separately and clearly isolated and valued, that right will be "depreciable intangible property" in its own right, and depreciable when the requirements of a declining value are also met.

Inland Revenue will carefully scrutinise the amounts attributed to any mixture of Schedule 17 rights and rights not listed in Schedule 17.

Section EG 2 sets out the formula permitting deductions for depreciation on "depreciable property".

Section OB 1 defines "depreciable property" as:

(a) ... any property ... which might reasonably be expected in normal circumstances to decline in value while used or available for use by persons-
  (i) In gaining or producing assessable income; or
  (ii) In carrying on a business for the purpose of gaining or producing assessable income; but
(b) Does not include -
  ...
  (iv) Intangible property other than depreciable intangible property.

The same section further defines "depreciable intangible property" as:

... intangible property of a type listed in Schedule 17, which Schedule describes intangible property that has -

(a) A finite useful life that can be estimated with a reasonable degree of certainty on the date of its creation or acquisition; and
(b) If made depreciable, a low risk of being used in tax avoidance schemes.

Schedule 17 provides the following list of depreciable intangible property:

1. The right to use a copyright.
2. The right to use a design or model, plan, secret formula or process, or other like property or right.

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3. A patent or the right to use a patent.
4. The right to use land.
5. The right to use plant or machinery.
6. The copyright in software, the right to use the copyright in software, or the right to use software.
7. The right to use a trademark.
8. Management rights and licence rights created under the Radiocommunications Act 1989.
9. A consent granted under the Resource Management Act 1991 to do something that otherwise would contravene sections 12 to 15 of that Act (other than a consent for a reclamation), being a consent granted in or after the 1996-97 income year.

To be depreciable, an intangible asset must be both:

- Property of a type listed in Schedule 17; and
- Property which might reasonably be expected in normal circumstances to decline in value.

As each franchise agreement must be considered on its own facts, only general guidelines can be provided.

Franchises are not considered to be property of a type listed in Schedule 17, so in general they will not be depreciable.

If a franchise gives rise to property or rights that are of a specific type listed in the Schedule (such as the right to use a trademark, secret formula, or process), then such rights will be depreciable only when there are no non-schedular properties included, or when the schedular rights are capable of being separately and clearly isolated and valued.

Regardless of whether or not the rights conferred under a franchise agreement are considered to be of a type listed in Schedule 17, they will *not be depreciable* if any of the following apply:

- There is no finite and defined period of life estimable with a reasonable degree of certainty.
- The rights are not expected to decline in value over their life.
- The payment is made to purchase goodwill (rather than rights to secret formulae, processes or trademarks).

If a right conferred under a franchise agreement is depreciable, it will usually have a legal life (as defined in section OB 1) equivalent to its estimated useful life. Accordingly, it must be depreciated using a straight-line method in terms of sections EG 3 (2) and EG 8 (sections 108B(2) and 108G, Income Tax Act 1976).

If there are rights of renewal (of the franchise) that are automatic, or subject only to the payment of a predetermined fee, the legal life will be equal to the full term of the agreement, assuming the rights of renewal are taken up.

The cost to be used for the annual depreciation calculation is the initial franchise fee (or separately valued amount), and the capital cost is increased when the renewal fee is incurred.

Section EG 19 (section 117, Income Tax Act 1976) requires a calculation of the loss or gain on disposal of assets. The calculation is required for franchise rights which are depreciable, by virtue of the section EG 19 (9) definition of “disposal”, which:

(a) Includes -

...

(iv) Any event whereby the rights which constitute or are part of an item of intangible property will no longer be able to be exercised, at any time, by the taxpayer who owns that property:

...

(b) Does not include, in the case of intangible property, the disposal of that property as part of an arrangement to replace it with property of the same type.

If the correct full cost of depreciable rights under a franchise agreement has not been claimed as an expense in the total depreciation claimed over its life, the operation of section EG 19 will ensure that the correct total is arrived at in the franchise's year of ultimate expiry.

This item has been concerned with the depreciability of franchise agreement rights. It does not purport to deal with the deductibility of ordinary franchise fees, which would require consideration of sections BB 7, EF 1, and BB 8 (a).

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.

Retirement allowance - assessability

Case: TRA No 95/82

Act: Income Tax Act 1976 - section 65 (2) (b), section 68 (2)

Keywords: *Long service payment*

Summary: The TRA took the view that the payment to the objector was a retiring allowance made in respect of his employment or service on the termination of that employment or service. It did not matter that the payment could also be described as a bonus or gratuity.

Facts: The objector had a sole period of employment for 29 years. He then sought early retirement on the basis of ill health and this request was accepted. The objector was paid the sum of $32,528 for long service. The issue to be determined was whether the payment was assessable under section 65(2)(b) of the Income Tax Act 1976 or whether it fell within section 68(2), which would deem it not to be assessable income.

Decision: The TRA ruled that the lump sum payment was an allowance (or a bonus or a gratuity) available to the objector only at the point of retirement and related to his past employment. It was made not only on termination of that employment but because of such termination and because of a high standard of performance.

As for the Commissioner's submission that section 68(2) only applies to "true retirement" the TRA found that the section should not be limited in this manner and could refer to retirement from employment, termination of a career or cessation of primary employment.

With regard to the Commissioner's alternative submission that section 68(5)(d) excluded the payment from falling within section 68(2), the Authority found that the payment would only be excluded if it had been calculated with respect to any right or entitlement not dependent on the occurring of the retirement.

Adjustment assistance payments - assessability

Case: TRA No 96/38 , 96/39

Act: Income Tax Act 1976 - section 65 (2) (a) , (h) or (l)

Keywords: *Compensation payments - assessability*

Summary: The TRA found that the adjustment assistance payments received by the objectors constituted assessable income in terms of section 65 (2) (a).

Facts: The objector partnership purchased land containing 38 hectares of native bush in April 1990. The partnership intended to log the timber. In July 1990 the Government stopped all logging and exporting of indigenous timber products. In August 1990 it announced that it would pay adjustment assistance to persons affected by the ban.

In March 1991 the partnership was successful in its application to the Ministry of Forestry for adjustment assistance. The issue to be determined by the TRA was whether the payments are assessable under section 65(2)(a) , (h) or (l) or whether there was a "sale" of timber under section 74 which would give rise to a deduction for the cost of the timber under section 74(2)(b).

Decision: The TRA reiterated the general principle that where any amount is received by way of compensation to fill a hole in profits, that payment takes its character from that which it replaces. It held that the payments were clearly compensation for the loss of profits from the taxpayers' logging business as they were unable to cut down their indigenous trees and sell the timber or export it.

The TRA also held that the payments were assessable as "royalties" under section 65(2)(h) as the payments were consideration for the abstaining of right to extract, remove or otherwise exploit the timber. It was further found that the payments could also be considered as "income derived from any other source whatsoever" under section 65(2)(l).

With regard to section 74, the TRA held that there had been no "sale" and that the objectors still owned the timber and had not given anyone a licence or an easement or granted anyone the right to take the profits from it. Therefore section 74(2)(b) did not provide the objectors with a deduction and nor was the cost of the timber deductible under section 104.

Liability for income tax - section 276

Case: BNZ Finance Limited v CIR and Nash, Wellington, CP 41/96
Fisher J. 24 October 1996.

Act: Income Tax Act 1976 - section 276, section 25

Keywords: *Liability, estoppel*

Summary: The plaintiff sought a declaration that it was not liable to pay income tax under section 276 of the Income Tax Act 1976 with respect to one of its former subsidiaries. Two other issues were also put forward by the plaintiff. The first related to section 25 the second was concerned with estoppel.

Facts: Between 1988 and 1992 a subsidiary of the plaintiff company derived income from investments in redeemable preference shares and debentures with various companies. The Commissioner originally assessed the subsidiary as having no liability for tax on the income derived. However the Commissioner's subsequent examination of the scheme resulted in the conclusion that it was for the purposes of tax avoidance within section 99 of the Act. Consequently the Commissioner intended that the plaintiff would be liable for tax on the amended assessment income of its subsidiary for the 1988 to 1992 (inclusive) income years, pursuant to section 276.

Decision: The High Court found that any steps taken by the Commissioner to assess or reassess a taxpayer are essentially procedural, crystallising the quantum of the assessable income and tax payable thereon. The underlying liability under the Act is present all along, with or without any assessment. The Court found that when the subsidiary was dissolved, it was "liable to be assessed" for the purposes of section 276.

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In addition to the issue of section 276, the Court also examined whether it was too late for the Commissioner to have claimed for the 1989 and 1990 income years. It held that as the Commissioner had not yet made an effective amended assessment for the 1989 and 1990 years, and as the four year limit imposed by section 25 had expired with respect to those years, it was too late for the Commissioner to issue an amended assessment for those years.

The final issue before the Court concerned estoppel. The plaintiff argued that when the Commissioner signified, by way of letter, that he did not object to the dissolution of the subsidiary, he estopped himself from pursuing any further claim with respect to tax for which the company was then liable. On this point the Court held that firstly there is nothing inconsistent between the giving of a notice under section 335A agreeing to the dissolution of an original company on the one hand, and giving effect to a statutory liability automatically created for the new company under section 276(3) on the other. Secondly the Court found that in its view it was doubtful whether the Commissioner would have the power to estop himself in this context. Thirdly the Court held that there is no general foundation for such estoppel at common law.

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: *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

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.)

January 1997

5 Large employers: PAYE deductions and deduction schedules for period ended 31 December 1996 due.

(We will accept payments received on Monday 6 January 1997 as on time for 5 January 1997.)

7 Provisional tax and/or Student Loan interim repayments: first 1997 instalment due for taxpayers with September balance dates.
Second 1997 instalment due for taxpayers with May balance dates.
Third 1997 instalment due for taxpayers with January balance dates.

Annual income tax returns due to be filed for all non-IR 5 taxpayers with September balance dates.

1996 end of year payments due (income tax, Student Loans, ACC premiums) for taxpayers with February balance dates.

QCET payment due for companies with February balance dates, if election is to be effective from the 1997 year.

15 GST return and payment for period ended 30 November 1996 due.

20 Large employers: PAYE deductions and deduction schedules for period ended 15 January 1997 due.

Small employers: PAYE deductions and deduction schedules for period ended 31 December 1996 due.

FBT return and payment for quarter ended 31 December 1996 due.

Gaming machine duty return and payment for month ended 31 December 1996 due.

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

RWT on dividends deducted during December 1996 due.

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

31 GST return and payment for period ended 31 December 1996 due.