TAX INFORMATION BULLETIN

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Inland Revenue
Te Tari Taake

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If you find that you prefer the electronic copy of the TIB and no longer need a paper copy, please fill in and return the form at the back of this TIB so we can take you off our mailing list.

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.

National standard costs for specified livestock – 1997

Under the authority of section EL 4 (1) of the Income Tax Act 1994 the Governor-General has declared the national standard costs for specified livestock for the year starting on 1 April 1996 (the 1996-97 income year).

The costs allow farmers to value their livestock under the national standard cost option for the 1996-97 income tax year. Farmers using the scheme apply the national standard costs to stock bred on the farm or immature animals on hand at the beginning of the year, while stock purchased is valued at their purchase price. The average of these costs is applied to the stock on hand at year's end to derive the closing value of live-stock on hand.

In announcing the values Revenue Minister, the Rt. Hon. W F Birch, said the average production costs for sheep, beef cattle, goats, and pigs have all fallen slightly compared with the previous year.

Costs for rising 1 year dairy cattle have decreased more than other livestock classes. This was due to the average number of homebred calves raised on farms being higher than in the previous survey year. The larger number reduces the per head cost of this class of animal.

The costs for deer have increased which reflects the improving income from this sector being channelled back into on-farm costs which increases the cost of producing the rising 1 year animals.

The national average market values of livestock, which farmers use to value livestock under the herd scheme, will be released in May this year after a national survey of market values taken at 30 April.

The national standard costs for the 1996-97 income year are as follows:

Kind of livestock	Category of livestock	National standard cost
		$
Sheep	Rising 1 year	15.00
	Rising 2 year	8.80
Dairy Cattle	Purchased bobby calves	128.00
	Rising 1 year	413.00
	Rising 2 year	72.40
Beef Cattle	Rising 1 year	125.00
	Rising 2 year	73.70
	Rising 3 year male non-breeding cattle (all breeds)	73.70
Deer	Rising 1 year	48.90
	Rising 2 year	23.90
Goats (Meat and Fibre)	Rising 1 year	11.50
	Rising 2 year	7.20
Goats (Dairy)	Rising 1 year	80.70
	Rising 2 year	13.20
Pigs	Weaners to 10 weeks of age	72.00
	Growing pigs 10 to 17 weeks of age	56.70

Plant Trolleys - Depreciation Determination DEP23

In TIB Volume Nine, No. 1 (January 1997), we published a draft general depreciation determination for Plant Trolleys as used in the horticultural industry. These trolleys are leased to growers for use in the selection of plants in nurseries and subsequent transport to retail outlets. No submissions were received, and the Commissioner has now issued the determination.

The determination is reproduced below and may be cited as, "Depreciation DEP23: Tax Depreciation Rates General Determination Number 23". The new depreciation rate is based on an estimated useful life ("EUL") as set out in the determination and a residual value of 13.5% of cost.

General Depreciation Determination DEP23

This determination may be cited as "Determination DEP23: Tax Depreciation Rates General Determination Number 23".

1. Application

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

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

2. Determination

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

- Inserting into the "Agriculture, Horticulture and Aquaculture" industry category the general asset class, estimated useful life, and diminishing value and straight-line depreciation rate listed below:

Agriculture, Horticulture and Aquaculture	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Plant Trolleys	5	33	24

3. Interpretation

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

This determination is signed by me on the 3rd day of March 1997.

Jeff Tyler
Assistant General Manager (Adjudication & Rulings)

Horizontal direction drilling machines - Depreciation Determination DEP24

In TIB Volume Eight, No.8 (November 1996) at page 4, we published a draft general depreciation determination for horizontal drilling machines and their underground components. These machines are 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.

We received no submissions, so the Commissioner has now issued the determination. It is reproduced below, and may be cited as, "Determination DEP24: Tax Depreciation Rates General Determination No. 24". The new depreciation rate is based on an estimated useful life ("EUL") as set out in the determination and a residual value of 13.5%.

General Depreciation Determination DEP24

This determination may be cited as "Determination DEP24: Tax Depreciation Rates General Determination Number 24".

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 & Quarrying" industry category the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below:

Contractors, Builders 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.

This determination is signed by me on the 10th day of March 1997.

Jeff Tyler
Assistant General Manager (Adjudication & Rulings)

Mulchers (commercial) - draft provisional depreciation determination

We have been made aware that there is currently no depreciation rate for commercial mulching machines of the type used at land fill and forestry sites for composting green waste.

The Commissioner proposes to issue a provisional depreciation determination which will set the asset class for these machines. The draft determination is reproduced below. The determination will set a new depreciation rate of 40% DV for the asset class "Mulcher (Commercial)". The proposed new depreciation rate of 40% DV is based on an estimated useful life ("EUL") of 4 years and a residual value of 13.5% of cost.

Exposure Draft - General Depreciation Determination PROVX

This determination may be cited as "Determination PROVX: Tax Depreciation Rates Provisional Determination Number X".

1. Application

This determination applies to taxpayers who own the asset class 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 10 (1)(b) 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 "Cleaning, Refuse and Recycling" category the provisionalasset class, estimated useful life, and diminishing value and straight-line depreciation rates listed below:

Cleaning, Refuse and Recycling	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Mulcher (Commercial)	4	40	30

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 new depreciation rates 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 30 April 1997 if we are to take it into account in finalising this determination.

FBT prescribed interest rate reduced to 10.0%

The prescribed interest rate used to calculate the fringe benefit value of low interest employment-related loans has been decreased to 10.0% for the quarter starting on 1 January 1997. This rate will continue to apply to subsequent quarters until any further adjustment is made.

This reduction from 11.1% reflects the recent fall in market interest rates.

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.

GST: Subdividers' payments of financial contributions to local authorities as a condition of the grant of a resource consent

Public Ruling BR Pub 97/2

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 2(1) (definition of "consideration"), 8(1), 10(2), and 20(3) of the Goods and Services Tax Act 1985.

The Arrangement to which this Ruling applies

The Arrangement is the charging by local authorities of financial contributions to persons who wish to develop subdivisions ("subdividers"), such contributions being in return for the supply of a resource consent by the local authority to the subdivider. The power for local authorities to levy such financial contributions is granted under the Resource Management Act 1991.

This Ruling does not apply to fees charged for the processing of resource consent applications by the local authority.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- The supply of a resource consent by a local authority to a subdivider, in return for the payment of a financial contribution by that subdivider, is subject to GST.
- GST must be returned by the local authority, whether the financial contribution is paid in monetary consideration or non-monetary consideration.
- The subdivider may make an input tax deduction for the GST charged on the supply of the resource consent by the local authority, if registration and invoice requirements are met.
- If a financial contribution is paid in non-monetary consideration by a subdivider who is a registered person, that subdivider must charge GST on the supply of the non-monetary consideration. The local authority may make an input tax deduction on receiving such a supply, when registration and invoice requirements are met.

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The period for which this Ruling applies

This Ruling will apply for the period from 1 June 1997 to 30 April 2000.

This Ruling is signed by me on the 6th of March 1997.

Martin Smith
General Manager (Adjudication & Rulings)

Commentary on Public Ruling BR Pub 97/2

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 97/2 ("the Ruling").

Background

When property is subdivided, demand increases for services provided by the relevant local authority. Existing services may need to be improved, or new facilities provided.

Local authorities levy financial contributions on subdividers to cover the cost of providing these services. The authority to levy financial contributions is provided for in the Resource Management Act 1991. Financial contributions are one condition that may be attached to the grant of a resource consent for a subdivision. A financial contribution includes money, land, works, services, or any combination of these. The most common services for which contributions are required are the provision of roads, water supply, drains, and reserves.

These services are not part of a local authority's normal business of providing services, which is funded by rates. A local authority assesses the impact of the subdivision on the services it provides in the course of its normal business, and evaluates the amount of financial contribution required for each increased service.

Sometimes a subdivider provides works, or land for a reserve or other purpose, instead of a cash contribution.

The Ruling does not cover supplies pursuant to the operation of law except in the context of a condition imposed for the supply of a resource consent by a local authority.

Legislation

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

The value of a supply is determined by section 10(2), which states:

Subject to this section, the value of a supply of goods and services shall be such amount as, with the addition of the tax charged, is equal to the aggregate of, -

(a) To the extent that the consideration for the supply is consideration in money, the amount of the money:

(b) To the extent that the consideration for the supply is not consideration in money, the open market value of that consideration.

"Open market value" is defined in section 4:

(1) For the purposes of this section-

(a) The term "similar supply", in relation to a supply of goods and services, means any other supply of goods and services that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods and services first mentioned, is the same as, or closely or substantially resembles, that supply of goods and services:

(b) The open market value of a supply shall include any goods and services tax charged pursuant to section 8(1) of this Act on that supply.

(2) For the purposes of this Act, the open market value of any supply of goods and services at any date shall be the consideration in money which the supply of those goods and services would generally fetch if supplied in similar circumstances at that date in New Zealand, being a supply freely offered and made between persons who are not associated persons.

(3) Where the open market value of any supply of goods and services cannot be determined under subsection (2) of this section, the open market value shall be the consideration in money which a similar supply would generally fetch if supplied in similar circumstances at that date in New Zealand, being a supply freely offered and made between persons who are not associated persons.

(4) Where the open market value of any supply of goods and services cannot be determined pursuant to subsection (2) or subsection (3) of this section, the open market value shall be determined in accordance with a method approved by the Commissioner which provides a sufficiently objective approximation of the consideration in money which could be obtained for that supply of those goods and services.

(5) For the purposes of this Act the open market value of any consideration, not being consideration in money, for a supply of goods and services shall be ascertained in the same manner, with any necessary modifications, as the open market value of any supply of goods and services is ascertained pursuant to the foregoing provisions of this section.

"Consideration" is defined in section 2:

"Consideration", in relation to the supply of goods and services to any person, includes any payment made or any act

or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods and services, whether by that person or by any other person; but does not include any payment made by any person as an unconditional gift to any non-profit body:

Section 20(3) allows a registered person to make input tax deductions on supplies of goods and services made to that registered person, subject to the different rules set out in the paragraphs in section 20(3).

Application of the Legislation

Consideration

The Commissioner's view is that subdividers provide financial contributions in respect of, in response to, or for the inducement of, the supply of a resource consent by a local authority to the subdivider of the subdivision. The supply of a resource consent is a supply of services. The contributions are "consideration", as defined, for goods and services and so are subject to GST.

The definition of "consideration" includes payments made "in respect of, in response to, or for the inducement of," a supply of goods and services. Financial contributions are in respect of, in response to, or for the inducement of, the services performed by local authorities when a resource consent is issued. Local authorities calculate the amount of a contribution as the cost of the services they must provide because of the subdivision. If a subdivider does not pay the contribution, the local authority will not approve the subdivision plan, the subdivision will not go ahead, and the local authority will not perform the services. The focus here is not on the goods and services the local authority supplies with the funds generated from the financial contribution, but on the supply of the resource consent with conditions attached. The use of the funds is quite separate from what the funds are consideration for, namely the resource consent.

Another person benefits from the supply

It makes no difference that the person paying the financial contribution is usually not the person who receives the long-term benefit of the goods and services provided by the local authority. (That long-term beneficiary being the resident or residents who ultimately buy the property.) The subdivider receives the supply of a resource consent, and it is that which determines the GST treatment of the financial contribution.

The subdivider has no choice

The financial contribution is subject to GST, despite the subdivider having no choice but to pay it if the subdivision is to proceed. The definition of "consideration" includes payments made in respect of, in response to, or for the inducement of, the supply of goods and services. If this degree of connection exists between a payment and goods and services, the payment falls within the definition of "consideration". The definition of "consideration" also includes payments which are not voluntary, so to the extent the financial contributions can be described as not being voluntary, this does not prevent them being "consideration" for a supply of goods and services.

Invoice

The local authority should state the amount of the consideration, including the open market value of any non-cash consideration, on the invoice.

Amount to return

The local authority should return output tax based on the amount of consideration received, including non-cash consideration. The subdivider, if registered, can claim an input tax deduction of the same amount if they have a tax invoice.

Non-monetary consideration

If a subdivider pays the financial contribution by providing works or land, the contribution is still "consideration" and subject to GST, calculated by reference to the value of supply rules in section 4 and section 10(2)(b). The value of the consideration is the open market value of the works or land. The open market value includes GST.

In this situation there will always be two supplies, one to the subdivider of the resource consent and the other to the local authority of the land or works. The supply of the land or works by the subdivider will be subject to GST if the subdivider is a registered person, as it will be a supply in the course or furtherance of a taxable activity.

If no cash payment changes hands and a pure barter arrangement has taken place, the value of the land or works and the value of the consent will be the same. The subdivider will get an input tax deduction for the GST on the resource consent (if it has a tax invoice) and pay output tax on the supply of the land or works. The local authority will get an input tax deduction on the supply to it of the land or works (if it has a tax invoice and is registered) and pay output tax on the supply of the resource consent. The supplies must be accounted for by both parties in their respective GST returns, notwithstanding the net effect being no GST liability or refund from the transaction for either party.

If the subdivider pays a financial contribution with land or works **and** a sum of money, the consideration for the supply of the resource consent is the amount of the money plus the open market value of the land or works. The subdivider is entitled to an input tax deduction for the GST imposed on the resource consent if it is registered and has a tax invoice. In these circumstances, the local authority is required to account for output tax on the total amount of consideration received for the supply of the resource consent. The subdivider's supply of land is a taxable supply subject to GST for the reasons discussed above. The local authority may claim an input tax deduction on the supply of the land if it is registered and has a tax invoice. This input tax deduction is equal to the portion of the financial contribution paid for in non-monetary consideration.

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Submissions received

Some submissions received by Inland Revenue on an exposure draft of this item have disagreed with the interpretation set out above. One commentator did not agree that non-monetary consideration (such as land or works) could be consideration for a supply of a resource consent. However, section 10(2)(b) is clear that non-monetary consideration can be consideration for a supply.

Another commentator disagreed that financial contributions were paid by a subdivider for a supply by a local authority. He considered such contributions were fundamentally in the nature of a tax imposed by the local authority pursuant to statutory powers. The better view is that the supply of the resource consent by a local authority is a supply subject to GST. The statutory powers which enable financial contributions to be imposed, do so in the context of conditions that may be attached to a resource consent. In return for satisfying such conditions a resource consent will be granted. A resource consent is a valuable property right enabling the subdivider to do acts which would otherwise be illegal, the supply of it for consideration is subject to GST. The direct benefit received by the subdivider distinguishes the supply from the payment of taxes.

We have made 1 June 1997 the starting date for the Ruling's application to assist any local authorities who may have to revise their systems as a result of the Ruling.

Examples

Example 1

Subdivider A wishes to divide a block of land into 10 individual sections. Council requires a financial contribution of $3,000 for each section created to cover all goods and services such as roads, drainage, street lighting, and reserves. The total for financial contributions is therefore $30,000, exclusive of GST.

Council should add GST of $3,750 onto the $30,000, making a GST inclusive total of $33,750 invoiced to Subdivider A. Subdivider A can claim an input tax deduction of the $3,750 GST charged.

Example 2

(The following example does not purport to establish any preferred valuation method for valuing non-monetary consideration, and should not be seen as doing so.)

Subdivider B (a registered person) wishes to divide a block of land into 20 individual sections. Council requires a financial contribution of $1,500 for each section created, together with a contribution of one of the newly-formed sections. The total of financial contribution is therefore $30,000 (exclusive of GST) plus one section of land. The open market value of the section is $50,000 (including GST).

Council should add GST of $3,750 onto the financial contribution of $30,000, making a GST inclusive total of $33,750 invoiced to Subdivider B. The Council should also return GST of $5,555.55 on the contribution of the section of land, as the value of supply is the open market value of $50,000. Therefore, the Council should return a GST total of $9,305.55 on supplies of $83,750. Subdivider B can claim an input tax deduction for the $9,305.55 of GST.

Subdivider B should return GST of $5,555 on the supply of the land to the Council, as it is a taxable supply. The Council can claim an input tax deduction for the $5,555 GST.

Assessability of payments under the Employment Contracts Act for humiliation, loss of dignity, or injury to feelings

Public Ruling - BR Pub 97/3

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

Taxation Laws

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

This Ruling applies in respect of sections BB 4 (b), BB 4 (d), NC 2, and the definition of "monetary remuneration" in section OB 1 of the Income Tax Act 1994.

The Arrangement to which this Ruling applies

The Arrangement is:

- The making of a payment to an employee or former employee for humiliation, loss of dignity, or injury to feelings under section 40(1)(c)(i) of the Employment Contracts Act 1991; or

- The making of a payment to an employee or former employee pursuant to an out of court settlement genuinely based on the employee's rights to compensation under section 40(1)(c)(i) of the Employment Contracts Act 1991.

This Ruling does not, however, apply to such payments that are in reality for lost wages or other assessable income, but which are merely characterised by the parties as being for humiliation, loss of dignity, or injury to feelings (irrespective of whether such an agreement is sealed by the Employment Tribunal in its mediation function).

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- Payments that are genuinely and entirely for compensation for humiliation, loss of dignity, or injury to feelings under section 40(1)(c)(i) of the Employment Contracts Act 1991 are not "monetary remuneration" in terms of the definition in section OB 1 of the Income Tax Act 1994. Consequently, such payments are not assessable to the employee under section BB 4 (b).
- Such compensation payments are not income from any other source under section BB 4 (d).
- There is consequently no liability under section NC 2 for employers or former employers to deduct PAYE from these payments.

The period for which this Ruling applies

This Ruling will apply to payments received between 1 April 1997 and 30 September 1997.

This Ruling is signed by me on the 10th day of March 1997.

Martin Smith
General Manager (Adjudication & Rulings)

Assessability of payments under the Employment Contracts Act for humiliation, loss of dignity, or injury to feelings

Public Ruling - BR Pub 97/3A

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

Taxation Laws

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

This Ruling applies in respect of sections CD 5, CH 3, NC 2, and the definition of "monetary remuneration" in section OB 1 of the Income Tax Act 1994.

The Arrangement to which this Ruling applies

The Arrangement is:

- The making of a payment to an employee or former employee for humiliation, loss of dignity, or injury to feelings under section 40(1)(c)(i) of the Employment Contracts Act 1991; or

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- The making of a payment to an employee or former employee pursuant to an out of court settlement genuinely based on the employee's rights to compensation under section 40(1)(c)(i) of the Employment Contracts Act 1991.

This Ruling does not, however, apply to such payments that are in reality for lost wages or other income, but which are merely characterised by the parties as being for humiliation, loss of dignity, or injury to feelings (irrespective of whether such an agreement is sealed by the Employment Tribunal in its mediation function).

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- Payments that are genuinely and entirely for compensation for humiliation, loss of dignity, or injury to feelings under section 40(1)(c)(i) of the Employment Contracts Act 1991 are not "monetary remuneration" in terms of the definition in section OB 1 of the Income Tax Act 1994. Consequently, such payments do not form part of the gross income of the employee under section CH 3.
- Such compensation payments are not gross income under ordinary concepts under section CD 5.
- There is consequently no liability under section NC 2 for employers or former employers to deduct PAYE from these payments.

The period for which this Ruling applies

This Ruling will apply to payments received between 1 April 1997 and 30 September 2000.

This Ruling is signed by me on the 10th day of March 1997.

Martin Smith
General Manager (Adjudication & Rulings)

Commentary on Public Rulings BR Pub 97/3 and 97/3A

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 97/3 and 97/3A ("the Rulings").

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

Because the repealed provisions will no longer apply from the start of each taxpayer's 1997-98 income year, the Commissioner has produced two rulings.
BR Pub 97/3 applies for the period from 1 April 1997 to 30 September 1997, and BR Pub 97/3A applies for the period from 1 April 1997 to 30 September 2000.

For example, if a taxpayer has a standard 31 March balance date, BR Pub 97/3A will apply to that taxpayer for the period from 1 April 1997. BR Pub 97/3 will apply from 1 April 1997 to those taxpayers with late non-standard balance dates whose 1996-97 income year has not yet ended. BR Pub 97/3A will apply to those taxpayers when their 1997-98 income year starts.

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 5 and CH 3 (previously sections BB 4 (d) and BB 4 (b)) and to the concept of "gross income" (previously in the context of these Rulings "assessable income").

Legislation

Cross-reference table

Income Tax Act 1994[1]	Income Tax Act 1994[2]	Income Tax Act 1976
CD 5	BB 4 (d)	65(2)(1)
CH 3	BB 4 (b)	65(2)(b)
NC 2	NC 2	338
OB 1 "monetary remuneration" def'n in para (a)	OB 1 "monetary remuneration" def'n in para (a)	

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

Background

The Employment Contracts Act 1991 provides for a number of remedies when an employee has a personal grievance against a current or former employer. This includes compensation for humiliation, loss of dignity, or injury to the feelings of the employee.

The Employment Contracts Act also establishes specialist institutions with exclusive jurisdiction to deal with the rights of parties to employment contracts: the Employment Tribunal and the Employment Court. The Employment Tribunal has jurisdiction to provide mediation assistance in matters brought before it and to adjudicate on personal grievances.

Section 27(1) of the Employment Contracts Act 1991 defines "personal grievance" as:

For the purposes of this Act, "personal grievance" means any grievance that an employee may have against the employee's employer or former employer because of a claim-

(a) That the employee has been unjustifiably dismissed; or

(b) That the employee's employment, or one or more conditions thereof, is or are affected to the employee's disadvantage by some unjustifiable action by the employer (not being an action deriving solely from the interpretation, application, or operation, or disputed interpretation, application, or operation, of any provision of any employment contract); or

(c) That the employee has been discriminated against in the employee's employment; or

(d) That the employee has been sexually harassed in the employee's employment; or

(e) That the employee has been subject to duress in the employee's employment in relation to membership or non-membership of an employees organisation.

Section 40 of the Employment Contracts Act provides a number of remedies for the Tribunal or Court when the Tribunal or Court determines that an employee has a "personal grievance":

(a) The reimbursement to the employee of a sum equal to the whole or any part of the wages or other money lost by the employee as an employee as a result of the grievance:

(b) ...

(c) The payment to the employee of compensation by the employee's employer, including compensation for -

(i) Humiliation, loss of dignity, and injury to the feelings of the employee; and

(ii) Loss of any benefit, whether or not of a monetary kind, which the worker might reasonably have been expected to obtain if the personal grievance had not arisen:

The Ruling considers whether such payments for humiliation, loss of dignity, or injury to the feelings of the employee are "monetary remuneration". Paragraph (a) of the definition of "monetary remuneration" in section OB 1 states:

"Monetary remuneration" …means any salary, wage, allowance, bonus, gratuity, extra salary, compensation for loss of office or employment, emolument (of whatever kind), or other benefit in money, in respect of or in relation to the employment or service of the taxpayer;…

Section CH 3 states that "all monetary remuneration derived by a person is gross income".

Section CD 5 also states that "the gross income of a person includes any amount that is included in gross income under ordinary concepts".

Application of the Legislation

If payments for humiliation, loss of dignity, or injury to feelings, under section 40(1)(c)(i) of the Employment Contracts Act 1991 are "monetary remuneration", they would be included under section CH 3 as gross income. They would be included in the calculation of "net income" under section BC 6 and would consequently form part of "taxable income" as calculated under section BC 7. Section OB 1 defines "monetary remuneration" to include any "other benefit in money, in respect of or in relation to the employment or service of the taxpayer…".

Payments under section 40(1)(c)(i) of the Employment Contracts Act are a benefit in money. The issue is, therefore, whether these payments are made "in respect of or in relation to the employment or service of" the recipient.

The meaning of "in respect of or in relation to"

The phrase "in respect of or in relation to" is capable of having a very wide meaning. For example, in *Shell New Zealand Limited v CIR*(1994) 16 NZTC 11,303, the Court of Appeal was dealing with certain lump sum payments made by Shell to employees who transferred at the request of Shell. The Court discussed the definition of "monetary remuneration". The case concerned the part of the definition of "monetary remuneration" which says:

... emolument (of whatever kind), or other benefit in money in respect of or in relation to the employment or service of the taxpayer.

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McKay J, delivering the judgment of the Court, said at page 11,306 that:

> The words "in respect of or in relation to" are words of the widest import.

Although McKay J acknowledged that the payments in *Shell* were not made under the contract of employment in that case, this did not mean that the employees received the payment outside the employee relationship. The learned Judge had earlier referred to the fact that the payments were not expressly provided under the employees' written employment contracts but were made pursuant to Shell's employment policy as a matter of discretion. They were still made "because he or she is an employee".

Other cases have also stressed the width of the words "in respect of or in relation to". In the Queens Bench case of *Paterson v Chadwick* [1974] 2 All ER 772, Boreham J considered the meaning of the phrase "in respect of" in relation to discovery, and adopted the comments of Mann CJ in the Australian case *Trustees, Executors & Agency Co Ltd v Reilly* [1941] VLR 110, where the learned Chief Justice said:

> The words "in respect of" are difficult of definition but they have the widest possible meaning of any expression intended to convey some connection or relation in between the two subject-matters to which the words refer.

Similarly, in *Nowegijick v The Queen* [1983] CTC 20 at page 25, the Supreme Court of Canada described the phrase "in respect of" as "probably the widest of any expression intended to convey some connection between two related subject-matters".

Context may affect the meaning

However, many cases have demonstrated that the meaning to be given to the phrase "in respect of or in relation to" may vary according to the context in which it appears.

In *State Government Insurance Office v Rees* (1979) 144 CLR 549, the High Court of Australia considered the meaning of the phrase "in respect of" in determining whether the debt due to the Government Insurance Office fell within section 292(1)(c) of the Companies Act 1961-1975 (Q.) as "amounts … due in respect of workers' compensation under any law relating to workers' compensation accrued before the relevant date". The Court held that amounts which could be recovered by the Government Insurance Office from an uninsured company pursuant to section 8(5) of the Workers' Compensation Act 1916-1974(Q.) for money paid to workers employed by the uninsured company were **not** amounts due "in respect of" workers' compensation under the Companies Act.

At page 561 Mason J observed that:

> ... as with other words and expressions, the meaning to be ascribed to "in respect of" depends very much on the context in which it is found.

Stephen J also discussed the meaning of the phrase "in respect of", noting at pages 553-554 that it was capable of describing relationships over a very wide range of proximity, and went on to say:

> Were the phrase devoid of significant context, it could, I think, be taken to be descriptive of the relationship between the present indebtedness owed to the State Government Insurance Office and the subject matter of workers' compensation. However a context does exist which is in my view sufficient to confine the operation of s 292(1)(c) to bounds too narrow to be of service to the appellant.

In *TRA Case R34* (1994) 16 NZTC 6,190, certain payments were made to a New Zealand distributor by its overseas parent in relation to repairs which had to be made to cars sold to the New Zealand subsidiary and then sold to dealers. The issue was whether the payments were zero-rated. The definition of "consideration" in section 2 of the Goods and Services Tax Act 1985 was relevant. Part of the definition of "consideration" states:

> …any payment made or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods and services …

The TRA stated at page 6,200 that:

> A sub-issue is whether the reimbursing payment from the overseas manufacturer (MC) was made "in respect of, in response to, or for the inducement of" the repair work in the sense required by the definition of "consideration" in s 2 of the Act. … Although the definition of consideration creates a very wide potential link between a payment and a particular supply it is, in any case, a matter of degree, commonsense, and commercial reality whether a payment is direct enough to have the necessary nexus with a service, i.e, whether the link is strong enough.

Not all payments to employees are "monetary remuneration"

While it is true that an employee would not receive a payment under section 40(1)(c)(i) of the Employment Contracts Act if he or she were not an employee, it would seem clear that this type of "but for" approach to "in respect of or in relation to" is not universally applied in the context of employment, and that not all payments to employees which have a connection with their work are within the definition of "monetary remuneration". In *Fraser v CIR* (1995) 17 NZTC 12,356, at page 12,363, Doogue J in the High Court said:

> There is no dispute that the words "emolument (of whatever kind), or other benefit in money, in respect of or in relation to the employment or service of the taxpayer" are words of the widest possible scope: see *Shell New Zealand Ltd v C of IR* (1994) 16 NZTC 11,303 at p 11,306, and *Smith v FC of T* 87 ATC 4883; (1987) 164 CLR 513; (1987) 19 ATR 274. Mr Harley does, however, submit, correctly, that it does not follow that all payments made are necessarily income and refers, for example, to reimbursement payments.

In *Shell*, McKay J highlighted the fact that the payments in that case were **both**:

- made to the recipients because they were employees; **and**
- paid to compensate for the loss incurred by the employee in having to relocate in order to take up a new position with the employer.

Many cases have concluded that, in appropriate circumstances, amounts received were not income, or assessable, even though paid by an employer to an employee. In *FC of T v Rowe* (1995) ATC 4,691, for example, the taxpayer was employed as an engineer for the Livingston Shire Council. As a result of a number of complaints against him he was suspended. An inquiry was commenced, and he incurred legal costs as a result of engaging counsel to defend himself against dismissal during the course of the inquiry. The taxpayer was cleared of any charges of misconduct but was dismissed a year later. The taxpayer claimed his legal costs as a deduction. Although the Council refused to reimburse the taxpayer for his legal costs, the Queensland government subsequently made an ex gratia payment.

The Full Federal Court considered, amongst other things, whether the ex gratia payment constituted assessable income. By majority, the Court concluded that the payment was not assessable under section 25(1) of the Australian Income Tax Assessment Act 1936 as income in accordance with ordinary concepts, nor was it assessable under section 26(e) of that Act as being compensation "in respect of, or for or in relation directly or indirectly to" any employment. Accordingly, Burchett and Drummond JJ (with Beaumont J dissenting) held that the payment was not assessable. Burchett J held that the payment was **not a reward for the taxpayer's services but was a recognition for the wrong done to him**. The payments were not remuneration but a reparation, and they were not sufficiently related to the performance of income-earning activities. On the same reasoning, it was too remote from the employment to be caught by section 26(e). Further, the payment was not assessable under section 26(e) because the employer/employee relationship between the Council and the taxpayer was **merely part of the background facts** against which the ex gratia payment was made.

Other cases relating to wartime service have also shown that payments made to present or former employees for reasons unconnected with their service as an employee will not necessarily be assessable income on a "but for" basis. In *Louisson v Commissioner of Taxes*[1943] NZLR 1, at page 9 Myers CJ and Northcroft J said of payments made by an employer to a former employee who had enlisted in the New Zealand Expeditionary Force in World War II:

> In our opinion, such payments were personal gifts to each of the employees coming within the description in the resolution - gifts made simply as an acknowledgment of personal appreciation of the sacrifice made in the service of the Country by persons whose employment with the company has ceased and who are under no engagement to return to that employment.

Similarly, in the Australian case of *FCT v Dixon* (1954) 5 AITR 443, the taxpayer received payments from his prior employer topping up his military pay. It would appear from the judgment that the Australian Commissioner argued that even a slight relationship to employment was sufficient to satisfy the test in section 26(e) of the Australian Income Tax Assessment Act 1936 [which made assessable certain sums granted to the taxpayer "in respect of, or for or in relation directly or indirectly to, any employment…".]. This argument was rejected by Dixon CJ and Williams J, who stated at page 446 that:

> We are not prepared to give effect to this view of the operation of s.26(e) …There can, of course, be no doubt that the sum of £104 represented an allowance, gratuity or benefit allowed or given to the taxpayer by Macdonald, Hamilton and Company. Our difficulty is in agreeing with the view that it was allowed or given to him in respect of, or in relation directly or indirectly to, any employment of, or services rendered by him …We are not prepared to give s.26(e) a construction which makes it unnecessary that the allowance, gratuity, compensation, benefit, bonus or premium shall in any sense be a recompense or consequence of the continued or contemporaneous existence of the relation of employer and employee or a reward for services rendered given either during the employment or at or in consequence of its termination.

In the same case, at page 450, McTiernan J stated that:

> The words of paragraph (e) are wide, but, I think, not wide enough to prevent an employer from giving money or money's worth to an employee continuing in his service or leaving it, without incurring liability to tax in respect of the gift. The relationship of employer and employee is a matter of contract. The contractual relations are not so total and all embracing that there cannot be personal or social relations between employer and employee. A payment arising from those relations may have no connexion with the donee's employment.

These principles have also been applied by the courts in cases involving contracts for services. In *Scott v FCT* (1969) 10 AITR 367, Windeyer J in the High Court of Australia, considered the meaning of the words "in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by him" in section 26(e) of the Income Tax and Social Services Contribution Assessment Act 1936-1961. The case concerned a solicitor who received a gift of £10,000 from a grateful client. Windeyer J stated at page 374 that the meaning of the words of the legislation "must be sought in the nature of the topic concerning which they are used". Windeyer J at page 376 referred to a passage from the judgment of Kitto J in *Squatting Investment Co Ltd v FCT*(1953) 5 AITR 496, at 524, where Kitto J (speaking of certain English cases) said:

> The distinction these decisions have drawn between taxable and non-taxable gifts is the distinction between, on the one hand, gifts made in relation to some activity or occupation of the donee of an income-producing character … and, on the other hand, gifts referable to the attitude of the donor personally to the donee personally.

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Adopting this as a general principle, his Honour held that the £10,000 was not given or received as remuneration for services rendered and it did not form part of the taxpayer's assessable income.

The nature and context of the payments

Looking at the nature and context of payments contemplated by section 40(1)(c)(i), it is strongly arguable that they do not intrinsically result from the employee and employer relationship. It is true that if the employee were not an employee then there would be no entitlement to receive the payment, but payments under section 40(1)(c)(i) of the Employment Contracts Act for humiliation, loss of dignity, or injury to feelings are **not** compensation for services rendered or for actions that occur in the normal course of the employment relationship. They are based on the existence of a personal grievance.

Provisions for such compensation can be seen as being included in the Employment Contracts Act because the sometimes unequal power of the parties to the employment contract means that such personal grievances may be likely to occur in that setting. It is noteworthy that the Human Rights Act 1993 also includes provisions for dealing with discrimination and sexual harassment of employees, even though that is not "employment legislation" at all.

It is also possible to analyse a breach of the terms of the employment contract giving rise to the personal grievance (and the subsequent compensation) as literally being outside the employment contract because of the breach of the terms of the contract.

Payments of compensation under section 40(1)(c)(i) of the Employment Contracts Act differ markedly from the situation in *Shell v CIR.* In that case at page 11,306, McKay J said:

> It is true …that the payment is not made under the contract of employment.…It is nevertheless paid to an employee only because he or she is an employee, **and** is paid to compensate for the loss incurred in having to change the employee's place of residence in order to take up a new position in the company. (Emphasis added)

Thus, in the *Shell* case, the employees received the payments as employees, **and** in order to compensate for the loss sustained as a result of the employment-related relocation.

In the ordinary course, the Commissioner considers genuine payments under section 40(1)(c)(i) to be too remote from the employment relationship to be within the definition of monetary remuneration. The Commissioner considers that the employment relationship in such instances is merely part of the background facts against which the compensation payments are made. The payments are not made "in respect of or in relation to the employment or service of the taxpayer".

At first glance, it may be thought that this approach conflicts with the outcome in *Case L78* (1989) 11 NZTC 1,451, where Barber DJ held that an *ex gratia* payment, to compensate for the employer's failure to give adequate notice of redundancy, was assessable as "monetary remuneration". However, the result in that case turned substantially on the objector's evidence as to the receipt being in the nature of "extra wages". Barber DJ stated at page 1,455 that:

> The objector himself related the $7,009.52 to extra holiday pay and sick leave. … At the end of his cross-examination he said that it was "really a bonus" and he regarded $7,009.52 as "extra wages". The character of the payment must be of a revenue nature. It is not a payment in the nature of capital. I consider that it is clearly within the definition of monetary remuneration in sec 2.

There is also the later TRA decision in *Case L92* (1989)11 NZTC 1,530, where Barber DJ again considered the definition of "monetary remuneration". This case also concerned an employee who was made redundant and an employer who did not comply with the requirement to give adequate notice. Barber DJ held that the payment came within the definition of "monetary remuneration" and was assessable income. However, the Authority did not consider any cases (other than his own previous decision in *Case L78*) on the correct characterisation of receipts for tax purposes, but rather concentrated upon the need to interpret "monetary remuneration" in a "wide manner" and the fact that the amount was received as compensation for loss of employment. Such compensation is specifically referred to in the definition of monetary remuneration. Recognising that it was possible for some receipts of a capital nature of a capital nature to be assessable income under a specific provision, Barber DJ at page 1,537 stated:

> In this case, the words in sec 2 "compensation for loss of office or employment, emolument (of whatever kind), or other benefit in money" must surely cover not only a revenue type of payment such as a payment for lost wages, but also any other form of compensation for loss of employment.

It may also be relevant to observe that both of these TRA decisions concerned settlements under the Industrial Relations Act 1973. This earlier legislation made no specific and separate provision for compensation payments for humiliation, loss of dignity, or injury to feelings.

It is also thought that payments of the type under consideration in this Ruling are to be distinguished from those considered in American cases such as the *Commissioner v Schleier*95-USTC 50,309. In that case, the United States Supreme Court held that certain punitive damages were assessable to the recipient employee. However, apart from the differing statutory context in the United States Internal Revenue Code, these damages were punitive because they related to a deliberate breach of the Age Discrimination in Employment Act and that Act does not provide for a separate recovery of compensatory damages for pain and suffering or emotional distress. The New Zealand Court of Appeal in *Air New Zealand Ltd v Johnston*[1992]

1 NZLR 159 seemingly rejected the view that humiliation type payments to employees are punitive in nature rather than compensatory. In that case Cooke J held at page 168 that "the emphasis evidently placed by the Labour Court on the punitive aspect does justify, in my opinion, a radical interference with their award." The award of $135,000 was replaced with one of $25,000, made up of $15,000 for future economic loss and $10,000 for injury to feelings under the Industrial Relations Act 1973.

Income from any other source

Compensation payments genuinely made under section 40(1)(c)(i) of the Employment Contracts Act 1991 are not "gross income under ordinary concepts" under section

CD 5 . Unlike the statutory definition of "monetary remuneration", section CD 5 can only apply when the payments received are "income" according to ordinary concepts.

Although the legislation does not define "gross income under ordinary concepts", a great number of decided cases have variously identified the concept by reference to such characteristics as periodicity, recurrence, and regularity, or by its resulting from business activities, the deliberate seeking of profit, or the performance of services. Nor do capital receipts form part of "gross income" unless there is a specific legislative provision to the contrary. It is clear that payments under section 40(1)(c)(i) will not generally be made periodically or regularly, or generally recur. Nor as we have seen above, are they compensation for services. And by analogy with common law damages, they are of a capital nature.

This point is acknowledged by Barber DJ in *Case L92*, where he stated at page 1,536 that:

> I appreciate only too well that it is possible to interpret the evidence as showing that the $7,179.30 was formulated as a payment in the nature of common law damages for human hurt and breach and unfairness… I appreciate that the latter concepts are akin more to payments of capital than to wage revenue.

Out of court settlements

Sometimes, an employee and an employer negotiate a settlement out of court. The settlement agreement may state that the payment is for humiliation, loss of dignity, or injury to feelings. In return for the employee surrendering his or her rights under the Employment Contracts Act, the employer will agree to pay a sum of money. There should be no difference in the tax treatment of the payments dependent on whether or not the parties use the Tribunal. A payment can be for humiliation, loss of dignity, or injury to the feelings of the employee whether the Tribunal is involved or not.

Shams

The Ruling will not apply to payments which are akin to sham payments. A sham is a transaction set up to conceal the true intention of the parties and is inherently ineffective. The nature of a sham was discussed by Diplock LJ in *Snook v London and West Riding Investment Ltd* [1967]1 All ER 518 at 528 where he stated:

> I apprehend that, if it has any meaning in law, it means acts done or documents executed by the parties to the "sham", which are intended by them to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create.

Richardson J, in the New Zealand case of *Mills v Dowdall* [1983] NZLR 154, stated that the "essential genuineness of the transaction is challenged" in a sham situation.

It is noteworthy that, in the recent Taxation Review Authority decision, *Case S 96* (1996) 17 NZTC 7,603, Judge Barber stated at page 7,606:

> Of course, seemingly excessive allocations to compensation for feelings injury should be reopened by the IRD.

If the parties to an agreement agree to characterise or describe payments as being for humiliation, loss of dignity, or injury to feelings when they are in reality for lost wages, this transaction would be a sham which would be open to challenge by the Commissioner. This would be so regardless of whether the payment was made as a result of an out of court settlement or an order representing the agreement of the parties sealed by the Employment Tribunal in its mediation function. Further, as provided by section 18 of the Taxation Review Authorities Act 1994 and section 136(16) of the Tax Administration Act 1994, the onus of proof in a hearing regarding the assessability of any such payment would be on the taxpayer.

Bank of New Zealand's Capital Guaranteed Growth Fund Ltd

Product ruling – BR Prd 97/11

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

Taxation Laws

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

This Ruling applies in respect of the definitions of "approved issuer", "financial arrangement", "interest" and "money lent" in section OB 1, the definition of

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"associated persons" in section OD 7, sections FC 1, NG 2 and NG 6, and section 86G of the Stamp and Cheque Duties Act 1971.

The Arrangement to which this Ruling applies

The Arrangement is the issue of certain capital guaranteed growth notes and related transactions.

Bank of New Zealand ("BNZ") has established BNZ Capital Guaranteed Growth Fund Limited ("FundCo"), a vehicle which will issue notes to investors, the return on which is linked to the futures market. FundCo is a wholly owned subsidiary of BNZ. In addition, repayment of an amount, at least equal to the initial capital invested on subscription of the notes, is guaranteed by BNZ.

The structure of the notes issued by FundCo is as follows:

(a) **Issue of Notes:** FundCo will issue a series of notes to investors. Each note will represent an agreement to sell, on a cash settled basis, to the investor, on a specified future date, a stated proportion of FundCo's assets on that date ("FundCo Agreements"). The notes will constitute debt securities under the Securities Act 1978. Accordingly, FundCo will appoint a trustee and enter into a trust deed for the benefit of noteholders, as required by the Securities Act.

(b) **Termination:** On the termination date, instead of physical delivery of FundCo's assets in settlement of all outstanding notes, there will be a cash settlement of each note equal to the value of the specified proportion of the assets being purchased. Noteholders will be able to call for early settlement, and settlement may also occur on the occurrence of certain events.

(c) **Variable Payments:** During the term of the notes, progress payments ("FundCo Variable Payments") are to be made to investors based upon a fixed percentage of the increase in value of the net assets of AHL Guaranteed Trading (NZ) Limited ("TradeCo") (see (g) below). Restrictions may be placed on payments which would reduce the value of the original investment.

(d) **Capital Guarantee Fund:** FundCo uses a proportion of the amount received on issue of the notes to invest in a deposit with BNZ. On maturity, the value of the deposit will at least be equal to the aggregate amount subscribed by the investors on the original issue of the notes. This amount is guaranteed to be repaid to investors by BNZ (the "capital guaranteed amount").

(e) **Futures Market:** FundCo makes an investment of the balance of the amount received on issue of the notes (i.e. after investing in the deposit and meeting certain expenses) by way of an agreement for sale with TradeCo ("TradeCo Agreement"). TradeCo is owned by 3 trustees of a trust established for New Zealand charitable purposes. TradeCo makes investments in the futures market (see (h) below). The TradeCo Agreement provides for a sale of all of TradeCo's assets, with settlement at a stated time, being 10 years after entry into the agreement (subject to FundCo's right to call for early settlement and settlement on the occurrence of certain events).

(f) **Cash Settled Sale:** Instead of physical delivery of TradeCo's assets on settlement, there will be a cash settlement of the agreement equal to the value of the assets of TradeCo. It is not intended that TradeCo's assets will be physically delivered to FundCo except in the event of a default by TradeCo to make the cash settlement payment. The cash proceeds will form part of the assets of FundCo subject to the settlement referred to in paragraph (b).

(g) **Variable Payments:** During the term of the notes progress payments are to be made by TradeCo to FundCo based upon a fixed percentage of the increase in value of TradeCo's net assets (thereby enabling FundCo to make

the payments described in paragraph (c) to investors during the term of the agreements).

(h) **Futures Investments:** TradeCo uses the moneys received by it under the agreement for sale with FundCo to invest in futures, foreign exchange and derivative contracts. This investment will be managed by E D & F Man Investment Products under an Investment Management Agreement. The principal futures broker will be E D & F Man International, appointed under an Introducing Broker Agreement.

(i) **Guarantee:** TradeCo will enter into a guarantee agreement with BNZ under which BNZ will agree to guarantee repayment of the capital guaranteed amount.

Assumption

This Ruling is based on the assumption that the FundCo Agreements are not held by an associated person of FundCo, as defined in section OD 7.

How the Taxation Laws apply to the Arrangement

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

- The FundCo Agreements will be "financial arrangements" as defined in section OB 1 and will not constitute debentures to which section FC 1 applies;
- The amounts invested under the FundCo Agreements will constitute "money lent" as that term is defined in section OB 1;
- The FundCo Variable Payments and amounts paid to investors on settlement in excess of the amount invested will constitute "interest" as that term is defined in section OB 1;
- The FundCo Agreements will be able to be registered by an approved issuer as registered securities under section 86G of the Stamp and Cheque Duties Act 1971;
- Where FundCo is an approved issuer under section NG 6, payments made by FundCo which constitute interest for tax purposes and are derived by non-residents, will be subject to non-resident withholding tax at the rate of 0% pursuant to section NG 2.

The period for which this Ruling applies

This Ruling applies from 7 February until 30 September 1997.

This Ruling is signed by me on the 7th day of February 1997.

Martin Smith
General Manager (Adjudication & Rulings)

Bank of New Zealand's Capital Guaranteed Growth Fund Ltd

Product ruling – BR Prd 97/12

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

Taxation Laws

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

This Ruling applies in respect of the definitions of "approved issuer", "financial arrangement", "interest" and "money lent" in section OB 1, the definition of

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"associated persons" in section OD 7, sections FC 1, NG 2 and NG 6, and section 86G of the Stamp and Cheque Duties Act 1971.

The Arrangement to which this Ruling applies

The Arrangement is the issue of certain capital guaranteed growth notes and related transactions.

Bank of New Zealand ("BNZ") has established BNZ Capital Guaranteed Growth Fund Limited ("FundCo"), a vehicle which will issue notes to investors, the return on which is linked to the futures market. FundCo is a wholly owned subsidiary of BNZ. In addition, repayment of an amount, at least equal to the initial capital invested on subscription of the notes, is guaranteed by BNZ.

The structure of the notes issued by FundCo is as follows:

(a) **Issue of Notes**: FundCo will issue a series of notes to investors. Each note will represent an agreement to sell, on a cash settled basis, to the investor, on a specified future date, a stated proportion of FundCo's assets on that date ("FundCo Agreements"). The notes will constitute debt securities under the Securities Act 1978. Accordingly, FundCo will appoint a trustee and enter into a trust deed for the benefit of noteholders, as required by the Securities Act.

(b) **Termination**: On the termination date, instead of physical delivery of FundCo's assets in settlement of all outstanding notes, there will be a cash settlement of each note equal to the value of the specified proportion of the assets being purchased. Noteholders will be able to call for early settlement, and settlement may also occur on the occurrence of certain events.

(c) **Variable Payments**: During the term of the notes, progress payments ("FundCo Variable Payments") are to be made to investors based upon a fixed percentage of the increase in value of the net assets of AHL Guaranteed Trading (NZ) Limited ("TradeCo") (see (g) below). Restrictions may be placed on payments which would reduce the value of the original investment.

(d) **Capital Guarantee Fund**: FundCo uses a proportion of the amount received on issue of the notes to invest in a deposit with BNZ. On maturity, the value of the deposit will at least be equal to the aggregate amount subscribed by the investors on the original issue of the notes. This amount is guaranteed to be repaid to investors by BNZ (the "capital guaranteed amount").

(e) **Futures Market**: FundCo makes an investment of the balance of the amount received on issue of the notes (i.e. after investing in the deposit and meeting certain expenses) by way of an agreement for sale with TradeCo ("TradeCo Agreement"). TradeCo is owned by 3 trustees of a trust established for New Zealand charitable purposes. TradeCo makes investments in the futures market (see (h) below). The TradeCo Agreement provides for a sale of all of TradeCo's assets, with settlement at a stated time, being 10 years after entry into the agreement (subject to FundCo's right to call for early settlement and settlement on the occurrence of certain events).

(f) **Cash Settled Sale**: Instead of physical delivery of TradeCo's assets on settlement, there will be a cash settlement of the agreement equal to the value of the assets of TradeCo. It is not intended that TradeCo's assets will be physically delivered to FundCo except in the event of a default by TradeCo to make the cash settlement payment. The cash proceeds will form part of the assets of FundCo subject to the settlement referred to in paragraph (b).

(g) **Variable Payments**: During the term of the notes progress payments are to be made by TradeCo to FundCo based upon a fixed percentage of the increase in value of TradeCo's net assets (thereby enabling FundCo to make

the payments described in paragraph (c) to investors during the term of the agreements).

(h) **Futures Investments**: TradeCo uses the moneys received by it under the agreement for sale with FundCo to invest in futures, foreign exchange and derivative contracts. This investment will be managed by E D & F Man Investment Products under an Investment Management Agreement. The principal futures broker will be E D & F Man International, appointed under an Introducing Broker Agreement.

(i) **Guarantee**: TradeCo will enter into a guarantee agreement with BNZ under which BNZ will agree to guarantee repayment of the capital guaranteed amount.

Assumption

This Ruling is based on the assumption that the FundCo Agreements are not held by an associated person of FundCo, as defined in section OD 7.

How the Taxation Laws apply to the Arrangement

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

- The FundCo Agreements will be "financial arrangements" as defined in section OB 1 and will not constitute debentures to which section FC 1 applies;
- The amounts invested under the FundCo Agreements will constitute "money lent" as that term is defined in section OB 1;
- The FundCo Variable Payments and amounts paid to investors on settlement in excess of the amount invested will constitute "interest" as that term is defined in section OB 1;
- The FundCo Agreements will be able to be registered by an approved issuer as registered securities under section 86G of the Stamp and Cheque Duties Act 1971;
- Where FundCo is an approved issuer under section NG 6, payments made by FundCo which constitute interest for tax purposes and are derived by non-residents, will be subject to non-resident withholding tax at the rate of 0% pursuant to section NG 2.

The period for which this Ruling applies

This Ruling applies from 7 February 1997 until 31 March 2002.

This Ruling is signed by me on the 7th day of February 1997.

Martin Smith
General Manager (Adjudication & Rulings)

Product binding rulings – updating under Taxation (Core Provisions) Act

As you can see, Product Rulings 91/11 and 97/12 above differ only in the Acts they are issued under and the application dates.

In the near future we expect to be updating a number of previously-issued product rulings to take into account the Taxation (Core Provisions) Act 1996. However, rather than republishing the entire text of these updated rulings, we will simply list their titles and numbers, plus any changes to the application dates.

If any readers require the full text of an updated ruling, it will be available on request from Adjudication & Rulings in our National Office. We will provide more information as the rulings are updated.

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.

Goods and Services Tax Act 1985

Input tax deductions for finance lease financiers and the appropriate method for section 21 adjustments

Section 21 - Adjustments: A taxpayer has asked how public ruling BR Pub 96/11 (see page 4, TIB Volume Eight, No.10) applies in a situation when the taxpayer has two activities: one being the activity of financing the purchase or lease of goods by way of finance leases, and the other the activity of making taxable supplies. The taxpayer is concerned that the part of the ruling that denies input tax deductions (when GST is incurred by a finance lease financier on "general business goods and services") may apply to both the finance lease activity and the activity of making taxable supplies.

It is the intention of the ruling to isolate the finance lease activity of such a taxpayer so that the ruling will only apply to that activity.

The public ruling defines a "finance lease financier" as a person whose business includes a substantial activity (which need not be the principal activity of the person) of financing customers' purchase or lease of goods by way of finance leases. The arrangement to which the ruling applies is the "incurring of GST on goods and services acquired for the business of financing" by finance lease financiers. This includes GST incurred on goods the financier buys which are the subject of the finance lease, as well as GST on all other goods and services acquired by the financier. These other goods and services are described as "general business goods and services" in the ruling.

In the section explaining how the taxation laws apply to the arrangement, the ruling goes on to state that "GST incurred on 'general business goods and services' acquired by a finance lease financier will not be deductible as 'input tax' because the principal purpose of acquiring such goods and services will be for making exempt supplies".

The taxpayer who has made the inquiry has an activity of financing the purchase or lease of goods by finance leases (so as to be a "finance lease financier" as defined), but also has another activity involving the making of taxable supplies. She is concerned that the ruling does not distinguish the two activities. It appears that as she is a "finance lease financier", GST incurred on "general business goods and services" acquired in **either** of her activities may be subject to the public ruling, not just GST on "general business goods and services" acquired in the finance lease activity. The taxpayer has asked three questions:

1. If the two activities are operated separately, does the ruling mean that GST incurred on "general business goods and services" acquired in either of the two activities is non-deductible as input tax?
2. If the two activities are operated together, and the finance leasing activity is the minor activity, does the ruling's prohibition of deductibility of input tax still apply?

3. If the two activities are operated by separate companies, grouped for GST purposes, does the ruling apply?

Question 1: Separate activities

When a taxpayer has two separate activities, one of finance leasing and one of making taxable supplies, the ruling is intended to apply only to GST incurred on "general business goods and services" acquired for the **finance leasing activity** and not the other activity of making taxable supplies. The deductibility of GST on inputs into the activity of making taxable supplies is not affected by the ruling. This is suggested in the Arrangement part of the public ruling which reads:

> The Arrangement is the incurring of GST on goods and services acquired **for the business of financing**, by finance lease financiers who enter into finance leases with customers to finance the purchase or lease of goods...(Emphasis added.)

The public ruling applies only to the GST relating to the activity of finance leasing, not GST relating to non-finance lease activities a taxpayer may carry on in addition to finance leasing.

Question 2: Activities operated together

When a taxpayer operates the activities of making supplies of finance leasing and making taxable supplies as one activity, the deductibility of GST will depend on the application of the "principal purpose" test to the overall activity. (This assumes that direct attribution of inputs to specific supplies is not possible. If it is possible to directly attribute, that should be done.)

If the principal purpose of acquiring the "general business goods and services" is for making **taxable** supplies, and the exempt supplies of finance leasing are only a **subsidiary** purpose to that principal purpose, the GST will be deductible as "input tax". Any adjustments for exempt application will be made under section 21(1). The public ruling does not cover section 21(1) adjustments, but some of the concepts in the ruling may be useful when making such an adjustment.

If the principal purpose of acquiring the "general business goods and services" is to make **exempt** supplies of finance leasing, and the taxable supplies are a subsidiary purpose to that principal purpose, the GST will not be deductible as "input tax". Any adjustments for taxable application will be made under section 21(5). The ruling relates to section 21(5) adjustments for the taxable side of finance lease activity (that is, the activity of selling or leasing goods). The application of inputs to the making of taxable supplies in the non-finance lease activity could also use the section 21(5) adjustment methods in the public ruling.

Question 3: Section 55 grouping

When the taxpayer operates the activities of making supplies of finance leasing and making taxable supplies within separate companies, grouped under section 55 of the Act, the principles of the ruling will still apply to the GST incurred in the finance lease activity. In the Arrangement part of the ruling is the following statement:

> A finance lease financier is most likely to be a finance company. It is not intended that the term cover persons who, as an adjunct of their business of selling goods, undertake the provision of finance to customers to encourage sales. However, the term is intended to cover a company whose business consists largely of financing the purchase or lease of goods when that company is in a group of companies for GST purposes. This is notwithstanding the deeming provisions of section 55(7).

The taxpayer has asked what this statement means for grouping purposes, and in particular whether it means the provisions of section 55(7) do not apply.

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The statement further describes the persons to whom the ruling applies. It notes that people who sell goods, and finance some sales as an incident of that activity of selling goods, will not be subject to the ruling. However, when a company is a finance lease financier, and is grouped for GST purposes, the fact of grouping will not mean that the activity of finance lease financing is considered incidental to the selling of goods by other group members, such that the principles of the ruling will not apply. Although the activity of the financing company will be deemed to be carried on by the "representative member" of the group (section 55(7)(da)), that activity is still subject to the principles of the ruling. However, the phrase "notwithstanding the deeming provisions of section 55(7)" is not intended to establish anything other than this. In particular, it does not purport to override or ignore those provisions.

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.

Judicial review – assessment under appeal

Case: Miller and Others v CIR

Decision date: 23 January 1997

Keywords: *Judicial review, assessment, appeal*

Summary: In a second judgment on an application for judicial review the Court found that neither the Commissioner nor the TRA could supersede an assessment under appeal by an assessment made on an inconsistent basis. The Court found that there were firm assessments against both the company and the associated individual, and consequently, both assessments could be maintained until the appeal on one was known.

Facts: The plaintiffs issued proceedings against the Commissioner seeking judicial review of the decision to issue amended assessments against each of them in relation to their former shareholdings. The plaintiffs sought declarations under section 8 of the Judicature Amendment Act 1972 that the Commissioner should not take any further action consequential on the exercise of his statutory power of assessment and should not institute or continue with any civil or criminal proceedings in connection with any matter to which the application for review related until the final determination.

Decision: In a second judgment on an application for judicial review the High Court dealt with issues left undetermined by an interim judgment dated 8 November 1996. The Court found that where there is an assessment in relation to a company, and another in relation to an associated person deeming the same income to be income to both, and there is no request for a case stated, the use of section 99 to make a reassessment of the associated person involves an application of section 99(4) deeming the income to be received by the associated person and not the company. The earlier assessment in relation to the company is superseded, and a concurrent complementary reassessment of the company is not necessary.

His Honour considered that where there is a request for a case stated or a case is before the TRA the Commissioner cannot act inconsistently with the assumption of control by the Authority. The judge applied *BASF* (1995) 17 NZTC 12,136 and distinguished *MacNab* (1984) 6 NZTC 61,710. Consequently, the Court held that the assessment under appeal could not be superseded by an assessment made on an inconsistent basis. However, his Honour confirmed that it is possible to have two inconsistent assessments (for two different taxpayers) provided these are made prior to a request for a case stated: *Canterbury Frozen Meats*[1984] 2 NZLR 681. Furthermore, the Court found that after an abatement of a case stated (as a result of removal of a company from the Register) the Commissioner could issue an amended assessment against an associated person.

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His Honour held that there were firm assessments against both the company and the associated individual and consequently, both assessments could be maintained until the appeal on one was known.

GST – supply of taxis to relief drivers

Case: TRA No. 96/046

Decision date: 5 February 1997

Act: Goods and Services Act 1985 – section 6(3)(b)

Keywords: *Taxi drivers, self-employed contractors, output tax*

Summary: The TRA held that the objector's business and taxable activity was the supply of taxis to relief drivers and not the supply of taxi services to the public. His Honour found that the taxi service to the public could not be imputed to the objector because the relief drivers were self-employed. Consequently, the objector was not liable to pay GST on all fares received by the relief drivers.

Facts: The objector was the owner of three taxis and was GST registered. The objector engaged relief drivers who were treated as self employed contractors. A verbal contract was entered into and the drivers split takings 50/50 with the objector after fuel costs were deducted.

The objector calculated output tax on his 50% share of the takings only. The Commissioner assessed the objector for output tax on the total takings from the three taxis. The Commissioner contended that there was an employer/employee relationship between the objector and the relief drivers, and the fares earned by the taxis were taxable supplies made by the objector in the course of his taxable activity and were subject to output tax.

Decision: The TRA held that the objector's business and taxable activity was the supply of taxis to relief drivers and not the supply of taxi services to the public. The taxi service to the public was conducted by the relief drivers and could only be imputed to the objector if the drivers were employees of or agents for the objector. The TRA agreed with the Commissioner that if the drivers were employees of the objector then the commission retained by the drivers would properly be regarded as salary and wages constituting an exempt supply in terms of s 6(3)(b) of the GST Act. In that case the objector would have been liable to pay GST on all fares received.

However, his Honour found that a contract for services existed and the relief drivers were self-employed. Consequently, the objector was not liable to pay GST on all fares received by the relief drivers.

GST registration – open market rental

Case: TRA No. 96/126

Decision date: 30 January 1997

Act: Goods and Services Act 1985 - section 51(4)(b)
Acts Interpretation Act 1924 – section 25(j)

Keywords: *GST registration, open market rental*

Summary: The TRA held that the market rental of the property in question exceeded the registration threshold. Consequently, the Commissioner by virtue of s 51(4)(b)

had the power to register the objector for GST and by virtue of s 25(j) of the Acts Interpretation Act to amend the registration date.

Facts: A farm was leased by the objector company to an individual ("the father") and subsequently to a farming partnership comprising the father and his son. The son purchased the farm from the objector on 1 April 1993.

The objector company was not GST registered and the rental charged to the partnership was below the GST registration threshold. The son claimed a second-hand goods input credit of $98,333.33.

The Commissioner obtained a valuation of the open market rental of the property which was substantially in excess of the registration threshold. The Commissioner registered the objector for GST as from 1 February 1994 and later amended the date of registration to 1 October 1986.

Decision: The TRA preferred the Commissioner's evidence as to the property's open market rental and found that a deduction for weed control costs should not be taken off the stock unit price (the rental is based on the stock unit price and the number of stock) as it is already taken into account.

His Honour further found that rates could form part of the consideration for supply and should be added to rental to ascertain the value of the lease supplied. Furthermore, weed and pest control costs imposed on the lessee under a lease were found to constitute consideration for the supply of the lease in determining the value of the supply and whether it exceeds the registration threshold.

The TRA held that the Commissioner had properly re-exercised his determination of the date of registration. Section 25(j) of the Acts Interpretation Act 1924 gave the Commissioner power under s 51(4)(b) to exercise the power as often as necessary to correct an error or omission notwithstanding that the power is not in general capable of being exercised from time to time.

Marketing and selling of timeshare holidays – not zero-rated

Case: Mallolailai Interval Holidays NZ Ltd v CIR

Decision date: 11 February 1997

Act: Goods and Services Act 1985 - section 11(2)(b)

Keywords: *Marketing and selling time-shares, zero-rated, input tax credit*

Summary: The Court held that the objector was entitled to GST input tax credits as the marketing and selling of time-share holidays by another company was not directly in connection with the land or any improvement thereto and should not be zero rated in terms of s 11(2)(b).

Facts: The objector is a GST registered company in the business of selling time-share holidays. Under a "timeshare holiday" agreement, purchasers acquire a right to occupy an accommodation unit at the Malololailai Lagoon Resort.

Accent Holidays Limited ("AHL") a GST registered company with shareholders in common with the objector was responsible for the marketing and sale of the timeshare holidays. Proceeds from the sale of a "timeshare holiday" were paid into a trust account, and upon AHL's authority were forwarded to the objector. AHL charged the objector commission fees.

The objector claimed input tax credits on the marketing and selling services supplied by AHL while all "timeshare holiday" sales were zero-rated. The Commissioner disallowed the input tax credit on the basis that the supplies by AHL should have been zero-rated under section 11(2)(b).

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Decision: The Court held that the marketing and selling of the time-shares by AHL was not "directly in connection with the land or any improvement thereto" as required by s 11(2)(b). His Honour found the contractual transaction between the objector and the purchaser of an interval holiday fell within the description.

The Court held that the marketing and sale of the timeshare holidays was one step removed from the direct transaction between the objector and the purchaser.

Consequently, the Court held that the objector company was entitled to GST input tax credits as the services provided by AHL were not zero-rated.

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 obligations interest and penalties (IR 240) - Jan 1997: *A guide to the new laws dealing with interest, offences and penalties applying from 1 April 1997.*

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.*

Making payments (IR 87C) - Nov 1996: *How to fill in the various payment forms to make sure payments are processed quickly and accurately.*

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

April 1997

5 Large employers: PAYE deductions and deduction schedules for period ended 31 March 1997 due.

7 Provisional tax and/or Student Loan interim repayments: first 1998 instalment due for taxpayers with December balance dates.
Second 1997 instalment due for taxpayers with August balance dates.
Third 1997 instalment due for taxpayers with April balance dates.

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

Small employers: PAYE deductions and deduction schedules for period ended 31 March 1997 due.

All employers: All IR 12 and IR 13 certificates for year ended 31 March 1997 must be completed, and yellow copies given to workers.

FBT return and payment for quarter ended 31 March 1997 due.

Gaming machine duty return and payment for month ended 31 March 1997 due.

RWT on interest deducted during March 1997 due for monthly payers.

RWT on interest deducted 1 October 1996 to 31 March 1997 due for six-monthly payers.

RWT on dividends deducted during March 1997 due.

Non-resident withholding tax (or approved issuer levy) deducted during March 1997 due.

30 GST return and payment for period ended 31 March 1997 due.

May 1997

5 Large employers: PAYE deductions and deduction schedules for period ended 30 April 1997 due.

7 Provisional tax and/or Student Loan interim repayments: first 1998 instalment due for taxpayers with January balance dates.
Second 1997 instalment due for taxpayers with September balance dates.
Third 1997 instalment due for taxpayers with May balance dates.

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

Small employers: PAYE deductions and deduction schedules for period ended 30 April 1997 due.

Gaming machine duty return and payment for month ended 30 April 1997 due.

RWT on interest deducted during April 1997 due for monthly payers.

RWT on dividends deducted during April 1997 due.

Non-resident withholding tax (or approved issuer levy) deducted during April 1997 due.

31 GST return and payment for period ended 30 April 1997 due.

All employers: 1997 PAYE and ACC reconciliation and calculation sheet (IR 68A and IR 68P) due to be filed, and 1997 ACC employer premium to be paid.

FBT – employers who elected to pay FBT on annual basis: annual liable return (1/4/96-31/3/97) and payment due.

RWT on interest: 1997 reconciliation (IR 15S) to be filed.

RWT on dividends: 1997 specified dividend reconciliation (IR 17S or IR 17SA) to be filed.

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

This page shows the draft public binding rulings and interpretation statements that we now have available for your review. You can get a copy and give us your comments in three ways:

By post: Tick the drafts you want below, fill in your name and address, and return this page to the address below. We'll send you the drafts by return post. Please send any comments *in writing, to the address below*. We don't have facilities to deal with your comments by phone or at our local offices.

From our main offices: Pick up a copy from the counter at our office in Takapuna, Manukau, Hamilton, Wellington, Christchurch or Dunedin. You'll need to post your comments back to the address below; we don't have facilities to deal with them by phone or at our local offices.

On the Internet: Visit our web site at http://www.ird.govt.nz/rulings/ Under the "Adjudication & Rulings" heading, click on "Draft Rulings", then under the "Consultation Process" heading, click on the drafts that interest you. You can return your comments via the Internet.

Name _____

Address _____

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✔	***Public binding rulings***	***Comment Deadline***
☐	**9702**: Deductibility of insurance premiums paid on policies used as security for a loan	30/04/97
✔	***Interpretation statements***	***Comment Deadline***
☐	**9701**: Deductibility of expenditure incurred in the borrowing of money – section DJ 11	30/04/97

We must receive your comments by the deadline shown if we are to take them into account in the finalised item

Inland Revenue
Te Tari Taake

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

Affix Stamp Here

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