

TAX INFORMATION BULLETIN

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

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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.

Electronic article surveillance systems

Draft general depreciation determination

In TIB Volume Nine, No. 1 (January 1997), we published General Depreciation Determination DEP21 for Tags (Security). At the time we also advised that we intended to undertake further investigation into the depreciation rate for security systems.

As part of that review, the Commissioner now proposes to issue a general depreciation determination which will create a new asset class for Electronic Article Surveillance Systems under the "Shops" Industry category. A draft of that determination is reproduced below. The proposed new depreciation rate of 33% D.V. is based on an estimated useful life of 5 years and a residual value of 13.5%.

Exposure draft – General Depreciation Determination DEP[X]

This determination may be cited as "Determination DEP[x]: Tax Depreciation Rates General Determination Number [x]".

1. Application

This determination applies to taxpayers that 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 "Shops" industry category the general asset class, estimated useful life, and diminishing value and straight-line depreciation rate listed below:

Shops	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Electronic Article Surveillance	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.

If you wish to make a submission on the proposed general depreciation determination, 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 16 May 1997 if we are to take it into account in finalising this draft.

1997 international tax disclosure exemption ITR8

Introduction

Section 61 of the Tax Administration Act 1994 (TAA) requires people to disclose interests they hold in foreign entities.

Under section 61(1) of the TAA, a person who has a control or income interest in a foreign company or an interest in a foreign investment fund (FIF) at any time during the income year must disclose the interest held. However, section 61(2) allows the Commissioner of Inland Revenue to exempt any person or class of persons from this requirement if disclosure is not necessary for the administration of the international tax rules (as defined by section OZ 1) contained in the Income Tax Act 1994 (ITA).

Under section 61(2), the Commissioner has issued an international tax disclosure exemption which applies for the income year ended 31 March 1997. This exemption may be cited as "International Tax Disclosure Exemption ITR8", and the full text appears at the end of this item.

Scope of exemption

The scope of the 1997 disclosure exemption is the same as the 1996 exemption. Disclosure is required for these interests:

- an interest held in a FIF
- an "income interest of 10% or greater" held in a foreign company. The disclosure obligation applies to all foreign companies regardless of the country of residence.

An "income interest of 10% or greater" is defined in section OB 1 of the ITA. For the purposes of determining exemption from disclosure it includes these interests:

1. an income interest held directly in a foreign company
2. an income interest held indirectly through any interposed foreign company
3. an income interest held by an associated person (which is not a controlled foreign company) as defined by section OD 8 (3) of the ITA.

Example

If a husband and wife each hold an income interest of 5% in a Cayman Islands company, the interests would not be exempt from disclosure because the husband and wife are associated persons under section OD 8 (3)(d). Under the associated persons test they are each deemed to hold the other's interests, so they each hold an "income interest of 10% or greater" which must be disclosed.

They are not required to account for attributed foreign income or loss under the controlled foreign company rules. However, they would have to account for FIF income or loss under the FIF rules.

In this example the husband and wife must disclose their interests as interests in a foreign company and as interests in a FIF. However, only the FIF interests should be disclosed on an IR 4H series form (see "Overlap of interests" on page 3).

Foreign company interests

A person who holds a control or income interest in a foreign company must disclose that interest, regardless of the company's country of residence. The 1997 international tax disclosure exemption also makes no distinction about residence, and any interest in a foreign company which is an "income interest of 10% or greater" must be disclosed. Disclosure is to be made on form IR 4G "Interest in a Foreign Company Disclosure Schedule".

The disclosure exemption makes no distinction on the residence of a foreign company for these reasons:

- attributed (non-dividend) repatriation rules apply to an "income interest of 10% or greater" in a controlled foreign company (CFC) regardless of the CFC's country of residence.
- to identify tax preferences applied by the taxpayer (whether or not specified in Schedule 3, Part B of the ITA) in respect of an interest held in a foreign company which is resident in a Schedule 3, Part A of the ITA jurisdiction (i.e., Australia, Canada, Federal Republic of Germany, Japan, Norway, United Kingdom and the United States of America).
- the requirement for a CFC which is resident in a country not listed in Schedule 3, Part A of the ITA to attribute foreign income or loss from 1 April 1993.

Foreign investment fund interests

An interest in a foreign entity must be disclosed if it constitutes an "interest in a foreign investment fund" specified within section CG 15 (1) of the ITA. These types of interest must be disclosed:

- rights in a foreign company or anything deemed to be a company for the purposes of the ITA (e.g., a unit trust)
- an entitlement to benefit from a foreign superannuation scheme
- an entitlement to benefit from a foreign life insurance policy
- an interest in an entity specified in Schedule 4, Part A of the ITA (no entities were listed when this TIB went to press).

However, any interest that does not fall within the above types or which is specifically excluded as an interest in a FIF under section CG 15 (2) does not have to be disclosed. The following are listed in section CG 15 (2) as exemptions from what constitutes an interest in a FIF:

- an “income interest of 10% or greater” in a CFC
- an interest in a foreign company that is resident and liable to income tax in a country or territory specified in Schedule 3, Part A of the ITA (i.e., Australia, Canada, Federal Republic of Germany, Japan, Norway, United Kingdom and the United States of America).
- an interest in an employment-related foreign superannuation scheme
- a qualifying foreign private annuity, unless an election has been made to remain within the FIF regime, by the due date for filing the person’s 1997 tax return. See Inland Revenue’s booklet *Overseas Private Pensions (IR 258A)* for more information.
- interests in foreign entities held by a natural person, if the aggregate cost or expenditure incurred in acquiring the interests remains under \$20,000 at all times during the income year
- an interest held by a natural person in a foreign entity located in a country where exchange controls prevent the person deriving any profit or gain or disposing of the interest for New Zealand currency or consideration readily convertible to New Zealand currency
- an interest in a foreign life insurance policy or foreign superannuation scheme acquired by a natural person before he or she became a New Zealand resident for the first time, for a period of up to four years.

There is more information on exemptions from the FIF rules in Inland Revenue’s “Foreign Investment Funds” booklet (IR 275B).

A person who holds an interest in a FIF at any time during the 1997 income year must disclose the interest and calculate FIF income or loss on the form “Interest in Foreign Investment Fund Disclosure Schedule and Worksheet” (IR 4H). The FIF rules allow a person four options to calculate FIF income or loss (accounting profits method, branch equivalent method, comparative value method and deemed rate of return method), so the Commissioner has prescribed four forms under the IR 4H series to disclose and calculate FIF income or loss from an interest in a FIF using one of the methods.

Overlap of interests

A situation may arise where a person is required to furnish a disclosure for an interest in a foreign company which is also an interest in a FIF. For example, a person with an “income interest of 10% or greater” in a foreign company which is not a CFC is strictly required to disclose both an interest held in a foreign company and an interest held in a FIF.

However, to meet the disclosure obligations only one disclosure return (either form IR 4G or the appropriate IR 4H series form) is required for each interest a person holds in a foreign entity.

Here are the general rules for determining which disclosure return to file:

1. Use the appropriate IR 4H series form to disclose all FIF interests, and in particular:
 - an interest in a foreign company which is not resident in a Schedule 3, Part A country and is not a CFC (regardless of the level of interest held)
 - an income interest of less than 10% in a CFC which is not resident in a Schedule 3, Part A country
 - an interest in a foreign life insurance policy or foreign superannuation scheme, regardless of the country or territory in which the entity was resident.
2. Use the IR 4G form to disclose:
 - an “income interest of 10% or greater” in a foreign company (regardless of the country of residence) that is not being disclosed on the appropriate IR 4H series form.

Disclosure is not required on either forms IR 4G or IR 4H for an income interest of less than 10% in a foreign company (whether a CFC or not) which is also not a FIF interest. An example is an interest which is excluded under the Schedule 3, Part A exemption of the FIF rules.

Summary

The 1997 international tax disclosure exemption removes the requirement to disclose an interest held in a foreign company (if the interest is not also an interest in a FIF) that does not constitute an “income interest of 10% or greater” (i.e., it is less than 10%). The disclosure exemption is not affected by the foreign company’s country of residence. Further, an interest in a FIF must be disclosed.

(Text of disclosure appears on page 4)

Persons not required to comply with section 61 of the Tax Administration Act 1994

This exemption may be cited as “International Tax Disclosure Exemption ITR8”

1. Reference

This exemption is made pursuant to section 61(2) of the Tax Administration Act 1994. It details interests in foreign companies in relation to which any person is not required to comply with the requirement in section 61 of the Tax Administration Act 1994 to make disclosure of their interests, for the income year ending 31 March 1997. This exemption does not apply to interests in foreign companies which are interests in foreign investment funds.

2. Interpretation

In this exemption, unless the context otherwise requires, expressions used have the same meaning as in section OB 1 of the Income Tax Act 1994 or the international tax rules (as defined by section OZ 1 of the Income Tax Act 1994).

3. Exemption

Any person who has an income interest or a control interest in a foreign company (not being an interest in a

foreign investment fund), in the income year ending 31 March 1997, shall not be required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that income interest or control interest in that foreign company and that income year, except where:

- the interest held by that person during any accounting period of the foreign company (the last day of which falls within that income year of the person), would constitute an “income interest of 10% or greater”, as defined by section OB 1 of the Income Tax Act 1994, as if the foreign company was a controlled foreign company.

This exemption is made by me acting under delegated authority from the Commissioner of Inland Revenue pursuant to section 7 of the Tax Administration Act 1994.

This exemption is signed on the 10th day of April 1997.

Max Carr
National Manager, Corporates

Provisional taxpayers and the new compliance and penalties rules – changes from 1 April

We have been asked whether there are any changes to the calculation of provisional tax liability as a result of the introduction of the new Compliance and Penalties regime.

There are only two changes:

- The underestimation penalty is treated as due on the third instalment date for the purposes of calculating interest only – the penalty itself is due for payment on the terminal tax due date.
- The underestimation penalty cannot be increased by an amended assessment.

Interest start dates

Use of money interest relating to provisional tax instalments remains unchanged by the Compliance and Penalties regime. We have restated these rules below.

Section 120K sets out the interest start dates for provisional taxpayers:

Residual income tax exceeding \$30,000

- tax is treated as due and payable equally on all three instalment dates
- interest is calculated from each instalment date.

Residual income tax exceeding \$30,000 – new provisional taxpayer

- instalment date liability linked to first day of business
- interest is calculated from appropriate instalment date

Residual income tax \$30,000 or less

- Interest starts from the third instalment date for these taxpayers:
 - any taxpayer who is not a natural person
 - any taxpayer who has estimated
 - any taxpayer who holds a valid Certificate of Exemption
 - any taxpayer who has income in their capacity as trustee
 - any taxpayer who is incorrectly assumed to be a provisional taxpayer.
- Interest starts from terminal tax due date on balances over \$100, for anyone who meets all of these conditions:
 - He or she is a natural person.
 - He or she uses the standard option.
 - He or she pays all instalments in full on or before due date.

New interest end dates

With the new interest provisions for periods starting on or after 1 April 1997, it is important to remember that the interest stop date is no longer the terminal tax due date. Interest will only stop calculating when the period balance is \$100 or less or the tax is paid in full, whichever is the earlier.

Standard option (safe harbour)

This option remains available to all taxpayers except:

- those whose residual income tax exceeds, or is expected to exceed, \$300,000
- those who make an estimate of their provisional tax.

Questions we've been asked

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

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

Income Tax Act 1994

Interest/bank charges deductibility – loan from shareholder to company

Section DD 1 (b) (previously section 106(1)(h), Income Tax Act 1976) – Certain deductions not permitted – rents, interest, and premises: A company shareholder plans to take out a mortgage on her own property and on-lend the proceeds to the company. Under the arrangement, the company will pay her the same rate of interest as she has incurred, and also meet all her borrowing expenses. She has asked if she can deduct the following costs for income tax purposes:

- bank interest on the mortgage
- bank and legal charges for arranging the mortgage

Section DD 1 (b) does not allow a deduction for interest except where the interest is payable in gaining or producing the assessable income for any income year, or it is necessarily payable in carrying on a business for the purpose of gaining or producing the assessable income for any income year.

In this case, the loan from the bank is in the shareholder's name. A second, or back-to-back, loan has been arranged, and the money has been on-lent to the company under a separate loan agreement. Under the arrangement, the company will pay the interest to the shareholder, who in turn will pay the bank. The interest paid to the shareholder by the company will be income to the shareholder, and the interest paid by the shareholder to the bank will be a deductible expense. The company is also able to claim a deduction for the interest payments made to the shareholder.

The company may also be required to deduct resident withholding tax (RWT) from the interest payments made to the shareholder. For the Commissioner's policy on RWT and back-to-back loans, see TIB Volume Six, No. 11 (April 1995).

Regarding the bank and legal expenses, section DJ 11 (previously section 136, Income Tax Act 1976) permits a deduction to a shareholder for costs incurred in borrowing money employed by the taxpayer as capital in the production of assessable income. The company is also allowed a deduction for any costs passed on to it, such as the costs of arranging the back-to-back loan.

Whether losses can be partially offset in one year, and balance carried forward to next year

Section IE 1 (3) (previously section 188(3), Income Tax Act 1976) – Carry-forward and set-off of losses: A taxpayer incurred a \$17,000 loss in the 1994-95 income year. She has asked if \$11,000 can be offset against her 1995-96 assessable income of \$35,000, and the balance offset in the 1996-97 income year.

Under section IE 1 (3), any loss incurred in one income year may be carried forward to the next income year, to be deducted or set-off against the assessable

income of the same taxpayer, if any, in that next income year so far as that assessable income extends. Only if the loss cannot be fully deducted or set-off in an income year can it be carried forward to the following income year or years.

The whole \$17,000 must be offset against the taxpayer's 1995-96 assessable income of \$35,000, leaving no balance to carry forward to the 1996-97 income year.

Childcare/housekeeper rebate when attending university full-time

Section KC 4 (previously section 54, Income Tax Act 1976) – Rebate in certain cases for housekeeper: A wage and salary earner whose husband is intending to return to full-time university study has asked if they are able to claim the childcare/housekeeper rebate, as their three-year old child will be attending a childcare centre on a regular basis.

Under section KC 4 (1), taxpayers who pay a "housekeeper" during any income year are allowed a rebate of income tax, for that income year, of 33 cents in the dollar of those payments. The maximum rebate a family can claim is \$310.

A "housekeeper" is defined in section KC 4 (2) as:

- (a) Where the taxpayer is a widow, a widower, a divorced person, an unmarried person, or a separated person, –
 - (i) A person who, or an institution which, has the care and control, either in the home of the taxpayer or elsewhere, of any child; or
 - (ii) A person who tends the home of the taxpayer, where the Commissioner is satisfied that the services of the person are necessary by reason of any mental or physical infirmity or disability of the taxpayer; or
- (b) Where the taxpayer is a married person (other than a separated person), –
 - (i) A person who, or institution which, has the care and control, either in the home of the taxpayer or elsewhere, of any child; or
 - (ii) A person who tends the home of the taxpayer, -

where, in either case, the Commissioner is satisfied that the services of the person or the institution are necessary by reason of any mental or physical infirmity or disability of the taxpayer or his or her spouse; or
- (c) Where the taxpayer is a married person (other than a separated person), a person who, or institution which, has the care and control, either in the home of the taxpayer or elsewhere, of any child, where the Commissioner is satisfied that the services of the person or the institution are necessary by reason of the employment or business activities of both the taxpayer and his or her spouse.

In this case, neither partner is suffering from any mental or physical infirmity or disability, and so, in order to qualify for the rebate, both partners must either be in employment or be self-employed. As attending university does not meet these criteria, the couple have been advised they are not able to claim the rebate.

Imputation credits affected by change in shareholder continuity

Section ME 5 (previously section 394E, Income Tax Act 1976) – Debits arising to imputation credit account: A company has undergone a change in shareholding that has necessitated the cancelling of an amount of credits in its imputation credit account (ICA). The company's accountant has asked if the company's non-standard balance date of 30 June is a factor to be taken into account when considering the amount of the cancelling debit.

The loss of continuity provisions were introduced to ensure that imputation credits could not be retained by a company that had undergone a substantial change of shareholding during the imputation year.

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Section OB 1 defines an imputation year as:

... the period of 12 months commencing on 1 April in any year and ending with the following 31 March:

This is regardless of any approved non-standard balance date that the company may have for other tax purposes.

From 1 April 1992, the continuity of shareholding to be maintained before a deemed debit arises in the imputation credit account, is 66%. This is measured on the basis of the shareholders' percentage of ownership in the company by determining the aggregate of the voting interests (or market value interests where a market value circumstance exists) held by the shareholders.

For each credit, shareholder continuity is measured from the time the credit arises to the time continuity is breached.

When the 66% continuity in respect of a credit no longer exists, that credit will be extinguished by a debit to that account which arises on the date that the breach in continuity occurs .

The accountant was advised that the company's imputation credit account would be debited on the day the 66% continuity of shareholding ceased. The company's late balance date is not significant, as imputation runs from 1 April to 31 March.

Non-cash dividend and imputation credits

Section ME 6 (previously section 394F, Income Tax Act 1976) – Company may attach imputation credit to dividend: A shareholder in a company, who is not a shareholder-employee, has received additional shares in the company in lieu of a cash dividend. She is aware that under section CF 2 (previously section 4, Income Tax Act 1976) the distribution of these shares is a non-cash dividend, and has asked if a non-cash dividend is able to carry imputation credits.

Section ME 6 states:

An imputation credit account company may, on payment of a dividend by the company, attach an imputation credit to that dividend.

Since 1 April 1992, a dividend for imputation purposes includes a non-cash dividend. Since that date non-cash dividends are assessable to shareholders who are not also employees of the company. This means that imputation credits may be attached to the non-cash dividend.

A non-cash dividend is defined in section OB 1. The definition includes a dividend within the meaning of section CF 2 (1) which includes a taxable bonus issue.

The shareholder was advised that imputation credits may be attached to the non-cash dividend.

Company partially owned by non-resident – can it be a “qualifying company”?

Section OB 3 (1) (previously section 393B(1), Income Tax Act 1976) - Meaning of “qualifying company”: A company has two shareholders who are individuals: one is a New Zealand resident, the other is a non-resident. Both own 50% voting rights. One of the shareholders has asked if the company can become a qualifying company in view of the part-overseas ownership. She is also interested in knowing how Inland Revenue would pursue any outstanding tax liability of a qualifying company from a non-resident shareholder.

Section OB 3 (1) defines a “qualifying company”. Under the definition, a company is not precluded from being a qualifying company simply because one of its shareholders is a non-resident. As long as the company qualifies under the criteria set out in section OB 3 (1), it can become a qualifying company. Under section HG 8 (previously section 393H, Income Tax Act 1976), the shareholders are personally liable for income tax assessed to the qualifying company in proportion to their effective interest in the company.

Any tax owed by the non-resident shareholder would be pursued in the same manner as any other tax owed by a non-resident. If the non-resident refused to pay the tax owing, Inland Revenue would look to locate any assets held in New Zealand, and at the obligations of any agent for the taxpayer in New Zealand. In this case, if no other assets were held in New Zealand, Inland Revenue would look to obtain the outstanding tax from the company by means of an order under section 157 of the Tax Administration Act 1994 (previously section 400, Income Tax Act 1976).

If Inland Revenue were unable to obtain payment of the outstanding debt, the company could no longer be a qualifying company.

Tax Administration Act 1994

Retrospective adjustment to salaries paid to shareholder-employees

Section 126 (previously section 30, Income Tax Act 1976): A company’s tax return was furnished which showed all its profit distributed as salaries to its shareholder- employees. The company’s accountant has now realised that some legitimate deductions have been omitted from the accounts and disputed the assessment notice issued by Inland Revenue. The accountant has asked that the additional expenses be allowed and the salaries reduced.

Inland Revenue will agree to an adjustment for the unclaimed expenses, but not for an adjustment to the salaries. When a company has resolved to pay an amount of salary, and a journal entry to that effect has been made, the salary is considered to have been paid. It is not possible to later change the amount of salary that has been paid.

The dispute relating to the expenses has, therefore, been settled, but the dispute concerned with the amount of the salaries would continue to be subject to the disputes resolution process.

When an adjustment has been agreed and the dispute resolved, a reassessment to allow an additional claim for expenses means that the company now has a loss for the year. Subject to continuity of shareholding requirements, that loss will be carried forward and will be available to be offset against taxable income in future years.

Goods and Services Tax Act 1985

Late GST refunds – interest of less than \$5 payable?

Section 46(5A) - Interest less than \$5 not payable: A GST registered person filed a GST return that resulted in a refund. The refund was not issued within 15 working days and Inland Revenue had not advised that there would be a delay. When the refund was issued, the taxpayer calculated that interest of \$4.90 should have been paid by Inland Revenue, but it was not. The taxpayer has asked why interest was not paid.

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Section 46(1) requires that GST refunds must be paid not later than 15 working days after the relevant return was received by Inland Revenue. If that 15 day timeframe is not met, section 46(5) requires Inland Revenue to pay interest. Interest is calculated on a daily basis at a specified rate of interest. Section 46(6) provides the method by which the amount of interest is calculated.

However, under section 46(5A), interest is not payable by Inland Revenue for a late GST refund when the amount of that interest is less than \$5. Therefore, in this case, interest was not payable, despite the refund being paid late.

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 – assessments under old section 276

Case: BNZ Finance Ltd v CIR and Nash

Decision: 10 April 1997

Keywords: *Judicial review, “liable to be assessed”.*

Summary: BNZ Finance Ltd appealed to the Court of Appeal from a decision of Justice Fisher in the High Court that the CIR was able to assess BNZ Finance for tax payable by a defunct “old company” under the old section 276 of the Income Tax Act 1976 because, at the time the old company was wound up, it was *liable to be assessed* for tax. The majority decision in the Court of Appeal disallowed the appeal.

Facts: BNZ Finance Deposits Ltd (“Deposits”) was a wholly owned subsidiary of BNZ Finance. It was assessed for 1989-1992 (inclusive) but, in its returns, had omitted dividend and interest income received from an investment in redeemable preference shares and debentures. Deposits was wound up in 1994 under section 335A of the Companies Act 1955. The Commissioner had confirmed prior to wind up that Inland Revenue did not object to the dissolution of Deposits. Section 25 of the Income Tax Act 1976 would have precluded the Commissioner from increasing the 1989 and 1990 assessments after 31 March 1995 and 31 March 1996 respectively, and for the latter two years, after 31 March 1997.

On 31 March 1995 the Commissioner purported to issue amended assessments for the 1989 and 1990 income years in respect of the amounts alleged to have arisen from the investments. These assessments were nullities as Deposits had already been wound up. Mr Nash, by letter of 21 July 1995, then advised BNZ Finance that Inland Revenue intended to assess BNZ Finance for \$26,457,520.00 in respect of Deposits’ dividend and interest income for the 1989 and 1992 years, and to include the whole sum in the BNZ Finance’s assessment for the 1995 year once the return for that year had been filed.

Judicial review proceedings followed. Justice Fisher, in the High Court, held that the words “liable to be assessed for tax” in section 276 covered the situation where an assessment had been made but was subject to amendment within the 4 year time limit imposed by section 25. He held that section 276 was a charging section, not merely a recovery one, and that subject to section 25 BNZ Finance could be assessed for the investment income earned by deposits in the 1989 to 1992 years. He noted that Richardson P had already held in the Court of Appeal that the assessments of 31 March 1995 and 21 July 1995 did not amount to assessments or amended assessments of the 1989 and 1990 years and that under section 25 the Commissioner was out of time to issue amended assessments to BNZ Finance in respect of those years.

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Justice Fisher also found that the Commissioner was not estopped from relying on section 276 by having had no objection to Deposits being wound up under section 335A of the Companies Act 1955.

Decision:

The Court of Appeal (by a 3 to 2 majority) held that Justice Fisher was correct in his findings. McKay J found that the words “liable to be assessed” were added to the old section 276 to ensure that the section applied not only where the original company is liable for some quantified amount of tax as when an assessment had been issued, but also where it is liable for tax which has not yet been quantified by an assessment. He agreed that the section was a charging one (not a recovery one) evidenced by the use of phrases like “...shall be deemed to be the agent...and...shall be liable for all tax payable”.

McKay J held that liability for tax is not contingent on an assessment. It is an absolute liability imposed by statute. It may not be finally ascertained as to amount until assessed, but the liability is not subject to any contingency. The assessment is merely part of the process of quantifying the amount of pre-existing liability, considering objections and recovering payment. There is nothing in section 276 (3) which suggests that the words “liable to be assessed” should be restricted to a liability that was already assessed or otherwise identified and quantified.

BNZ Finance was liable to be assessed for tax on any taxable income derived by Deposits, under section 276.

Justice McKay agreed that the notice under section 335A of the Companies Act 1955, which the Commissioner gave prior to Deposits being wound up, is not a statement that he is satisfied there is no outstanding tax liability. Therefore there is no basis for an estoppel by representation or a statutory estoppel.

The Commissioner cross-appealed Fisher J’s finding that it was beyond the Commissioner’s power to make assessments in respect of the years ended 31 March 1989 and 31 March 1990 as the 4 year period had expired. The Commissioner argued that it was sufficient that he had validly quantified the tax in question prior to the expiry of the period by his assessments of Deposits on 31 March 1995. Justice McKay held that the applicable time bar for BNZ Finance carried over to the time bar period for Deposits.

Both the appeal and the cross-appeal were dismissed and the respondents were granted \$10,000 costs.

Input tax credits – “supply by way of sale”

Case: Union Corporate Services Ltd v CIR

Decision: 21 March 1997

Act: Goods and Services Tax Act 1985 – section 20 (3).

Keywords: *Input tax, “supply by way of sale”, secondhand goods*

Summary: The High Court held that the appellant (“Union”) was entitled to an input tax credit under section 20 (3)(a)(ia) because the sale of the vessel between itself and its subsidiary, “C Limited”, had occurred in New Zealand. It was therefore the sale of a secondhand good.

Facts: In 1989 the Objector (“Union”) purchased a ship from the Isle of Man. Union wanted to use the vessel for Gulf War shipping charters. For the ship to remain on the Isle of Man Shipping Registry (which was necessary for chartering) it had to be owned by a company incorporated in the Isle of Man. Union therefore

incorporated "C Limited". Union was the beneficial owner of the shares in C Limited, and had total control over the use of the vessel.

The Gulf War charters did not eventuate and the ship was chartered back to New Zealand. It was sold by C Limited to Union and Union sought to claim an input tax credit for the purchase of the vessel.

The TRA held that C Limited held the ship as bare trustee for Union and therefore Union actually purchased the ship outside New Zealand from a non-registered supplier. The TRA held that Union was not entitled to a secondhand goods input tax credit for the purchase of the vessel as there had been no "supply by way of sale" to Union by C Limited of "secondhand goods situated in New Zealand". This is because Union had beneficial ownership.

Decision: Justice Baragwanath held that the original acquisition of the vessel by C Limited was both beneficial and legal. The sale of the vessel by C Limited to Union was at a time the vessel was in New Zealand. Accordingly there was a supply, by way of sale, of secondhand goods in New Zealand and Union was entitled to claim an input tax credit under section 20 (3)(a)(ia) of the GST Act 1985.

It was found, on further evidence adduced by Union at the hearing, that under the Isle of Man's legislative provisions, it was, at all material times, unlawful to secure registration of a ship in the name of any party other than its beneficial owner and that a declaration had been signed which cited C Limited as the beneficial owner.

Justice Baragwanath further held there was no resulting trust between C Limited and Union as had been held by the TRA. He distinguished the cases relied on by the Commissioner .

Body corporate charging GST output tax

Case: Taupo Ika Nui Body Corporate v CIR

Decision: 21 March 1997

Act: Goods and Services Tax Act 1985 – section 6

Keywords: *Body corporate, output tax, taxable activity*

Summary: This is an appeal by the Objector of a decision from the TRA. The High Court held that the Objector, a body corporate, is a separate entity from the proprietors of the land it provides services for. The High Court held that the Objector merely collects contributions from its members and passes them on. The actions of the Objector did not amount to a supply for consideration so as to amount to a taxable activity under section 6 (1)(a) of the GST Act 1985. It was not, therefore, required to charge output tax on administration and maintenance levies.

Facts: The Objector is a body corporate which operates a timeshare resort consisting of 28 units. The 28 units are owned by 850 proprietors. Each unit has been divided into 51 weeks (for availability to use purposes). These weeks were marketed by a company and sold to individual proprietors. Each unit is separate and is clearly defined in an individual certificate of title issued in respect of each week purchased by an owner. The proprietor is able to mortgage, sell or deal with the unit title like any other estate in land.

The Objector collects annual levies payable by the proprietors and credits the money collected to its own account. It then meets all outgoings on the property. The Objector is invoiced for such outgoings, not the proprietors. The Objector undertakes every form of administration to ensure the resort is properly maintained and managed for the benefit of the proprietors.

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Decision: The High Court agreed with the TRA that the Objector has an identity separate from the proprietors who constitute it. It has powers and liabilities which the proprietors do not individually possess and it is subject to at least one restriction to which they are not individually subject i.e., the prohibition on trading.

The High Court held that whether the relevant activities undertaken by the Objector comprise a taxable activity under section 6 depends on whether the activities of the Objector are carried out for a consideration. The Court ruled that the Objector, in the circumstance of the case, did not receive consideration for the services it passed on to the proprietors. The Objector does not receive or obtain anything for its own benefit in respect of the services it performs. It merely collects the money from its members and passes it on to any creditors.

Therefore, the actions of the Objector, although amounting to the supply of goods or services from one person to another, were not supplies for consideration so as to amount to a taxable activity in terms of section 6 (1)(a) of the GST Act 1985.

Club manager – whether employee or independent contractor

Case: TRA No 96/74

Decision: 3 April 1997

Keywords: *employee, independent contractor*

Summary: The TRA held that the Objector was liable for PAYE for work carried out by a manager. The manager was not in business on his own account; he was an employee of the Objector and the Objector was liable to account for PAYE accordingly.

Facts: The Objector was a rugby club, which had taken on “M” as a manager. There was an unsigned employment contract prepared by the Objector’s solicitors to cover the hiring of a manager by the Objector. The contract was for an “*employee*” in the position of “*Club manager*” and referred to the Objector as “*the employer*”. The contract provided for a base retainer of \$19,220.00. This contract was not handed to M at any time. An Inland Revenue investigator found entries in the Objector’s cashbook under the name of M starting in November 1993 for \$369.92 weekly by “AP” encoded to “*Wages Club Man*”. The “AP” was taken to mean automatic payment into a bank account. \$369.92 per week for 52 weeks amounted to \$19,220.24 for the year, which was very close to the base salary in the unsigned employment contract.

The Objector did not deduct PAYE from the remuneration it paid M over the period 1 October 1993 to 31 August 1994. M did not file personal income tax returns for that period nor pay income tax on that remuneration, so the Objector has been assessed for \$5,806.63 as PAYE deductions in respect of M’s remuneration over that period. M had served the Objector for nearly two years but only the said 11 month period is the subject of the case.

The issue was whether M was hired by the objector as an employee or as an independent contractor. If the former was the case, the Objector was required to account for PAYE.

Decision: Barber J agreed that the intentions of the parties were not decisive. He confirmed the lack of a signed contract did not invalidate the principles found in *TNT Worldwide* (1995) 17 NZTC 7,145. The terms of the unsigned contract were considered neutral, as the manager had not seen the contract.

Barber J noted that the manager was under the “firm control” of the club but that this need not be considered determinative. Of more importance was the fact the manager was an integral part of the Objector’s operation. His Honour placed some weight on the regular “wages” payments which were made to the manager by the Objector.

Barber J considered the classic tests of employee/contractor status were probably outmoded. Of the manager’s status, Barber J concluded that in reality, he was not in business on his own account. Rather the manager was part of the ongoing business activity of the Objector. The Objector was therefore liable to the Commissioner for PAYE.

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) - 1997: 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 1997: *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 1997.*

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) - Mar 1997: *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 - 1998

- 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) - 1998: *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

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

(We will accept returns and payments received on Tuesday 3 June as in time for 31 May, but note that this does not apply to GST due on Friday 30 May.)

June 1997

- 5 Large employers: PAYE deductions and deduction schedules for period ended 31 May 1997 due.
- 7 Provisional tax and/or Student Loan interim repayments: first 1998 instalment due for taxpayers with February balance dates.
Second 1998 instalment due for taxpayers with October balance dates.
Third 1997 instalment due for taxpayers with June balance dates.
IR 5 tax returns due to be filed.
(We will accept returns and payments received on Monday 9 June as in time for 7 June.)
- 20 Large employers: PAYE deductions and deduction schedules for period ended 15 June 1997 due.
Small employers: PAYE deductions and deduction schedules for period ended 31 May 1997 due.
Gaming machine duty return and payment for month ended 31 May 1997 due.
RWT on interest deducted during May 1997 due for monthly payers.
RWT on dividends deducted during May 1997 due.
Non-resident withholding tax (or approved issuer levy) deducted during May 1997 due.
Imputation: Debit balances as at 31 March 1997 due to be paid.
FBT: Final day for "small" employers to elect to pay annually.
- 30 GST return and payment for period ended 31 May 1997 due.
Non-resident Student Loan repayments: first instalment of 1998 Student Loan non-resident assessment due.

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

This page shows the draft public binding rulings and interpretation statements 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 _____

<input checked="" type="checkbox"/> Public binding rulings	Comment Deadline
<input type="checkbox"/> 3401: Trading stock – date of sale	31/5/97
<input type="checkbox"/> 3167: Effect of declaration of trust for charitable purpose under section 24B of the Maori Trust Boards Act 1955	31/5/97
<input checked="" type="checkbox"/> Interpretation statements	Comment Deadline
<input type="checkbox"/> 3229: Sponsorship and promotional payments – deductibility under sections BD 2, DJ 4, and KC 5.	31/5/97
<input type="checkbox"/> 9702: Ostriches and emus – valuation for income tax purposes	31/5/97

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



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

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 Adjudication & Rulings
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