

TAX INFORMATION BULLETIN

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Inland Revenue
Te Tari Taake

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

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List of depreciation determinations

On page 20 of this TIB you'll find a list of all depreciation determinations we've issued since the last update of our booklet *Depreciation (IR 260)*. We've published it to help you locate the latest rates for any assets when preparing financial accounts. It will be updated every month or two, whenever we have space available in the TIB.

Our thanks to one of our local liaison meetings with the Institute of Chartered Accountants, from which the idea for this list arose.

Get your TIB sooner via Internet

Every month the Tax Information Bulletin is loaded onto Inland Revenue's Internet web site. This happens on the same day as the paper copy goes to the printers, so the web site copy will always be available about ten days before we can post you a paper copy.

You can find us at:

www.ird.govt.nz

This web site contains all the TIBs back to October 1996 (Volume Eight, No.6). These will be permanently available; we have no plans to remove them.

Also on our web site is other Inland Revenue information which you may find useful, including any draft binding rulings and interpretation statements that are available. All this material is saved in PDF format, which you can read using freely-available software.

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.

New compliance and penalties rules – are you up to date?

It's important that you pay your taxes, ACC premiums, and duties by the due dates, as there are new interest and penalty rules that apply if they're not paid on time.

The new compliance and penalties rules that came into force on 1 April mean business taxpayers now have new obligations and standards to meet when filing returns or paying taxes.

Do you need more information?

You can find more information about these matters from these sources:

IRD Web Site

Visit our Web Site at <http://www.ird.govt.nz> for:

- the booklet *Taxpayer Obligations, Interest and Penalties: a short guide to the new rules for business people* (IR 240)
- Tax Information Bulletin Volume Eight, No.7 (October 1996) for technical detail on the new rules
- commonly-asked questions and their answers
- information sheets covering interest, shortfall penalties, late filing penalties, late payment penalties, criminal penalties and an overview of the new rules.

0800 service

Call this service for technical advice. We're on 0800-4-TAXCARE (0800-4-829-2273) between 9 am and 4 pm weekdays.

Booklet *Taxpayer Obligations, Interest and Penalties* (IR 240)

You can order this booklet by calling your local Inland Revenue forms and stationery line (have your IRD number handy). The number is listed under *Inland Revenue* in the Blue Pages at the front of your telephone book.

Inland Revenue offices

Visit your local Inland Revenue office to pick up a copy of *Taxpayer Obligations, Interest and Penalties* and the information sheets. We can also lend you free of charge a copy of the introductory video *Mind your Business*.

Tax Information Bulletin

For a copy of the October 1996 issue, which deals with the compliance and penalty rules, write to:

Tax Information Bulletin (October 1996)
Inland Revenue Warehouse
P O Box 2198
WELLINGTON

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.

Fabric samples and fabric display stock – draft depreciation determination

We have received an application for a depreciation rate for samples of curtain fabric used by a retailer to sell curtains. A sample is made by taking a piece of the fabric from stock, attaching it to a card, and displaying it in the home delivery van. This is then shown to customers as an example of what is available. The life of the samples varies from 1 month to 2 years, with the average sample lasting between 8 and 12 months. When the fabric goes out of stock and/or becomes unavailable, the sample is of no value and is disposed of. There is currently no general depreciation rate for these samples.

The Commissioner proposes to issue a general depreciation determination which will insert a new asset class, “Fabric Samples and Fabric Display Stock” under both the “Shops” and “Textile, Garment and Carpet Manufacturing” industry codes. The new rate will be 100% D.V. and S.L., and is based on an estimated useful life of 1 year.

The draft determination is reproduced below.

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 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 “Shops” and “Textile, Garment and Carpet Manufacturing” industry categories the general asset class, estimated useful life, and diminishing value and straight-line depreciation rate listed below:

Shops and Textile, Garment and Carpet Manufacturing	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Fabric Samples and Fabric Display Stock	1	100	100

3. Interpretation

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

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

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

We need to receive your submission by 27 June 1997 if we are to take it into account in finalising the determination.

Determination: amount of a specified withholding payment (being prize money) which shall be regarded as expenditure incurred in production of payment

Introduction

This Determination sets out the amount which is regarded as expenditure incurred in the production of a specified withholding payment when that payment is prize money.

Section NC2 of the Income Tax Act 1994 requires anyone who makes a source deduction payment to deduct tax from the payment when making it.

Under section OB 2 (1) of the Income Tax Act 1994 a withholding payment is included in the definition of source deduction payments. Consequently any person who makes a withholding payment must deduct tax from that payment at the time it is made unless an exemption applies.

Prize money paid to participants at sporting events or competitions comes within the definition of 'specified payment' in the Income Tax (Withholding Payment) Regulations 1979, so section NC(2) applies to these payments.

The regulations require withholding tax of 20% to be deducted from the amount of the prize paid to participants.

Regulation 7 of the Income Tax (Withholding Payments) Regulations 1979 allows the Commissioner to determine an amount or proportion of any specified withholding payment which is considered to be expenditure incurred in the production of that payment. If the Commissioner has made such a determination the person paying the specified withholding payment is only required to deduct tax from the amount which exceeds this threshold.

Application

This determination applies to prize money, being a specified payment, paid to participants, (being non-resident entertainers or resident entertainers) at sporting events or competitions.

This determination applies to prize money paid on or after 1 June 1997 until such time as the Commissioner varies or revokes this determination.

This determination applies to each separate prize paid to each separate participant for each separate event that participant has entered at the sporting event or competition.

Interpretation

In this Determination, unless the context otherwise requires, expressions used have the same meaning as in section NC and OC (2)(1) of the Income Tax Act 1994,

and as in the Income Tax (Withholding Payment) Regulations 1979.

Determination

When any non-resident entertainer or entertainer receives prize money, being a specified payment, in relation to a sporting event or competition of any nature, being a specified activity, the sum of \$500 shall be regarded as expenditure incurred in the production of the payment. However, where the total amount of the prize money is less than \$500, the total amount of the prize money shall be regarded as expenditure incurred in the production of the payment.

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

This Determination is signed on the 13th day of May 1997.

Peter Wallwork
National Manager (Businesslink)

Examples

Example 1

A team of four bowlers compete in a competition and they win the first prize of \$1,600. The prize money is shared equally – \$400 each. Therefore, the payer does not have to deduct withholding tax. This is because although the total amount of the prize exceeds \$500, the amount per person is under the \$500 threshold.

Example 2

A doubles pairing in a tennis tournament win their division – first prize was \$900. The total prize amount exceeds \$500, but again the amount per person is under \$500. The payer does not have to deduct withholding tax.

Example 3

One of the tennis players in the above example also wins the singles title in one division – first prize is \$700. The prize money is over \$500 so withholding tax must be deducted, but only from the portion exceeding the \$500 threshold.

The total amount of withholding tax to be deducted is \$200 x 20 cents = \$40.

The player has won total prize money of \$1,150. However, the determination applies to each separate prize paid to each separate participant for each separate event.

Estate and Gift Duties (Termination of Exemption) Order 1997

Recent Order in Council with implications for local authorities

Introduction

The Estate and Gift Duties (Termination of Exemption) Order 1997 came into force on 8 May 1997. It terminates the temporary provision in the Estate and Gift Duties Act 1968 which exempts from gift duty the payment of income earned on the proceeds of port company share sales from local authorities to community trusts.

Background

The Local Government Act 1974 provides that local authorities may establish community trusts with the proceeds of the sale of shares in port companies. Payments to the community trusts would have been subject to gift duty. However, section 73(2)(k) of the Estate and Gift Duties Act 1968 (inserted by the Estate and Gift Duties Amendment Act 1995 - see Tax Information Bulletin Volume Six, No. 12, page 33) exempts from gift duty any payment from a local authority to its

community trust if the payment is funded from one of the following sources:

- the proceeds of the sale of port company shares or equity securities
- any of the income derived from or capital gain arising on the sale proceeds, if that income or gain is paid to the community trust before a date set by the Governor-General by Order in Council.

Key issues

The date for the termination of the gift duty exemption for income derived from or capital gain arising on the sale proceeds has now been set at 8 May 1997 by the Governor-General by Order in Council. Therefore any payment made on or after 8 May 1997 by a local authority to a community trust of any income derived from or capital gain arising on the sale proceeds of port company shares will be subject to gift duty.

The ability to pass on the original sale proceeds without gift duty will remain.

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.

Interest on money borrowed to pay up uncalled or unpaid capital in a group company – deductibility and meaning of "to acquire shares"

Public Ruling – BR Pub 97/4

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

Taxation Law

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

This Ruling applies in respect of section DD 1 (b)(iii).

The Arrangement to which this Ruling applies

The Arrangement is the payment of interest by one company ("the shareholder company") included in a group of companies in respect of money borrowed to pay for shares in another company included in that group of companies, where those shares were issued to the shareholder company at an earlier date, but the shareholder company has not previously provided all the consideration for those shares, i.e. the shares are unpaid or uncalled capital.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- The interest payable by the company under the Arrangement is payable in respect of money borrowed to acquire shares in another company included in that group of companies for the purposes of section DD 1 (b)(iii).

The period for which this Ruling applies

This Ruling will apply to interest incurred, in respect of an Arrangement to which this Ruling applies, in the period of the 1997, 1998, and 1999 income years.

This Ruling is signed by me on the 29th day of April 1997.

Martin Smith
General Manager (Adjudication & Rulings)

commentary continued on page 6

Commentary on Public Ruling BR Pub 97/4

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusion reached in Public Ruling BR Pub 97/4 (“the Ruling”).

The subject matter covered in the Ruling was previously dealt with in PIB 178 (February 1989). To the extent that the Ruling covers issues dealt with in that earlier policy statement, this Ruling supersedes and replaces that earlier policy.

Public Ruling BR Pub 97/5 deals with the deductibility of interest on money borrowed to refinance a debt used to acquire shares in a group company.

Background

A company that is a member of a group of companies is allowed a deduction under section DD 1 (b)(iii) for interest on money borrowed to acquire shares in another group company.

In some cases a company may be issued with shares in a group company, and may agree to provide all or part of the consideration for those shares to the group company at a later stage – either at a fixed time or when the group company makes a call shares. At that later stage, the shareholder company may borrow money to pay up the previously unpaid or uncalled capital.

The shareholder company may seek to claim a deduction under section DD 1 (b)(iii) for the interest payable on the money borrowed to pay up the unpaid or uncalled capital. In this case, the issue is whether the payment of the unpaid or uncalled capital is a payment to “acquire” shares. If it is, the interest on the money borrowed will be interest on money borrowed to acquire shares and will be deductible under section DD 1 (b)(iii).

Legislation

Cross-reference table

Income Tax Act 1994	Income Tax Act 1976
DD 1 (b)	106(1)(h)
IG 1	191

Under section DD 1 (b), no deduction is allowed to a taxpayer for interest except so far as the Commissioner is satisfied that:

- (i) It is payable in deriving the taxpayer’s gross income; or
- (ii) It is necessarily payable in carrying on a business for the purposes of deriving the taxpayer’s gross income; or
- (iii) It is payable by one company included in a group of companies in respect of money borrowed to acquire shares in another company included in that group of companies:

Provided that for the purposes of this paragraph expenditure deemed to be incurred under the qualifying accruals rules shall be deemed to be interest payable:

Provided further that for the purposes of this paragraph any 2 companies shall be treated as being included in a group of companies in respect of any income year only if those companies are members of the same group of companies at the end of that income year:

Whether companies are a “group of companies” is determined by section IG 1 (2).

Application of the Legislation

Section DD 1 (b)(iii) allows a deduction for interest payable on money borrowed to acquire shares in a group company. The issue which the Ruling addresses is whether the payment of uncalled capital is a payment “to acquire shares”. This depends on whether a payment for shares which occurs some time after the shares are obtained by the shareholder can be said to be a payment to “acquire” shares. If money borrowed to pay a call on unpaid capital is borrowed to “acquire” shares, the interest paid on that borrowed money is deductible under section DD 1 (b)(iii).

There are no cases on whether money that is borrowed to pay for shares in a group company, where that payment occurs some time after the shares have been issued to the shareholder, is money borrowed to “acquire” the shares. However, general observations made by the courts in respect of the word “acquire” indicate that the courts accept that “acquire” has a flexible meaning which can vary depending upon the context in which it is used and the issue that is being addressed (see *Beetham v CIR* [1973] 1 NZLR 575; *Mayor of Stratford v The King* [1926] GLR 151; *US v ITT Continental Baking Company* (1975) 420 US 223).

Companies Act

An examination of the provisions of the 1993 and 1955 Companies Acts helps to determine when a shareholder acquires shares for the purposes of those Acts.

Under the Companies Act 1993, a person may become a shareholder by way of an issue of shares by the company either on the registration or amalgamation of a company (section 41) or at any other time (section 42). Under section 51 of the Companies Act 1993, a share is issued when the name of the shareholder is entered on the share register. A person could become a shareholder by way of an issue of shares by the company under the Companies Act 1955 by way of subscription to the memorandum or by an allotment of shares by the company. In any event, the name of the shareholder must be entered in the company’s register of members (sections 39 and 118 of the 1955 Act; section 87 of the 1993 Act) and the register is prima facie evidence of legal title to shares (section 126 of the 1955 Act, section 89 of the 1993 Act).

However, although a shareholder may have legal title to shares, not all of the consideration for those shares will necessarily have passed to the company. The 1955 and

1993 Companies Acts clearly envisage that share may be only partly paid (or completely unpaid) at the time it is acquired by the shareholder, with the unpaid balance to be paid at a later date (either at a fixed time or when called up by the company at its discretion). Section 13 of the 1955 Act and section 97(2) of the 1993 Act confirm that a shareholder is liable for any amount unpaid on shares held by the shareholder.

Thus, although entry of the shareholder's name on the share register is prima facie evidence of legal title to shares, the shareholder will be liable for any unsatisfied consideration which exists in respect of the issue of the shares. Even though a shareholder may not be called upon to meet the liability arising for the initial issue of shares until quite some time after that issue, that liability nevertheless relates directly to the "acquisition" of the shares by the shareholder: that is, it is the outstanding consideration for that acquisition.

Treating money borrowed to pay for shares issued some time previously as meeting the meaning of the expression "to acquire shares" in section DD 1 (b)(iii) is, therefore, entirely consistent with the provisions of the Companies Acts. It is therefore clearly arguable that any consideration payable for the issue of shares in a company, whether payable by way of an immediate subscription at the time of issue, or deferred, or subject to a call at some later stage, is money payable "to acquire shares" within the meaning of section DD 1 (b)(iii).

Consequences of limiting meaning of "acquisition" to time of issue

Section DD 1 (b)(iii) was first enacted as section 112(1)(g)(ii) of the Land and Income Tax Act 1954. At the time of its enactment, inter-company dividends were exempt from tax under section 86C of the Land and Income Tax Act 1954. Thus, interest on money borrowed to purchase shares in a group company would not have been deductible under the general interest deductibility provision (interest payable on capital employed in the production of assessable income), because there was no nexus between the interest and the production of dividend assessable income. The enactment of section DD 1 (b)(iii) therefore enables a shareholder to claim a deduction for interest on money borrowed to purchase group company shares.

A narrow interpretation of the word "acquire" in section DD 1 (b)(iii) is that it only refers to the shareholder's initial act of obtaining the shares when the shares are issued to the shareholder. When a shareholder pays for the shares at a later stage, this payment relates to discharging the shareholder's liability in respect of the shares and arguably does not relate to the "acquisition" of the shares because the shareholder has already acquired or obtained the shares. However, the result of such an interpretation is that shareholders would only be allowed a deduction under section DD 1 (b)(iii) for interest payable on money borrowed to fund share

acquisitions where that money is borrowed at the time of the initial share issue. This would give rise to injustice and absurdity in cases where companies delay making a call on their newly issued shares or agree to deferred payment for the shares. In the case of such delays, shareholders borrowing to meet those calls or make the deferred payment will be penalised if section DD 1 (b)(iii) does not apply to allow a deduction. This does not appear to be the purpose of the legislation.

The Privy Council in *Mangin v C of IR* [1971] 1 NZLR 591 held that words are to be given their ordinary meaning, and that there is no room for intendment. However, the Privy Council also said that, in the case of an ambiguity, if a literal interpretation results in an injustice or an absurdity, and the language of the section admits an interpretation which avoids such a result, then the alternative interpretation may be adopted.

The Court of Appeal took a similar approach to ambiguities in *CIR v Alcan New Zealand Ltd* [1994] 3 NZLR 439 and said that one should approach the question of statutory interpretation on the premise that the legislature will not have intended absurdity or injustice. The Court said that one should always have regard to the total context of the words used and to the purpose of the legislation in order to arrive at the meaning intended. However, it should be remembered that this does not mean giving the words, "some forced meaning to fit a preconceived idea of purpose".

Taking the approach authorised by *Mangin* and *Alcan*, on the basis that:

- the phrase "to acquire shares" in section DD 1 (b)(iii) is ambiguous in that it is not clear whether it only refers to the initial obtaining of shares at the time that they are issued to the shareholder, or whether it includes the payment for those shares at a later date; and
- a narrow interpretation of the phrase, "to acquire shares", as meaning only the initial obtaining of shares, would give rise to injustice and absurdity; and
- the language of section DD 1 (b)(iii) admits an interpretation which avoids such injustice and absurdity arising, being that a deferred payment of the outstanding consideration for shares relates directly to the acquisition of the shares by the shareholder,

the Ruling adopts a wider interpretation of the phrase, "to acquire shares" as including a payment for shares which becomes due after those shares are issued by the company to the shareholder, i.e. the paying up of unpaid or uncalled capital.

Record-keeping

The shareholder company must maintain adequate records of the initial expenditure of the borrowed funds and the subsequent refinancing(s). It may be necessary to retain these records for many years, and longer than the statutory requirement to retain records, in order to establish the purpose of the later refinancings.

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Example

Issuer Company is incorporated on 1 June 1996. Borrower Company and Issuer Company are members of the same group of companies. Borrower Company subscribes for shares in Issuer Company, and is issued 100,000 shares, but Issuer Company makes no call on the shares at that time.

Issuer Company makes a call on the 100,000 shares on 1 December 1996. Borrower Company borrows

money to pay the call, and incurs interest on those borrowed funds.

Although the loan money in respect of which the interest is payable is not borrowed until 6 months after the shares are subscribed for and issued to Borrower Company, the interest is payable on money used to *acquire* shares in Issuer Company. As Borrower Company and Issuer Company are members of the same group of companies, Borrower Company can deduct the interest paid under section DD 1 (b)(iii).

Deductibility of interest on money borrowed to refinance a debt used to acquire shares – meaning of “acquired”

Public Ruling – BR Pub 97/5

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

Taxation Law

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

This Ruling applies in respect of section DD 1 (b)(iii).

The Arrangement to which this Ruling applies

The Arrangement is the payment of interest by one company included in a group of companies in respect of money borrowed to refinance a debt which was originally used to acquire shares in another company included in that group of companies, and the payment of interest in respect of any subsequent refinancings of that debt.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- The interest payable by the company under the Arrangement is payable in respect of money borrowed to acquire shares in another company included in that group of companies for the purposes of section DD 1 (b)(iii).

The period for which this Ruling applies

This Ruling will apply to interest incurred, in respect of an Arrangement to which this Ruling applies, in the period of the 1997, 1998, and 1999 income years.

This Ruling is signed by me on the 29th day of April 1997.

Martin Smith
General Manager (Adjudication & Rulings)

Commentary on Public Ruling BR Pub 97/5

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusion reached in Public Ruling BR Pub 97/5 (“the Ruling”).

The subject matter covered in the Ruling was previously dealt with in PIB 178 (February 1989). To the extent that the Ruling covers issues dealt with in that earlier policy statement, this Ruling supersedes and replaces that earlier policy.

Public Ruling BR Pub 97/4 deals with the deductibility of interest on money borrowed to pay up uncalled or unpaid capital in a group company.

Background

A company that is a member of a group of companies is allowed a deduction under section DD 1 (b)(iii) for interest on money borrowed to acquire shares in another group company.

In some cases a company may borrow money to acquire shares in a group company, and then later refinance by borrowing money to repay the existing debt. The issue is whether the interest on the replacement debt is deductible under section DD 1 (b)(iii) as interest on money borrowed to acquire shares.

Legislation

Cross-reference table

Income Tax Act 1994	Income Tax Act 1976
DD 1 (b)	106(1)(h)
IG 1	191

Under section DD 1 (b), no deduction is allowed to a taxpayer for interest except so far as the Commissioner is satisfied that:

- (i) It is payable in deriving the taxpayer’s gross income; or
- (ii) It is necessarily payable in carrying on a business for the purposes of deriving the taxpayer’s gross income; or
- (iii) It is payable by one company included in a group of companies in respect of money borrowed to acquire shares in another company included in that group of companies:

Provided that for the purposes of this paragraph expenditure deemed to be incurred under the qualifying accruals rules shall be deemed to be interest payable:

Provided further that for the purposes of this paragraph any 2 companies shall be treated as being included in a group of companies in respect of any income year only if those companies are members of the same group of companies at the end of that income year:

Whether companies are a “group of companies” is determined by section IG 1 (2).

Application of the Legislation

Section DD 1 (b)(iii) permits a deduction for interest payable in respect of money borrowed to acquire shares

in a group company. It is arguable that the words “to acquire shares” only refer to the one-off event of obtaining the shares. If this is the case, an interest deduction will only be allowable for the original borrowing of money to purchase shares in the group company, and interest payable for any subsequent refinancing of the original borrowing will not be deductible.

Conversely, it is arguable that “to acquire” is capable of bearing a wider meaning, and that it includes all acts which enable the shareholder to obtain shares in the group company. The refinancing of the debt used to purchase the shares is arguably an extension or continuation of the original act of borrowing for the purpose of acquiring the shares, and has the same character as that original borrowing. If this is the case, interest on money borrowed to repay and replace a loan that was originally used to acquire shares will also be deductible under section DD 1 (b)(iii), because it is payable on money borrowed in respect of the shareholder continuing the act of acquiring shares in the group company.

Section DD 1 (b)(iii) was first enacted as section 112(1)(g)(ii) of the Land and Income Tax Act 1954. At the time of its enactment, inter-company dividends were exempt from tax under section 86C of the Land and Income Tax Act 1954. Thus, interest on money borrowed to purchase shares in a group company would not have been deductible under the general interest deductibility provision (interest payable on capital employed in the production of assessable income), because there was no nexus between the interest and the production of dividend assessable income. The enactment of section DD 1 (b)(iii) therefore enabled shareholders to claim a deduction for interest on money borrowed to acquire group company shares.

There are no cases on whether an interest deduction is available under section DD 1 (b)(iii) in respect of money borrowed to refinance a loan which was used to acquire shares in a group company. General observations made by the courts in respect of the word “acquire” indicate that the courts accept that “acquire” has a flexible meaning which can vary depending upon the context in which it is used and the issue that is being addressed (see *Beetham v CIR* [1973] 1 NZLR 575; *Mayor of Stratford v The King* [1926] GLR 151; *US v ITT Continental Baking Company* (1975) 420 US 223).

In *US v ITT Continental Baking Company* (1975) 420 US 223 the Court held, in a 5-4 majority decision, that the word “acquiring”, as used in the case before it, meant not only the initial act of acquisition, but also the retention of the rights obtained.

In that case, a Federal Trade Commission order prohibited the respondent baking company from, “acquiring ... the whole or any part of the stock, share capital, or assets of any concern, corporate, or non-corporate, engaged in the United States in the production and sale of bread ...”.

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The relevant statutes authorised the imposition of a daily \$1,000 penalty for a continuing failure or neglect to obey the order.

The petitioner alleged that the respondent had acquired assets in three companies in violation of the order, and that the retention of the assets constituted continuing violations of the order. The respondent argued that “acquiring” in the order unambiguously referred only to the initial transaction and that to read it otherwise was to add the words “holding or retaining” to the literal language of the order.

The US Supreme Court found for the petitioner on the grounds that it interpreted “acquiring”, as used in the order, to mean both the initial transaction and the maintaining of the assets or rights obtained without resale, and accordingly held that the violation of the order was a continuing violation subject to daily penalties.

While *Continental Baking* lends some support to the proposition that the phrase “to acquire” has connotations of continuity, that case is not persuasive authority in respect of the interpretation of the words “to acquire” in the context of section DD 1 (b)(iii), not only because decisions of the US Supreme Court do not bind New Zealand Courts but also because:

- The surrounding documentation and the context of the word’s use were important factors in the US Supreme Court’s interpretation of the word “acquiring”;
- The Court was not considering the word “acquiring” in the context of the United States taxation legislation, but rather in the context of its anti-trust legislation, and the specialised meaning of the term in this context; and
- It was not a unanimous decision of the Court, and the division between the judges was narrowly split with the dissenting judges unanimous in their decision.

Continental Baking should therefore only be seen as an example of an instance where a Court has found that the word “acquiring” can be interpreted widely to include maintaining or retaining assets and rights, and is not the basis for the Commissioner making the Ruling in this instance.

The Concise Oxford Dictionary defines “acquire” as meaning “gain by and for oneself; come into possession of”. This definition arguably does not connote any consequent transactions.

However, to interpret the words “to acquire” in the context of section DD 1 (b)(iii) narrowly to mean only the initial act of obtaining shares would result in unfairness, in that shareholder companies which can only obtain short-term financing will be at a disadvantage when compared with shareholder companies which can obtain longer term finance. Shareholder companies that can only get short-term finance will not be able to deduct the interest on any subsequent loan(s), thereby increasing their business costs, while shareholder companies that can get longer term financing will be able to claim the interest deduction for a longer period. The narrow interpretation of the phrase “to acquire”

would make section DD 1 (b)(iii) ineffective as regards refinancing and rollovers, which are often a necessary part of financing activities.

The Privy Council in *Mangin v C of IR* [1971] 1 NZLR 591 held that words are to be given their ordinary meaning, and that there is no room for intendment. However, the Privy Council also said that where words in a section are ambiguous, and a literal interpretation of those words results in an injustice or an absurdity, if the language of the section admits an interpretation which avoids such a result, then the alternative interpretation may be adopted.

The Court of Appeal took a similar approach in *CIR v Alcan New Zealand Ltd* [1994] 3 NZLR 439 and said that one should approach the question of statutory interpretation on the premise that the legislature will not have intended absurdity or injustice. The Court said that one should always have regard to the total context of the words used and to the purpose of the legislation, in order to arrive at the meaning intended. However, it should be remembered that this does not mean giving the words, “some forced meaning to fit a preconceived idea of purpose”.

As a narrow, literal interpretation of the phrase “to acquire” would lead to an injustice, and an alternative meaning of the words is possible having regard to the total context of the words used and the purpose of the legislation, the alternative meaning (which does not lead to an injustice) may be adopted. This approach lends support to interpreting the words “to acquire” more widely, as extending to include the act of refinancing the original loan that was used to acquire the shares.

Records

The shareholder company must maintain adequate records of the initial expenditure of the borrowed funds and the subsequent refinancing(s). It may be necessary to retain these records for many years, and longer than the statutory requirement to retain records, in order to establish the purpose of the later refinancings.

Example

Company A is granted a loan for a five-year period for the purposes of purchasing shares in Company B, a member of the same group of companies. Under section DD 1 (b)(iii), Company A can deduct the interest payable on the loan, because the interest is payable by one company included in a group of companies for money borrowed to acquire shares in another company included in that group of companies.

At the end of the five-year loan period, Company A refinances by entering into a new loan. To the extent that the replacement loan is used to repay the earlier loan which was used to actually “acquire the shares”, the interest on the replacement loan is also deductible under section DD 1 (b)(iii). This is because the loan moneys are a replacement for the original loan, and are an extension and continuation of the original act of borrowing money to acquire shares in the group company.

Charitable organisations and fringe benefit tax

Public Ruling BR Pub 97/6

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

Taxation Law

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

This Ruling applies in respect of paragraph (m) of section CI 1 of the Act.

The Arrangement to which this Ruling applies

The Arrangement is the provision of a non-monetary benefit by a charitable organisation to an employee of that organisation.

In this Ruling, the term “charitable organisation” has the meaning that it has in the Act for the purposes of the FBT rules. That is, in relation to any quarter or (where FBT is payable on an income year basis under section ND 4) any income year, any society, institution, association, organisation, trust, or fund (not being a local authority, a public authority, or a university) to which, in the quarter or income year, section KC 5 (1) applies.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- For the purposes of the proviso to section CI 1 (m), a non-monetary benefit which is provided to an employee of a charitable organisation *is not* received by that employee in relation to the carrying on of a business by the charitable organisation if the employee receives the benefit in the course of an activity of the charitable organisation which involves carrying out any of the organisation’s charitable, benevolent, philanthropic or cultural purposes, even if income is received by the organisation in the course of carrying out that activity.
- For the purposes of the proviso to section CI 1 (m), a non-monetary benefit which is provided to an employee of a charitable organisation *is* received by that employee in relation to the carrying on of a business by the charitable organisation if the employee receives the benefit in the course of an activity which both:
 - cannot be characterised as carrying out any of the organisation’s charitable, benevolent, philanthropic or cultural purposes; and
 - constitutes a profession, a trade, a venture, or an undertaking which is carried on for the purpose of making a profit (even if that profit is to be applied solely for the purposes of the charitable organisation).

The period for which this Ruling applies

This Ruling will apply to non-monetary benefits provided by charitable organisations in the FBT periods which commence after 30 June 1997 and which end before 1 July 1999.

This Ruling is signed by me on the 12th day of May 1997.

Martin Smith
General Manager (Adjudication & Rulings)

Commentary on Public Ruling BR Pub 97/6

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 97/6 (“the Ruling”).

Background

The charitable organisation exemption from fringe benefit tax does not apply to any benefit that is provided by a charitable organisation to an employee in the course of the employee’s employment in a business activity of the charitable organisation.

The issue is whether the FBT exemption applies to benefits provided by charitable organisations which carry on their charitable objects in a business-like manner, and which have a record and expectation of making surpluses of income over expenditure.

Legislation

Cross-reference table

Cross-reference table	
Income Tax Act 1994	Income Tax Act 1976
CB 4 (1)(e)	61(27)
CI (1)	336N (1) “fringe benefit”
CI 1 (m)	336N (1) “fringe benefit” paragraph (h)
KC 5 (1)	56A(2)
OB 1 “charitable organisation”	336N (1) “charitable organisation”

Section CI 1 defines the term “fringe benefit” for the purposes of the fringe benefit tax rules. The relevant parts of that section, for the purposes of the Ruling, state:

In the FBT rules, “fringe benefit”, in relation to an employee and to any quarter or (where fringe benefit tax is payable on an income year basis under section ND 4) income year, means any benefit that consists of -

- (a) The private use or enjoyment, in relation to the employee ... of a motor vehicle ...
- (b) The availability for private use or enjoyment of the employee ... of a motor vehicle ...
- (c) Any loan that is owing, by the employee,...
- (d) Any subsidised transport:
- (e) ... any contribution to any sick, accident, or death benefit fund ...
- (f) ... any specified insurance premium or any contribution to any insurance fund of a friendly society:
- (g) Any contribution in relation to an employer of an employee, to any superannuation scheme:
- (h) Any benefit of any other kind whatever,...

being, as the case may be, private use or enjoyment, availability for private use or enjoyment, a loan, subsidised transport, a contribution to a fund referred to in paragraph (e), a specified insurance premium or a contribution to an insurance fund of a friendly society, a contribution to a superannuation scheme, or a benefit that is used, enjoyed, received, whether directly or indirectly, in relation to, in the course of, or by virtue of the employment of the employee (whether that employment will occur, is occurring, or has occurred) and which is provided or granted by the employer of the employee; but does not include—

...
(m) Any benefit that, in any quarter or (where fringe benefit tax is payable on an income year basis under section ND 4) any income year, is provided or granted by or on behalf of an employer, being a charitable organisation, to an employee of the employer:
Provided that this paragraph shall not apply to any such benefit to the extent that the benefit is used, enjoyed, or received, whether directly or indirectly, primarily or principally in relation to, and in the course of, or by virtue of, any employment, in relation to the employee, that consists of any activity or activities performed by the employee in the carrying on, by the employer, of a business [emphasis added]:

“Business” is defined in section OB 1 as including any profession, trade, manufacture, or undertaking carried on for pecuniary profit.

“Charitable organisation” is defined for the purposes of the FBT rules as:

... any society, institution, association, organisation, trust, or fund (not being a local authority, a public authority, or a university) to which ... section KC 5 (1) applies.

Section KC 5 (1) applies to certain named institutions (paragraphs (ae) to (bq)), and, more generally, to:

- (aa) A society, institution, association, organisation, or trust which is not carried on for the private pecuniary profit of any individual and the funds of which are, in the opinion of the Commissioner, applied wholly or principally to any charitable, benevolent, philanthropic, or cultural purposes within New Zealand:
- (ab) A public institution maintained exclusively for any one or more of the purposes within New Zealand specified in paragraph (aa):
- (ac) A fund established and maintained exclusively for the purpose of providing money for any one or more of the purposes within New Zealand specified in paragraph (aa), by a society, institution, association, organisation, or trust which is not carried on for the private pecuniary profit of any individual:
- (ad) A public fund established and maintained exclusively for the purpose of providing money for any one or more of the purposes within New Zealand specified in paragraph (aa):

“Charitable purpose” is defined in section OB 1 as including:

... every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community:

The Act does not define “benevolent, philanthropic, or cultural purposes”.

Application of the legislation

The charitable organisation exemption from FBT contained in paragraph (m) of section CI 1 only applies to the extent that the employee does not receive the benefit in the course of the organisation carrying on a business. The Ruling addresses the issue of when a charitable organisation will and will not be carrying on a business for the purposes of the charitable organisation exemption from FBT.

“Business” is defined in section OB 1 as including “any profession, trade, manufacture, or undertaking **carried on for pecuniary profit**” [emphasis added].

The Court of Appeal in *Grieve v CIR* (1984) 6 NZTC 61,682 considered that underlying the Act’s definition of “business”, and the use of the word in the context of a taxation statute, is the fundamental notion of the exercise of an activity in an organised and coherent way that is directed to an end result - the making of pecuniary profits. The Court said that the existence of a business activity is determined on the basis of the nature of the activity and whether the taxpayer has the intention of making a pecuniary profit in carrying out that activity. The Court stated, at page 61,691:

Statements by the taxpayer as to his intentions are of course relevant but actions will often speak louder than words. Amongst the matters which may properly be considered in that inquiry are the nature of the activity, the period over which it is engaged in, the scale of operations and the volume of transactions, the commitment of time, money and effort, the pattern of activity, and the financial results.

Many charitable organisations engage in activities on a continuous and ongoing basis, commit time, money and effort to those activities and conduct a large volume of transactions, and so will have these characteristics of a business.

The issue is therefore whether a charitable organisation that budgets for, and has a record of making surpluses of income over expenditure has the intention of making a profit. If it is carried on for profit, it will be a “business” for the purposes of the Income Tax Act.

English cases have held that the fact that a charity makes a profit does not mean that it is carried on “for profit”. In *Trustees of the National Deposit Friendly Society v Skegness UDC* [1958] 2 All ER 601, the House of Lords found that a charity’s objects are to advance the charitable purposes for which it is established. If profit-making is not one of their purposes but is only a means of achieving those purposes, the charity is not carried on “for profit”. In *Customs and Excise Commissioners v Bell Concord Educational Trust Ltd* [1989] 2 All ER 217, the Court held that the question of whether or not an organisation is carried on “for profit” must be answered by reference to the objects for which that organisation is established, as contained in its constitution, and not by reference to the budgeting policy of that organisation.

Thus, a charitable organisation that carries on its activities in a business-like manner and which has the

intention and record of making surpluses is not carried on “for profit”, unless the organisation’s constitution states that one of its purposes is to make a profit. As such organisations are not carried on “for pecuniary profit”, they are not carrying on a “business” for the purposes of the Income Tax Act and the FBT exemption.

The Commissioner considers that Parliament did not intend the word “business” in the proviso to paragraph (m) of section CI 1 to include any charitable organisation which operates in a business-like manner and which intends to make surpluses. Such an interpretation would mean that most successful charitable organisations, in carrying on their charitable, benevolent, philanthropic, or cultural purposes, would be carrying on businesses for the purposes of the Income Tax Act and so would be subject to FBT in respect of benefits they provide to their employees. The proviso to the exemption contained in paragraph (m) would apply to most charitable organisations, making them subject to FBT, and the exemption from FBT contained in paragraph (m) would generally not apply. Only those charitable organisations which could show that they did not operate in a business-like manner or did not intend to make surpluses, either in the short or long term, would not be carrying on a business and would be exempt from FBT. The Commissioner considers that this wide interpretation of the word “business” in the proviso to paragraph (m) of section CI 1 is not correct.

Instead, the Commissioner considers that the proviso to paragraph (m) of section CI 1 only applies to business activities which are carried on by charitable organisations but which are not, themselves, charitable, benevolent, philanthropic, or cultural activities. Such business activities may be conducted to assist the achievement of charitable purposes, and the income produced by them may be applied to the charitable purpose. However, the business activities that the proviso applies to are not the intrinsically charitable, benevolent, philanthropic, or cultural activities of the organisation.

A distinction between the charitable (i.e. running and administering a charity, and providing charitable services) and the non-charitable purposes of a charity was drawn in *Oxfam v City of Birmingham District Council* [1975] 2 All ER 289.

That case concerned section 40 of the United Kingdom General Rate Act 1967 which applied to premises or hereditaments that were occupied by a charity and *wholly or mainly used for charitable purposes*. The House of Lords considered whether Oxfam’s gift shops were on premises wholly or mainly used for charitable purposes. The House of Lords found that, although the gift shops were used for purposes that indirectly related to the achievement of the objects of the charity (i.e. selling donated goods to raise money for the charity), the premises were not wholly or mainly used for charitable purposes.

In reaching this conclusion, the House of Lords drew a line between the use of premises for purposes which are

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the charitable purposes of the charity, and the use of premises for purposes which, though purposes of the charity, are not charitable purposes. Lord Cross said (at page 293):

The wording of s 40(1) of the 1967 Act shows that the Legislature did not consider that the mere fact that a hereditament in question is occupied by a charity justifies any relief from rates. That is only justified if the hereditament is being used for the 'charitable purposes' of the charity. So the first question which arises is: what are the 'charitable purposes' of a charity as distinct from its other purposes? The answer must be, I think, those purposes or objects the pursuit of which make it a charity - that is to say in this case the relief of poverty, suffering and distress.

Oxfam identifies the fact that a charitable organisation can carry out both charitable and non-charitable activities. However, not all of the "non-charitable" activities carried on by a charitable organisation will constitute business activities. Only benefits provided to employees of a charitable organisation in relation to the carrying on of a business by or on behalf of the organisation will be subject to FBT.

The distinction between an organisation carrying out the functions for which the organisation was established and an organisation carrying on a business was examined in *Port Chalmers Waterfront Workers Union v CIR*; *New Zealand Waterfront Workers Union v CIR* (1995) 17 NZTC 12,059 (High Court); *CIR v Port Chalmers Waterfront Workers Union* (1996) 17 NZTC 12,523 (Court of Appeal). That case concerned section 61(23) of the Income Tax Act 1976. Section 61(23) (which is section CB 4 (1)(a) of the Income Tax Act 1994) provides an exemption from income tax for the income of a friendly society, except so far as that income is derived from *business* carried on beyond the circle of its membership.

In *Port Chalmers*, the High Court drew a distinction between a friendly society carrying on a business as a trading organisation and a friendly society discharging its functions as a friendly society. It said that where the friendly society is discharging its functions as a friendly society it is not carrying on a business even though it may conduct transactions that have a commercial flavour. This distinction was accepted by the Court of Appeal.

The Ruling interprets paragraph (m) of section CI 1 as drawing a similar distinction as that drawn in *Port Chalmers* between the activities of a charitable organisation which discharge the purposes for which the organisation was established (i.e. the discharging of its charitable, benevolent, or philanthropic objects) and the charitable organisation carrying on a business as a trading organisation. A charitable organisation is not carrying on a business for the purposes of paragraph (m) when it discharges its charitable objects, even though it may discharge those purposes in a business-like manner.

The effect of the Ruling is that the activities involved in carrying out the charitable objects of a charitable

organisation, or directly facilitating the carrying out of the charitable objects (such as fundraising or administrative or clerical activities) will not be treated as being business activities for the purposes of paragraph (m). However, trading activities which are carried on to raise funds for the charity, and which are not themselves the charitable purposes of the charity, will be treated as business activities of the charitable organisation, if they satisfy the "business" test set out in the Income Tax Act (i.e. if those activities are carried on for the purpose of making a pecuniary profit).

Thus, when a charitable organisation's employees are engaged in carrying out the charitable purposes of the organisation, any benefits provided to them are not provided in the course of employment in a business activity of the organisation. The benefits will therefore be exempt from FBT under paragraph (m) of section CI 1. However, when a charitable organisation's employees are engaged in activities of the organisation which are not in themselves charitable, and which constitute business activities of the organisation, any benefits provided to them will be provided in the course of employment in a business activity of the organisation. These benefits will not be exempt from FBT under paragraph (m).

An employee may be employed by a charitable organisation in a range of activities, some of which relate to the carrying out of the organisation's charitable purposes or other non-business activities of the organisation, and some of which are non-charitable business activities. Such an employee may receive benefits from the organisation in connection with both the business and non-business types of activities. Section CI 1 (m) exempts benefits provided to employees of charitable organisations from FBT except where the benefit is received *principally or primarily* in relation to the employee's employment in a business carried on by the charitable organisation. Thus, a benefit provided to an employee who engages in both the business and non-business activities of a charitable organisation will only be subject to FBT if the employee receives that benefit principally and primarily in relation to the carrying out of the organisation's business activities. In other cases the benefit will remain exempt from FBT. As a guide, the Commissioner considers that an employee will receive a benefit principally and primarily in relation to his or her employment in a business activity of the organisation where the benefit arises primarily in connection with such a business activity, rather than in connection with a non-business activity, or where the benefit arises equally in connection with both the business and non-business activities carried out by the employee, but the employee is predominantly employed in the business activities of the employer.

Note that the Ruling does not apply to employers that are local authorities, public authorities, or universities. These organisations are excluded from the definition of "charitable organisation" for the purposes of the FBT rules, so the charitable organisation exemption contained in paragraph (m) of section CI 1 does not apply

to them. Fringe benefits provided by these organisations will be subject to FBT unless some other exemption applies to them.

Examples

It will be a question of fact in each case whether the particular activities of a charitable organisation are activities which are not the inherently charitable activities which the organisation was established to carry out, and are also activities which constitute a business for the purposes of the Income Tax Act. The following activities are examples of activities likely to be characterised as not being business activities of the charitable organisation (and, hence, any benefits provided to employees of the organisation in connection with these activities will be exempt from FBT). Note that this is not intended to be an exhaustive list of such activities:

- Activities which are *directly* related to carrying out the objects of the charity but which also have an income component. For example:
 - A school or polytechnic which is established to provide education which charges fees for the provision of the educational services.
 - An organisation which is established to provide assistance to a disabled or disadvantaged group which provides services to those people for payment (e.g. residential accommodation services in return for board).
 - An organisation established to provide relief and assistance to the poor which runs a second hand shop in order to provide affordable goods to that group.
- Appeals for funds for the charity's purposes.
- Passive investment and management of the funds of the charity, as long as the charitable organisation does not carry on a business of fund investment.
- Administration of the above activities.

An activity that is carried on by the charitable organisation which does not involve the organisation carrying out its charitable objects but which involves the sale of goods or services for valuable and adequate consideration, on a similar basis to business enterprises carried out by private individuals, and with a view to making a profit, is likely to constitute the organisation carrying on a business. Any benefits provided to employees in connection with such an activity will be subject to FBT under the proviso to paragraph (m).

Example 1

A charitable trust has the principal purpose of providing education through a private school. The trust is a charitable organisation for the purposes of the FBT rules, as it is not carried on for the private pecuniary profit of any individual and its funds are

applied wholly or principally for charitable purposes (the advancement of education) within New Zealand. The trust charges tuition fees and has had surpluses of income over expenditure for the 1994, 1995, and 1996 income years.

The trust provides a car to its school principal for work and private use.

The trust is not liable for FBT on the benefit arising from the private use or availability for private use of the car which it provides to the principal. This is because the benefit is provided by a charitable organisation to an employee who is employed in respect of the charitable organisation carrying out its charitable objects. The employee is not employed in a separate business activity carried on by the school.

Example 2

A company conducts a farming business on land adjacent to the school. All of the shares in the company are held for the benefit of the school charitable trust referred to in Example 1, and the company's constitution provides that the assets and profits of the farming business must be applied exclusively to the promotion of the objects of the school charitable trust.

The company provides a car to its farm manager for his work and personal use. The company is liable for FBT on the benefit arising from the provision of the car to the farm manager because the farm manager receives the benefit in relation to his employment in a business (the farm) carried on by the company.

Example 3

The same facts exist as in Example 2, except in this case the farming operation is carried out by the company, in a business-like manner, for the purpose of the practical component of the school's agricultural courses. In this case the farming operation relates to the carrying on of the educational charitable objects of the school, and the availability of the car for private use by the farm manager is not subject to FBT.

Example 4

A polytechnic charitable organisation offers a course on working in the hospitality industry. As part of that course the polytechnic operates a restaurant where the students gain experience in preparing food and waiting on tables. The restaurant is open to the public and patrons pay for their meals.

The polytechnic provides the supervisor of the hospitality course with a van for restaurant use. The van is also available for the supervisor's private use. The supervisor is employed in carrying out the

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polytechnic's charitable purpose of providing education to the students in the hospitality course. Because of this, the van is not provided in relation to the supervisor's employment in a business carried on by the polytechnic and its availability for private use is not a benefit that is subject to FBT.

Example 5

A polytechnic runs a cafeteria which is open to students and the general public. The cafeteria is not operated as part of any polytechnic course. The cafeteria is an activity of the polytechnic which cannot be characterised as carrying out the polytechnic's charitable purposes of providing education. Further, it is a commercial trading activity carried on with the intention of making a profit. The cafeteria is therefore a business run by the polytechnic.

The polytechnic employs a person to prepare food for the cafeteria. Once a week, this employee is also employed by the polytechnic to provide instruction in the hospitality course run by the polytechnic. The employee therefore is employed in both the business operations (the cafeteria) and the charitable activities (providing education in the hospitality course) of the polytechnic.

The polytechnic pays for the employee's membership to an off-campus fitness centre. This benefit arises because of the employee's employment with the polytechnic, and does not specifically arise in relation to either her employment in the cafeteria or her employment in the hospitality course. However, because the employee's employment in the cafeteria takes up 80% of her time, the benefit arises principally and primarily in relation to her employment in a business activity of the polytechnic. The benefit is therefore not exempt from FBT under paragraph (m) of section CI 1 and will be subject to FBT.

Notice of withdrawn product rulings

The Commissioner hereby gives notice under section 91FJ(2)(b) of the Tax Administration Act 1994 that Product Rulings 97/13 and 97/14 have been withdrawn. The following notices appeared in the *New Zealand Gazette* of 15 May 1997.

Notice of withdrawal of Product Ruling 97/13

1. This is a notice of a withdrawal of a product ruling made under section 91FJ of the Tax Administration Act 1994.
2. Product ruling 97/13 is hereby withdrawn.
3. Product ruling 97/13 originally applied to a wholesale superannuation fund for the period 14 February 1997 to 31 March 1997, and notice of its making appeared in the *New Zealand Gazette* of 27 February 1997.
4. Product ruling 97/13 is withdrawn on and from 15 May 1997.

Martin Smith
General Manager
(Adjudication & Rulings)

Notice of withdrawal of Product Ruling 97/14

1. This is a notice of a withdrawal of a product ruling made under section 91FJ of the Tax Administration Act 1994.
2. Product ruling 97/14 is hereby withdrawn.
3. Product ruling 97/14 originally applied to a wholesale superannuation fund for the period 1 April 1997 to 31 March 2002, and notice of its making appeared in the *New Zealand Gazette* of 27 February 1997.
4. Product ruling 97/14 is withdrawn on and from 15 May 1997.

Martin Smith
General Manager
(Adjudication & Rulings)

Public Service Investment Society transaction fees

Product Ruling – BR Prd 97/36

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

Taxation Laws

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

This Ruling applies in respect of sections CD 5, CE 1 (1)(a), the definition of “dividends” in section CF 2 (1) and the definitions of “interest” and “investment society dividends” in section OB 1.

The Arrangement to which this Ruling applies

The Arrangement is that the Public Service Investment Society (“PSIS”) will charge account holders monthly transaction fees, subject to a policy which states that account holders will not be charged transaction fees where they meet certain stated criteria.

Assumption

This Ruling is based on the assumption that the criteria for not charging transaction fees are not dependent on whether the account holder is also a member of the PSIS.

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 benefit of not being charged transaction fees is not gross income of those account holders under section CD 5.
- Such benefits are not interest or investment society dividends under section CE 1 (1)(a).
- Such benefits are not dividends under section CF 2 (1).

The period for which this Ruling applies

This Ruling applies from the commencement of the 1997-98 income year to 31 March 1999.

This Ruling is signed by me on the ninth day of May 1997.

Martin Smith
General Manager (Adjudication & Rulings)

Legal decisions - case notes

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

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

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

Land subdivision – taxable activity

Case: Rick David Wakelin v CIR

Act: Goods and Services Tax Act 1985

Keywords: *meaning, taxable activity*

Summary: The fact that the venture may have lacked a commercial or business flavour or that it may be a sale of private assets is not sufficient to preclude the application of section 6(1) of the GST Act. A transaction, which involves the sale of private assets, if carried out continuously or regularly, falls within the provision of the section.

Facts: In 1985, the Objector decided to subdivide a 2.4 hectare block of land at Parau into six residential sections, including a section on which a dwellinghouse had been erected.

The subdivision work was carried out over a period of three years, and between 1989 and 1995 the Objector sold all six lots. Inland Revenue contends that GST was payable on five of those sections, but not on the sale of the proceeds of the dwellinghouse.

Decision: The Court held that the Objector was involved in a taxable activity. What the Objector did over a period of nine years was to continuously and regularly subdivide a portion of land and supply it to the market. The activity was uninterrupted in time or sequence in that it was started with the intention of seeing it through to completion. The fact that it may have gone on in fits and starts does not mean that this was not activity which was carried on continuously. The activity was also carried on regularly in the sense that the Objector was pursuing a course or observing a uniform principle of action or conduct, namely, the subdivision of land and the sale or supply of sections on the open market.

Crown payments not subject to GST

Case: CIR v New Zealand Refining Company Limited

Act: Goods and Services Tax Act 1985

Keywords: *Consideration for supply of services*

Summary: The Court of Appeal held the payments made by the Crown were not part of the value of the supply of services to the oil companies and therefore were not subject to GST.

Facts: The taxpayer operated an oil refinery at Marsden Point. Under an Agreement between the Crown, NZRC and the oil companies, the Crown made payments to the Objector totalling \$85 million in 1988-90 as part of an assistance package following the deregulation of the oil industry.

Inland Revenue assessed GST on the payments on the basis that they were a fee/consideration for the supply of services by the taxpayer for the use of its facilities by the oil companies.

Decision: The Court found in favour of the taxpayer and stated that in taxation disputes the Court is concerned with the legal arrangements actually entered into and the rights and duties they create, not with the economic or other consequences of the arrangements.

Support for the view that the payments represented a contribution to NZRC's operating expenses and were no part of the value of the supply of services to the oil companies was given by the terms of the contract or, more specifically, what it did not say. In terms of the Agreement between the parties, there was little or no linkage between the Crown's payments and the making of particular (or any) supplies of goods and services. A linkage between supply and consideration is requisite for the imposition of the tax.

The Court found that although the payments were intended as an inducement to NZRC to keep the refinery open they were not payments for any supply. The payments related to the structure or framework within which supplies of services were expected to be made. They were payments received in the course of the taxable activity but were not to be regarded as consideration for any supply by NZRC.

Depreciation determinations issued since last update of IR 260 Depreciation booklet

This list shows the contents of all depreciation determinations we've issued since the last update of our Depreciation booklet (IR 260). We've published it so you can quickly check whether you need to review any determinations when calculating depreciation for tax purposes.

Some determinations cover a large number of assets which will concern relatively few taxpayers. For these determinations we've simply listed a cross-reference to the original TIB article rather than reproduce several pages of figures here.

This list is essentially a summary; if you're claiming depreciation on any of these assets we recommend that you refer to the original TIB article to make sure you get the full context of the determination, including the relevant industry categories.

Asset	Estimated useful life (years)	DV banded depreciation rate (%)	SL equivalent banded dep'n rate (%)	Determination number	Appears in TIB
Aquariums	4	40	30	DEP22	9.2:1
Bin (wool storage, live bottom)	15.5	12	8	DEP11	7.3:20
Bulkheads (insulated, removable)	4	40	30	DEP13	7.10:26
CCH Electronic NZ Essential Tax Package, designed for a specific tax year	1	100	100	PROV4	7.3:19
CCH Electronic NZ Master Tax Guide, designed for a specific tax year	1	100	100	PROV4	7.3:19
Combing machines (wool)	15.5	12	8	DEP11	7.3:20
Containers (insulated, below 8m ³)	5	33	24	DEP13	7.10:26
Containers (shipping)	20	9.5	6.5	DEP13	7.10:26
Crown Health Enterprise assets (<i>half a page of various assets - see TIB article</i>)					6.5:3
Drilling machines (horizontal directional)	6.66	26	18	DEP24	9.3:3
Drilling machine components, underground (horizontal directional)	2	63.5	63.5	DEP24	9.3:3
Fastening guns (explosive)	3	50	40	DEP20	8.10:1
Firearms (Leisure industry category)	10	18	12.5	DEP20	8.10:1
Gas cylinders – LPG (incl. propane and butane)	8	22	15.5	DEP16	8.1:10
Gas cylinders – other	12.5	15	10	DEP16	8.1:10
Gill machines (wool)	20	9.5	6.5	DEP11	7.3:20
Golf ball placing machine and sensor	3	50	40	DEP10	7.3:18
Golf driving ranges, netting (for golf driving nets)	5	33	24	DEP10	7.3:18
Golf driving ranges, poles (for golf driving nets)	20	9.5	6.5	DEP10	7.3:18
Golf mats (stance and base, at golf driving/practice ranges)	2	63.5	63.5	DEP10	7.3:18
Hand soap dispensers	2	63.5	63.5	DEP7	6.7:16
Lawnmowers (domestic type in use by lawnmowing contractors)	2	63.5	63.5	DEP15	7.13:22
Lawnmowers (non-domestic type in use by lawnmowing contractors)	5	33	24	DEP15	7.13:22
Marquees (<i>half a page of various assets – see TIB article</i>)				DEP18	8.6:8
Medical and medical laboratory equipment (<i>3 pages of various assets – see TIB article</i>)				DEP8	6.7:17
Paintball firearms	2	63.5	63.5	DEP20	8.10:1
Pallet covers (insulated)	2	63.5	63.5	DEP13	7.10:26
Paper towel dispensers	2	63.5	63.5	DEP7	6.7:16
Pistols, Air (Leisure industry category)	10	18	12.5	DEP20	8.10:1

Plant trolleys	5	33	24	DEP23	9.3:2
Psychological testing sets	10	18	12.5	PROV2	6.10:6
Rifles, Air (Leisure industry category)	10	18	12.5	DEP20	8.10:1
Rifles (less than 10,000 rounds per year)	6.66	26	18	DEP20	8.10:1
Rifles (more than 10,000 rounds per year)	2	63.5	63.5	DEP20	8.10:1
Scaffolding (aluminium)	8	22	15.5	DEP19	8.8:3
Scaffolding (other than aluminium)	15.5	12	8	DEP19	8.8:3
Scientific and laboratory equipment (not medical laboratory equipment)(2 pages of various assets – see TIB article)				DEP8	6.7:17
Shotguns (less than 50,000 rounds per year)	6.66	26	18	DEP20	8.10:1
Shotguns (more than 50,000 rounds per year)	2	63.5	63.5	DEP20	8.10:1
Speed humps (metal)	5	33	24	PROV3	6.13:13
Static delimiters (timber industry)	5	33	24	DEP9	6.11:16
Tags (security)	3	50	40	DEP21	9.1:1
Toilet roll dispensers	2	63.5	63.5	DEP7	6.7:16
Tomato graders	8	22	15.5	DEP14	7.13:23
Undersea maintenance equipment(1 page of various assets – see TIB article)				DEP17	8.2:9
Wintering pads (rubber)	6.66	26	18	PROV5	8.2:7
Yachts (international ocean-going)	6	15	10	DEP12	7.10:25
Yachts (other than international ocean-going)	15.5	12	8	DEP12	7.10:25

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.

Cash assistance for your growing family (FS 4) - Mar 1997: Information about Family Assistance and how to apply.

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.

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.

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.

Retiring allowances and redundancy payments (IR 277) - Jun 1996: An explanation of the tax treatment of these types of payments.

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 - how to apply (CS 69A) - Apr 1997: *How to apply for a review of the amount of Child Support you receive or pay, if you have special circumstances.*

Child Support administrative reviews - how to respond (CS 69B) - Apr 1997: *Information about the administrative review process, and how to respond if you are named in a review application.*

Child Support and the Family Court (CS 51) - Apr 1997: *Explains what steps people need to take if they want to go to the Family Court about their Child Support.*

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) - Jul 1996: *Explains how to estimate your income so your Child Support liability reflects your current circumstances.*

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

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.

July 1997

- 5 Large employers: PAYE deductions and deduction schedules for period ended 30 June 1997 due.
(We will accept payments received on Monday 7 July as on time for 5 July.)
- 7 Provisional tax and/or Student Loan interim repayments: first 1998 instalment due for taxpayers with March balance dates.
Second 1998 instalment due for taxpayers with November balance dates.
Third 1997 instalment due for taxpayers with July balance dates.
Income tax returns due for non-IR 5 taxpayers with balance dates from 1 October to 31 March.
- 20 Large employers: PAYE deductions and deduction schedules for period ended 15 July 1997 due.
Small employers: PAYE deductions and deduction schedules for period ended 30 June 1997 due.
FBT return and payment for quarter ended 30 June 1997 due.
Gaming machine duty return and payment for month ended 30 June 1997 due.
RWT on interest deducted during June 1997 due for monthly payers.
RWT on dividends deducted during June 1997 due.
Non-resident withholding tax (or approved issuer levy) deducted during June 1997 due.
(We will accept payments received on Monday 21 July as on time for 20 July.)
- 31 GST return and payment for period ended 30 June 1997 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 _____

- | | |
|--|-------------------------|
| ✓ Public binding rulings | Comment Deadline |
| <input type="checkbox"/> 1780: Domestic air travel – zero-rating for GST purposes | 30 June 1997 |
| | |
| ✓ Interpretation statements | Comment Deadline |
| <input type="checkbox"/> 3255: Shareholder continuity requirements in section IF 1 (1) and/or section IF 1 (6) – whether these need to be satisfied by a company wanting to claim pre-1993 net losses | 30 June 1997 |

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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Conversion of overseas income to New Zealand currency

1 April 1996 to 31 March 1997

Here's how to show any overseas investment income in your New Zealand tax return for the income year ended 31 March 1997.

- If the income was sent back to New Zealand, show the gross amount (before any overseas tax was deducted) received during the year in New Zealand currency.
- If all or some of the income was not sent back to New Zealand, convert the income using the telegraphic transfer buying rate at the time the income was paid or otherwise credited.

This table shows the mid-month telegraphic buying rates. You can use these conversion tables in all cases where the income was not sent back to New Zealand.

1996	Australia	United Kingdom	USA	Canada	Hong Kong	Japan
April	0.8548	0.4486	0.6777	0.9188	5.238	73.75
May	0.8585	0.4548	0.6892	0.9428	5.324	72.96
June	0.8510	0.4391	0.6743	0.9222	5.211	73.62
July	0.8620	0.4424	0.6864	0.9412	5.307	75.88
August	0.8788	0.4432	0.6866	0.9436	5.293	74.23
September	0.8764	0.4460	0.6938	0.9508	5.361	76.60
October	0.8838	0.4423	0.6992	0.9473	5.404	78.08
November	0.8991	0.4272	0.7112	0.9521	5.498	79.12
December	0.8845	0.4235	0.7011	0.9584	5.417	79.91
1997						
January	0.8999	0.4203	0.7022	0.9426	5.430	82.15
February	0.9077	0.4283	0.6938	0.9380	5.367	86.38
March	0.8762	0.4362	0.6991	0.9579	5.354	86.30

How to convert to New Zealand currency

For the countries shown in this table, divide the overseas income by the appropriate rate for the month.

Example

The New Zealand equivalent of a UK dividend of £85 paid in July 1996 is: $£85 \div 0.4424 = \$192.13$.

Note

You do not have to use this table. You can use the actual applicable rate, available at any trading bank.