

T AX INFORMATION BULLETIN

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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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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.

Interpretation statements

This section of the TIB contains interpretation statements issued by the Commissioner of Inland Revenue. These statements set out the Commissioner's view on how the law applies to a particular set of circumstances when it is either not possible or not appropriate to issue a binding public ruling.

In most cases Inland Revenue will assess taxpayers in line with the following interpretation statements. However, our statutory duty is to make correct assessments, so we may not necessarily assess taxpayers on the basis of earlier advice if at the time of the assessment we consider that the earlier advice is not consistent with the law.

Trophies and animal products derived from the tourist, hunting and safari industry: zero-rating under GST

Summary

This item sets out the Commissioner's interpretation of zero-rating in section 11 of the Goods and Services Tax Act 1985 (the GST Act) in relation to animal trophies and animal products derived from the tourist, hunting and safari industry. For these purposes, "animal" includes birds and fish.

Background

Animals are being sold to tourists in New Zealand, who then have them killed for trophies. Hunting guides who sell the animals to the tourists are zero-rating the supplies. They collect and return GST on items of goods and services enjoyed by clients while they are in New Zealand, and claim zero-rating on the trophy fees that directly relate to the items exported. In addition, taxidermists who process the carcasses before they are exported zero-rate the supply of their services.

In some instances, the types of products supplied are not only the mounted trophies but also the salted skins and horns that may be supplied unmounted.

In all, there are three supplies on which zero-rating is being claimed:

- the taxidermy services provided by the taxidermist
- the packaging and shipping of the trophy and related animal products
- the trophy fee.

The GST treatment of each of these supplies is considered in turn.

Legislation

Section 11(1) states that a supply of goods will be charged with GST at the rate of zero percent if:

- (a) The supplier has entered the goods for export, pursuant to the Customs Act 1966, and those goods have been exported by the supplier; or
- (aa) The goods have been deemed to be entered for export, pursuant to the Customs Act 1966, and the goods have been exported by the supplier; or

- (ab) The supplier has satisfied the Commissioner that the goods have been exported by the supplier to a place outside New Zealand; or
- (ac) Subject to subsection (1B) of this section, the supplier will enter the goods for export, pursuant to the Customs Act 1966, in the course of, or as a condition of, making the supply and will export the goods; or
- (ad) Subject to subsection (1B) of this section, the goods will be deemed to be entered for export, pursuant to the Customs Act 1966, and exported by the supplier in the course of, or as a condition of, making the supply; or...

Section 11(1B) states:

In any case where paragraph (ac) or paragraph (ad) of subsection (1) of this section applies, and the goods are not exported by the supplier within -

- (a) Twenty-eight days of the time of supply; or
- (b) Such longer period, from the time of supply, as the Commissioner has determined pursuant to subsection (1C) of this section -

the goods shall, notwithstanding paragraphs (ac) and (ad) of subsection (1) of this section, but subject to paragraphs (a) and (aa) of subsection (1) of this section and to subsection (1C) of this section, be charged with tax under section 8 of this Act.

Section 11(1C) states:

In any case where paragraph (ac) or paragraph (ad) of subsection (1) of this section applies and the Commissioner has determined, upon application by the supplier in writing, that -

- (a) Circumstances beyond the control of the supplier and recipient have prevented, or will prevent, the exportation of those goods within 28 days of the time of supply; or
- (b) Due to the nature of the supply, it is not practicable for the supplier to export those goods, or a class of those goods, within 28 days of the time of supply, -

the Commissioner may extend the 28-day period before the supply of goods is charged with tax under section 8 of this Act, as the Commissioner sees fit.

Section 11(2) states that a supply of services will be charged with GST at the rate of zero-percent if:

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- (a) The services (not being ancillary transport activities such as loading, unloading, and handling) comprise the transport of passengers or goods-
...
 - (ii) From a place in New Zealand to a place outside New Zealand; or
- ...
- (ac) The services comprise the insuring or the arranging of the insurance or the arranging of the transport of passengers or goods to which any provision of paragraphs (a) to (ab) of this subsection applies; or
...
 - (ii) Moveable personal property (other than choses in action, and other than goods to which paragraph (ca) of this subsection applies) situated inside New Zealand at the time the services are performed;-
and not being services which are the acceptance of an obligation to refrain from carrying on any taxable activity, to the extent that the conduct of that activity would have occurred within New Zealand; or....
- (e) The services are supplied for and to a person who is not resident in New Zealand and who is outside New Zealand at the time the services are performed, not being services which are supplied directly in connection with-
...
 - (ii) Moveable personal property (other than choses in action, and other than goods to which paragraph (ca) of this subsection applies) situated inside New Zealand at the time the services are performed;-
and not being services which are the acceptance of an obligation to refrain from carrying on any taxable activity, to the extent that the conduct of that activity would have occurred within New Zealand; or....

Interpretation

Taxidermy fee

The taxidermy fees are chargeable with GST at the standard rate as they do not fall within the zero-rating provisions of the GST Act. While the services are supplied to someone who is outside New Zealand at the time the services are carried out, they are in connection with “moveable personal property situated inside New Zealand at the time the services are performed” and are clearly excluded by section 11(2)(e)(ii).

Packaging and shipping of the trophy and related animal products

The packaging and shipping of the trophy and related animal products to the recreational hunter overseas are properly zero-rated under section 11(2)(ac) as services comprising “the insuring or the arranging of the insurance or the arranging of the transport of passenger or goods to which any provision of paragraphs (a) to (ab) of this subsection applies”. Paragraph (a) includes services comprising the transport of goods from a place in New Zealand to a place outside New Zealand.

Trophy fee

A trophy fee is charged for the animal, and from this the recreational hunter receives the head and hide of the animal (which will have been prepared by the hunting guide or in part by the taxidermist) in his or her country of residence. The trophy fee is properly zero-rated *provided* that it is supplied in accordance with the relevant provisions of the GST Act. The hunting guide must make the supply under section 11(1)(ac), meaning that the hunting guide must enter the goods for export in the course of, or as a condition of, making the supply. The hunting guide must be both the person supplying the trophy or animal and the person entering the goods for export – otherwise GST must be charged on the trophy fee.

The export must take place within 28 days of supply, unless the Commissioner exercises his discretion to permit a longer period for export. Due to the difficulties involved in the processing, drying, and salting of the trophies within the tourist, hunting and safari industry, when it is not possible for goods to be exported within 28 days of the time of supply, section 11(1C)(b) of the Act permits the Commissioner to extend the 28-day period. The Commissioner’s general practice is to grant such an extension so that the total period within which the goods must be exported is up to 183 days.

Any request for an extension of time beyond the 28-day rule (but not exceeding 183 days) must be made in writing and sent with a copy of the contract of supply to the supplier’s local Inland Revenue office.

Legislation and determinations

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

Electronic Article Surveillance Systems – Depreciation Determination DEP26

In TIB Volume Nine, No.4 (April 1997) at page 1, we published a draft general depreciation determination for Electronic Article Surveillance Systems. These systems are used in the retail sector as an aid to help prevent shoplifting.

Only one submission was received, which accepted the proposed depreciation rate but requested the implementation date be backdated to the 1995/96 income year.

The Commissioner has agreed to this request and has now issued the determination. It is reproduced below, and may be cited as, “Determination DEP26: Tax Depreciation Rates General Determination No. 26”. The new depreciation rate is based on an estimated useful life (“EUL”) as set out in the determination and a residual value of 13.5%.

General Depreciation Determination DEP26

This determination may be cited as “Determination DEP26: Tax Depreciation Rates General Determination Number 26”.

1. Application

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

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

2. Determination

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

- Inserting into the “Shops” industry category the general asset class, estimated useful life, and diminishing value and straight-line depreciation rate listed below:

Shops	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Electronic Article Surveillance Systems	5	33	24

3. Interpretation

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

This determination is signed by me on the 20th day of May 1997.

Jeff Tyler
Assistant General Manager (Adjudication & Rulings)

Average market values of specified livestock – 1997

Under section EL 8 of the Income Tax Act 1994 (the Act), the Governor-General has announced, by Order in Council, the national average market values of specified livestock for the 1996/97 income year.

The values listed below apply to animals valued under the herd scheme.

High-priced livestock

The trigger price for high-priced livestock purchased in the 1996/97 income year is the greater of these two amounts:

1. \$500
2. five times the greater of these two amounts:

- the national average market values (1996/97 values) listed below; or
- the national average market values declared for the 1995/96 income year.

The trigger price for animals purchased during the 1996/97 income year is shown in the right-hand column below.

High-priced livestock cannot be valued under the herd scheme, but must be capitalised and written off at an assigned percentage. The assigned percentages for the 1996/97 income year remain the same as for previous years. They are shown in the table at the end of this item.

Type of livestock	Classes of livestock	Average market value per head	High-priced trigger price	
		\$	\$	
Sheep	Ewe hoggets	41	500	
	Ram and wether hoggets	41	500	
	Two-tooth ewes	57	500	
	Mixed-age ewes (rising three-year and four-year old ewes)	51	500	
	Rising five-year and older ewes	43	500	
	Mixed-age wethers	35	500	
	Breeding rams	143	720	
Beef cattle	<i>Beef breeds and beef crosses:</i>			
	Rising one-year heifers	188	940	
	Rising two-year heifers	293	1,465	
	Mixed-age cows	381	1,905	
	Rising one-year steers and bulls	279	1,395	
	Rising two-year steers and bulls	396	1,980	
	Rising three-year and older steers and bulls	496	2,480	
	Breeding bulls	1,177	5,885	
Dairy cattle	<i>Friesian and related breeds:</i>			
	Rising one-year heifers	294	1,820	
	Rising two-year heifers	573	3,520	
	Mixed-age cows	688	4,340	
	Rising one-year steers and bulls	218	1,090	
	Rising two-year steers and bulls	348	1,740	
	Rising three-year and older steers and bulls	459	2,295	
	Breeding bulls	728	3,640	
	<i>Jersey and other dairy cattle:</i>			
	Rising one-year heifers	221	1,635	
	Rising two-year heifers	462	3,255	
	Mixed-age cows	591	4,140	
	Rising one-year steers and bulls	144	720	
	Rising two-year and older steers and bulls	242	1,310	
	Breeding bulls	540	2,700	
	Deer	<i>Red deer:</i>		
		Rising one-year hinds	218	1,125
		Rising two-year hinds	364	1,820
		Mixed-age hinds	410	2,065
		Rising one-year stags	243	1,365
Rising two-year and older stags (non-breeding)		390	2,155	
Breeding stags	1,642	11,605		

Deer (cont'd)	Wapiti, elk, and related crossbreeds:		
	Rising one-year hinds	252	1,395
	Rising two-year hinds	402	2,165
	Mixed-age hinds	458	2,565
	Rising one-year stags	274	1,785
	Rising two-year and older stags (non-breeding)	453	1,785
	Breeding stags	1,576	12,160
	Other breeds:		
	Rising one-year hinds	86	505
	Rising two-year hinds	145	815
	Mixed-age hinds	170	910
	Rising one-year stags	110	595
	Rising two-year and older stags (non-breeding)	174	925
	Breeding stags	358	2,360
Goats	Angora and angora crosses (mohair producing):		
	Rising one-year does	19	500
	Mixed-age does	25	500
	Rising one-year bucks (non-breeding)/wethers	17	500
	Bucks (non-breeding)/wethers over one year	22	500
	Breeding bucks	148	740
	Other fibre and meat producing goats (Cashmere or Cashgora producing):		
	Rising one-year does	13	500
	Mixed-age does	18	500
	Rising one-year bucks (non-breeding)/wethers	17	500
	Bucks (non-breeding)/wethers over one year	23	500
	Breeding bucks	167	835
	Milking (dairy) goats:		
	Rising one-year does	117	630
	Does over one year	185	925
	Breeding bucks	275	1,375
	Other dairy goats	180	900
Pigs	Breeding sows less than one year	188	940
	Breeding sows over one year	252	1,260
	Breeding boars	310	1,550
	Weaners less than 10 weeks of age (excluding sucklings)	39	500
	Growing pigs 10 to 17 weeks of age (porkers and baconers)	82	500
	Growing pigs over 17 weeks of age (baconers)	121	605

Assigned percentages of high-priced livestock

Under the livestock valuation regime, owners of high-priced livestock have the choice of using straight-line rates or diminishing value rates as the assigned percentage write down for those animals.

The rates for the 1996/97 income year are unchanged from last year. They are shown in the following table.

Livestock category	Straight-line rate	Equivalent diminishing rate
Sheep	25%	33%
Cattle	20%	26%
Stags	20%	26%
Other deer	15%	22%
Goats	20%	26%
Pigs	33%	40%

A taxpayer who wishes to apply the diminishing value rate to an animal must clearly use the diminishing value rate in the financial statements that support the tax return. Once a taxpayer makes this election it is irrevocable. If there is no such clear use of the diminishing value rate, the straight-line rate will apply.

Mulchers (Commercial) – Depreciation Determination DEP 25

In TIB Volume Nine, No. 3 (March 1997), we published a draft provisional depreciation determination for Mulchers (Commercial) of the type used at land fill and forestry sites for composting green waste.

Although no submissions were received, we have received an application for a provisional depreciation rate for mulchers used in orchards for the mulching of orchard green waste, such as kiwifruit vines and orchard and shelterbelt trimmings.

We have decided that the mulching machines used in orchards will have the same depreciation rate as the mulchers as described in the original draft determination. Therefore, the determination will extend the asset “mulchers (commercial)” to the “Agriculture, Horticulture and Aquaculture” industry category.

General Depreciation Determination DEP25

This determination may be cited as “Determination DEP25: Tax Depreciation Rates General Determination Number 25”.

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 Depreciation Number 1 (as previously amended) by:

- Inserting in the “Cleaning, Refuse and Recycling” category the general asset class, estimated useful life, and diminishing value and straight-line depreciation rate listed below, and
- Inserting in the “Agriculture, Horticulture and Aquaculture” category the general asset class, estimated useful life, and diminishing value and straight-line depreciation rate listed below:

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

	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Agriculture, Horticulture and Aquaculture			
Mulchers (Commercial)	4	40	30

3. Interpretation

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

This determination is signed by me on the 20th day of May 1997.

Jeff Tyler
Assistant General Manager (Adjudication & Rulings)

Ink Mixing Systems, Computerised – draft general depreciation determination

We have been made aware that there is currently no depreciation rate for computerised ink mixing systems used in the printing industry.

The Commissioner proposes to issue a general depreciation determination which will insert a new asset class “Ink Mixing Systems, Computerised” into the “Printing & Photographic” industry category, with an estimated

useful life of 3 years and a general depreciation rate of 50% D.V. and 40% S.L.

The draft determination is reproduced below. The proposed new depreciation rate is based on the estimated useful life (“EUL”) set out in the draft determination below and a residual value of 13.5%.

Provisional 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 in the “Printing & Photographic” industry category.

This determination applies to “depreciable property” other than “excluded depreciable property” for the 1994/95 and subsequent income years.

2. Determination

Pursuant to section EG 10 (1)(b) of the Income Tax Act 1994 I hereby amend Determination DEP1: Tax Depreciation Rates General Determination Number 1 (as previously amended) by:

- Inserting into the “Printing & Photographic” industry category the provisional asset class, estimated useful life, and diminishing value and straight-line depreciation rate listed below:

Printing & Photographic	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Ink Mixing Systems, Computerised	3	50	40

3. Interpretation

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

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

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

We need to receive your submission by 18 July 1997 if we are to take it into account in finalising this determination.

Fringe benefit tax – prescribed interest rate decreased to 9.65%

The prescribed rate of interest used to calculate the fringe benefit value of low interest employment-related loans has been decreased to 9.65% for the quarter beginning on 1 April 1997. This rate will continue to apply to subsequent quarters until any further adjustment is made.

The prescribed rate, down from 10.00%, is a reflection of the recent fall in market rates.

“Kiwiplus” – Kiwifruit Packhouse Software

The Commissioner has issued Determination PROV6: Tax Depreciation Rates Provisional Determination Number 6, which applies to the “Kiwiplus” Kiwifruit Packhouse Software package designed for a specific year. The determination is reproduced below.

Provisional Depreciation Determination PROV6

This determination may be cited as “Determination PROV6: Tax Depreciation Rates Provisional Determination Number 6”.

1. Application

This determination applies to taxpayers who own the assets “Kiwiplus – Kiwifruit Packhouse Software designed for a specific year”.

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

2. Determination

Pursuant to section EG 10 (1)(b) of the Income Tax Act 1994 I hereby amend Determination DEP1: Tax Depreciation Rates General Determination Number 1 (as previously amended) by:

- Inserting into the “Software” asset category the provisional asset class, estimated useful life, and diminishing value and straight-line depreciation rates listed below:

Software	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Kiwiplus – Kiwifruit Packhouse Software – designed for a specific year	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.

This determination is signed by me on the 9th day of June 1997.

Jeff Tyler

Assistant General Manager (Adjudication & Rulings)

Taxation (Income Tax Rates) Act 1997

Sections KC 1, KD 3, KD 5, KD 5 AB, KD 5B, KD 6, OB 1, and Schedules 1, 14 and 19, Income Tax Act 1994

Section 33A, Tax Administration Act 1994

Introduction

The Taxation (Income Tax Rates) Act 1997 was enacted in May 1997. It gave effect to the decision, announced in the Coalition Agreement of 11 December 1996, to defer for one year the implementation of the second round of tax reductions enacted last year as part of the Tax Reduction and Social Policy Programme. The legislated increases in the Independent Family Tax Credit and Family Support will proceed, with effect from 1 July 1997.

The deferral of the tax reductions has these results:

- The previously legislated annual tax rates (basic rates of income tax) for the 1997/98 and 1998/99 income years become the annual tax rates for the 1998/99 and 1999/2000 income years respectively.
- The previously legislated entitlement and abatement rates for the low income rebate for the 1997/98 and 1998/99 income years become the entitlement and abatement rates for the 1998/99 and 1999/2000 income years respectively.

- PAYE tax deduction rates (basic tax deductions) and the other withholding tax rates applying for pay periods or interest paid on or after 1 July 1996 continue to apply until 30 June 1998.
- The increase in the Guaranteed Minimum Family Income from 1 July 1997 is deferred to 1 July 1998.
- The increase in the non-filing threshold from \$34,200 to \$38,000 is deferred until the 1998/99 income year.

The annual tax rates for the 1997/98 income year have been set and confirmed. The entitlement and abatement rates for the low income rebate for the 1997/98 income year have also been set.

Key features

Tax rates - 1997/98 income year

Here are the annual tax rates for the 1997/98 income year. They are the same as those that applied from 1 July 1996.

Annual tax rates 1997/98	
Income	Annual tax rate
\$0 – \$34,200	21.5 cents
over \$34,200	33 cents

The 1997/98 PAYE tax deduction rates for the 1997/98 income year are the PAYE tax deduction rates that applied from 1 July 1996.

Here are the annual entitlement and abatement rates for the low income rebate for the 1997/98 income year:

Low income rebate 1997/98	
Income	Low income rebate
\$0–\$9,500	– 6.5 cents
\$9,501–\$34,200	2.5 cents
over \$34,200	nil

Taking into account the low income rebate, these are the effective tax rates for the 1997/98 income year. They are also the PAYE tax deduction rates for the 1997/98 income year.

Effective tax rates 1997/98			
Income	Annual tax rate	Low income rebate	Effective tax rate
\$0–\$9,500	21.5 cents	– 6.5 cents*	15 cents
\$9,501–\$34,200	21.5 cents	2.5 cents	24 cents
over \$34,200	33 cents	nil	33 cents

* A negative number reduces the tax rate by the amount of the rebate. A 21.5 cent tax rate less a 6.5 cent rebate gives an effective tax rate of 15 cents. A positive number represents an abatement rate, which is added to the tax rate. A 21.5 cent tax rate plus a low income rebate abatement of 2.5 cents gives an effective tax rate of 24 cents.

The resident withholding tax rate on interest will remain at 21.5 percent until 1 July 1998.

The secondary tax deduction rate on secondary employment income will remain at 24 percent until 1 July 1998.

The extra emolument rate on payments such as retiring allowances and redundancy payments will remain at 24 percent until 1 July 1998.

Tax rates - 1998/99 income year

The annual tax rates for the 1998/99 income year take into account the deferred tax reductions. They are composite rates based on the tax rates applying for the period 1 April 1998 to 30 June 1998 and reduced rates applying from 1 July 1998 to 31 March 1999. The 1998/99 annual tax rates are shown below.

Annual tax rates 1998/99	
Income	Annual tax rate
\$0–\$34,200	20 cents
\$34,201–\$38,000	22.875 cents
over \$38,000	33 cents

The annual tax rates for 1998/99 and subsequent income years will need to be confirmed by annual taxing Acts.

The entitlement and abatement rates for the low income rebate for the 1998/99 income year will be composite rates based on the rates for the period 1 April 1998 to 30 June 1998, and the rates for the period 1 July 1998 to 31 March 1999 (which include the tax reductions).

Here are the 1998/99 entitlement and abatement rates for the low income rebate:

Low income rebate 1998/99			
Income	Low income rebate	Low income rebate	Composite low income rebate
	1/4/98 to 30.6.98	1/7/98 to 31/3/99	1/4/98 to 31/3/99
\$0–\$9,500	– 6.5 cents	– 4.5 cents	– 5.0 cents
\$9,501–\$34,200	2.5 cents	1.5 cents	1.75 cents
\$34,201–\$38,000	nil	1.5 cents	1.125 cents
over \$38,000	nil	nil	nil

Here are the PAYE tax deduction rates for the 1998/99 income year:

PAYE Tax Deduction Rates 1998/99						
Income	Pay Periods 1 April 1998 to 30 June 1998			Pay Periods 1 July 1998 to 31 March 1999		
	Tax rate	Low income rebate	Effective tax ddn rate	Tax rate	Low income rebate	Effective tax ddn rate
0–\$9,500	21.5c	– 6.5c	15c	19.5c	– 4.5c	15c
\$9,501–\$34,200	21.5c	2.5c	24c	19.5c	1.5c	21c
\$34,201–\$38,000	33c	nil	33c	19.5c	1.5c	21c
Over \$38,000	33c	nil	33c	33c	nil	33c

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Here are the effective annual tax rates for the 1998/99 income year, taking into account the low income rebate:

Effective Tax Rates 1998/99			
Income	Annual tax rate	Low income rebate	Effective annual tax rate
\$0 - \$9,500	20 cents	-5 cents	15 cents
\$9,501 - \$34,200	20 cents	1.75 cents	21.75 cents
\$34,201 - \$38,000	22.875 cents	1.125 cents	24 cents
Over \$38,000	33 cents	-	33 cents

The resident withholding tax rate on interest will reduce from 21.5 percent to 19.5 percent on payments made on or after 1 July 1998.

The secondary tax deduction rate will reduce from 24 cents to 21 cents for pay periods ending on or after 1 July 1998.

The extra emolument rate will reduce from 24 cents to 21 cents for pay periods ending on or after 1 July 1998.

Tax rates - 1999/2000 income year

Here are the annual tax rates for the 1999/2000 income year.

Annual Tax Rates 1999/2000	
Income	Annual tax rate
\$0-\$38,000	19.5 cents
Over \$38,000	33 cents

Here are the entitlement and abatement rates for the low income rebate for the 1999/2000 income year:

Low income rebate 1999/2000	
Income	Low income rebate
\$0-\$9,500	- 4.5 cents
\$9,501-\$38,000	1.5 cents
Over \$38,000	nil

The PAYE tax deduction rates for the 1999/2000 income year will be the PAYE tax deduction rates that apply from 1 July 1998.

Here are the effective annual tax rates for the 1999/2000 income year, taking into account the low income rebate:

Effective tax rates 1999/2000			
Income	Annual tax rate	Low income rebate	Effective tax rate
\$0 - \$9,500	19.5 cents	- 4.5 cents	15 cents
\$9,501 - \$38,000	19.5 cents	1.5 cents	21 cents
Over \$38,000	33 cents	nil	33 cents

Guaranteed minimum family income

The \$6.00 a week increase in the GMFI threshold has been deferred from 1 July 1997 to 1 July 1998. The annual GMFI threshold for the 1997/98 income year is \$14,768 (\$284 a week).

This means that the annual threshold for the 1998/99 income year will be \$15,002 (\$288.50 a week), being the composite of the threshold applying from 1 April 1998 to 30 June 1998 of \$284 a week, and the threshold applying from 1 July 1998 to 31 March 1999 of \$290 a week.

The threshold for the 1999/2000 income year will be \$15,080 (\$290 a week).

The purpose of the GMFI increase was to ensure that recipients of GMFI benefited from the tax reductions. As the reductions have been deferred a year it is also appropriate that the GMFI increase was deferred.

Non-return filing threshold

The increase in the non-return filing threshold from \$34,200 to \$38,000 from 1 April 1997 has been deferred to 1 April 1998. This coincides with the increase in the top marginal tax rate threshold of \$38,000, which now takes effect in the 1998/99 income year as a result of the deferral of the 1 July 1997 tax reductions.

Provisional tax

The Act does not amend the provisional tax uplift factors for the 1997/98 income year. The existing provisional tax rules will apply.

For those taxpayers who use the "safe harbour" provisional tax rules to calculate their provisional tax, the uplift factors will be either 105 percent or 110 percent depending on whether they have filed a 1996/97 tax return.

Deemed rate of return announced for foreign investment fund regime

The deemed rate of return used for the foreign investment fund regime has been set at 12.04% for the 1996-97 income year. This rate will apply to all types of investments, including interests in superannuation schemes and life insurance policies.

The FIF regime taxes the income earned by foreign entities on behalf of New Zealand residents, when the Controlled Foreign Company rules do not apply.

The deemed rate of return method is one of four methods for calculating FIF income or loss. The rate for future income years will continue to be set annually.

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.

Employment Court awards for lost wages or other remuneration – employers' liability to make tax deductions

Public Ruling BR Pub 97/7

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

Taxation Laws

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

This Ruling applies in respect of sections BB 4 (b), EB 1, NC 2, NC 16, OB 1 (definitions of "employee", "extra emolument", "monetary remuneration", "shareholder-employee"), and OB 2 (definition of "source deduction payment").

The Arrangement to which this Ruling applies

The Arrangement is an order by a Court or Tribunal requiring an employer to make an award for lost wages under sections 40(1)(a) or 41 of the Employment Contracts Act 1991. A Court or Tribunal will make such an award when an employee has lost remuneration as a result of an action by the employer which has been the subject of a personal grievance by the employee against the employer (e.g. unjustified dismissal or other unjustified action by the employer).

This Ruling does not apply to an award of compensation for humiliation, loss of dignity, or injury made under section 40(1)(c)(i) of the Employment Contracts Act.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

A. Monetary remuneration

The payment of an award for lost wages under sections 40(1)(a) or 41 of the Employment Contracts Act 1991 is "monetary remuneration" of the employee as defined in section OB 1. As the payment is monetary remuneration, it is assessable income of the employee under section BB 4 (b).

B. Employer's liability to make tax deductions from the award

The payment of an award for lost wages or other remuneration under sections 40(1)(a) or 41 of the Employment Contracts Act 1991 is an extra emolument and is a "source deduction payment" under section OB 2 (1). The employer must make tax deductions from the payment under section NC 2 and account for those deductions to Inland Revenue in the normal way.

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If an employer fails to make the required tax deductions from a payment, the employee is liable, under section NC 16, to pay an amount equal to those tax deductions to the Commissioner (and is also required to furnish to the Commissioner a return in the prescribed form).

C. When the payment is assessable to the employee

Under section EB 1 (1), an employee derives a payment of an award for lost wages or other remuneration under section 40(1)(a) or 41 of the Employment Contracts Act 1991 when the employee receives the payment, or when the payment is credited to an account or otherwise dealt with on the employee's behalf.

A person who is a shareholder-employee for the purposes of section EB 1 (as defined in sections OB 1 and OB 2 (2)), derives a payment of an award for lost wages or other remuneration under sections 40(1)(a) or 41 of the Employment Contracts Act 1991, in the income year that the expenditure on that award is deductible to the employer. If the expenditure on the award is not deductible to the employer, the shareholder-employee derives the award in the year of receipt.

The period for which this Ruling applies

This Ruling will apply to payments of awards for lost wages or other remuneration which are made by a Court or Tribunal within the period 1 April 1997 to 30 September 1997.

This Ruling is signed by me on the 21st day of May 1997.

Martin Smith
General Manager (Adjudication & Rulings)

Employment Court awards for lost wages or other remuneration – employers' liability to make tax deductions

Public Ruling BR Pub 97/7A

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

Taxation Laws

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

This Ruling applies in respect of sections CH 3, EB 1, NC 2, NC 16, OB 1 (definitions of "employee", "extra emolument", "monetary remuneration", and "shareholder-employee"), and OB 2 (definition of "source deduction payment").

The Arrangement to which this Ruling applies

The Arrangement is an order by a Court or Tribunal requiring an employer to make an award for lost wages or other remuneration under sections 40(1)(a) or 41 of the Employment Contracts Act 1991. A Court or Tribunal will make such an award when an employee has lost wages or other remuneration as a result of an action by the employer which has been the subject of a personal grievance by the employee against the employer (e.g. unjustified dismissal or other unjustified action by the employer).

This Ruling does not apply to an award of compensation for humiliation, loss of dignity, or injury made under section 40(1)(c)(i) of the Employment Contracts Act.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

A. Monetary remuneration

The payment of an award for lost wages or other remuneration under sections 40(1)(a) or 41 of the Employment Contracts Act 1991 is “monetary remuneration” of the employee as defined in section OB 1. As the payment is monetary remuneration, it is gross income of the employee under section CH 3.

B. Employer’s liability to make tax deductions from the award

The payment of an award for lost wages or other remuneration under sections 40(1)(a) or 41 of the Employment Contracts Act 1991 is an extra emolument and is a “source deduction payment” under section OB 2(1). The employer must make tax deductions from the payment under section NC 2 and account for those deductions to Inland Revenue in the normal way.

If an employer fails to make the required tax deductions from a payment, the employee is liable, under section NC 16, to pay an amount equal to those tax deductions to the Commissioner (and is also required to furnish to the Commissioner a return in the prescribed form).

C. When the payment is derived by the employee

Under section EB 1 (1) an employee derives a payment of an award for lost wages or other remuneration under section 40(1)(a) or 41 of the Employment Contracts Act 1991 when the employee receives the payment, or when the payment is credited to an account or otherwise dealt with on the employee’s behalf.

A person who is a shareholder-employee for the purposes of section EB 1 (as defined in sections OB 1 and OB 2 (2)), derives a payment of an award for lost wages or other remuneration under sections 40(1)(a) or 41 of the Employment Contracts Act 1991, in the income year that the expenditure on that award is deductible to the employer. If the expenditure on the award is not deductible to the employer, the shareholder-employee derives the award in the year of receipt.

The period for which this Ruling applies

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

This Ruling is signed by me on the 21st day of April 1997.

Martin Smith
General Manager (Adjudication & Rulings)

Commentary on Public Rulings BR Pub 97/7 and 97/7A

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Rulings BR Pub 97/7 and 97/7A (“the Rulings”).

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

Given that the repealed provisions will no longer apply from the commencement of each taxpayer’s 1997-98 income year, the Commissioner has produced two rulings. BR Pub 97/7 applies for the period from 1 April 1997 to 30 September 1997. BR Pub 97/7A applies for the period from 1 April 1997 to 30 September 2000.

For example, if a taxpayer has a standard balance date, i.e. 31 March, BR Pub 97/7A will apply to that taxpayer for the period from 1 April 1997 to 30 September 2000.

BR Pub 97/7 will apply from 1 April 1997 to those taxpayers with late non-standard balance dates whose

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1996-7 income year has not yet ended. BR Pub 97/7A will apply to those taxpayers when their 1997-8 income year commences.

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

Background

The Employment Contracts Act 1991 provides for a number of remedies when an employee has a personal grievance against a current or former employer. This includes compensation for wages lost by the employee as a result of actions by the employer which are the subject of a personal grievance.

These Rulings confirm the Commissioner's existing practice in respect of the assessability and deduction of tax from awards for lost wages or other remuneration made under sections 40(1)(a) or 41 of the Employment Contracts Act 1991.

Legislation

Cross-reference table

Income Tax Act 1994 ¹	Income Tax Act 1994 ²	Income Tax Act 1976
CH 3	BB 4 (b)	65(2)(b)
EB 1	EB 1	75
NC 2	NC 2	338
NC 6	NC 6	343
NC 16	NC 16	355
NC 19 (a)	NC 19 (a)	372(a)
OB 1	OB 1	2, 6, 104A
def'n of "employee" paragraph (a) "extra emolument" "monetary remuneration" paragraph (a)	def'n of "employee" paragraph (a) "extra emolument" "monetary remuneration" paragraph (a)	
OB 2 (1)	OB 2	6
Schedule 19	Schedule 19	Second Schedule
Tax Admin. Act 1994	Income Tax Act 1994 ²	Income Tax Act 1976
168		366

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

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

Relevant provisions of the Employment Contracts Act 1991

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

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

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

- (b) That the employee's employment, or one or more conditions thereof, is or are affected to the employee's disadvantage by some unjustifiable action by the employer (not being an action deriving solely from the interpretation, application, or operation, or disputed interpretation, application, or operation, of any provision of any employment contract); or
- (c) That the employee has been discriminated against in the employee's employment; or
- (d) That the employee has been sexually harassed in the employee's employment; or
- (e) That the employee has been subject to duress in the employee's employment in relation to membership or non-membership of an employees organisation.

Section 40 of the ECA states:

Where the Tribunal or the Court determines that an employee has a personal grievance, it may, in settling the grievance, provide for any one or more of the following remedies:

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

Section 41 of the ECA states:

- (1) Subject to subsections (2) and (3) of this section, where the Tribunal or Court determines, in respect of any employee, -

- (a) That the employee has a personal grievance; and
- (b) That the employee has lost remuneration as a result of the personal grievance, -

the Tribunal or Court shall, whether or not it provides for any of the other remedies provided for in section 40 of this Act, order the employer to pay to the employee the lesser of a sum equal to that lost remuneration or to 3 months' ordinary time remuneration.

- (2) Notwithstanding subsection (1) of this section, the Tribunal or the Court may, in its discretion, order an employer to pay to an employee by way of compensation for remuneration lost by that employee as a result of the personal grievance, a sum greater than that to which an order under that subsection may relate.

- (3) Where -

- (a) The Tribunal or the Court is obliged to make an order under subsection (1) of this section; and
- (b) The Tribunal or the Court is satisfied that the situation that gave rise to the personal grievance resulted in part from fault on the part of the employee in whose favour the order is to be made, -

the Tribunal or the Court shall reduce, to such extent as it thinks just and equitable, the sum that would otherwise be ordered to be paid to the employee by way of reimbursement.

Application of legislation

Monetary remuneration

In *Egmont Co-operative Dairies Ltd v CIR*(1996) 17 NZTC 12,536 the Court of Appeal confirmed the long line of cases beginning with *Burmah Steamship Co*

Ltd v IRC (1931) 16 TC 67 which establish the principle, as stated by Dixon and Fullagar JJ in *FCT v Wade* (1951) 84 CLR 105 at p 112, that “moneys recovered from any source representing items of a revenue account must be regarded as received by way of revenue”. The *Egmont* case concerned the taxation of insurance moneys received under loss of profits insurance following Cyclone Bola. The Court of Appeal examined the issue of whether the common law compensation principle required the compensation payment to be treated for income tax purposes in the same manner as the original sum would have been treated had it in fact been received. In the High Court Thorp J held that “the rules as to derivation were unaffected by such matters as ‘compensation principles’”. However, the Court of Appeal overturned this decision. Richardson P at page 12,541 stated that:

Characterising the insurance recovery requires determining whether the function of the insurance was to compensate for the asset or for the revenue that would have been derived from the asset. That turns on consideration of the nature and effect of the insurance policy and its relation to the general conduct of Egmont’s business....

Having considered the facts, the Court found that “the insurance recovery, having the same character as the loss which it replaced, was inherently business income.”

An award for lost wages or other remuneration is made to compensate the employee for wages or other remuneration he or she may have lost as a result of an action by the employer which has been the subject of a personal grievance by the employee against the employer. The wages or other remuneration that would have been received if it were not for the personal grievance are revenue in nature. It follows from the principle confirmed in the *Egmont* case, that amounts received in compensation for those wages or other remuneration would be similarly revenue in nature.

Having clarified that these payments are of an income nature, it is then necessary to consider whether they constitute monetary remuneration. Section OB 1 defines “monetary remuneration” as meaning:

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

The words “...other benefit in money, in respect of or in relation to the employment or service of the taxpayer ...” cover an award for lost wages or other remuneration. The payment of the award for lost wages or other remuneration is made “in respect of or in relation to the employment or service of the taxpayer”, even though the payment is made to resolve a personal grievance rather than for services actually performed.

A wide interpretation of the words “in respect of or in relation to the employment or service” was endorsed by the Court of Appeal in *Shell New Zealand Ltd v CIR* (1994) 16 NZTC 11,303, in response to Shell’s argument that a payment was not made in respect of or in

relation to employment because it was not made under a contract of employment. The Court stated that the words “in respect of or in relation to” are words of the widest import. The Court also found that the words “emolument (of whatever kind), or other benefit in money” were not to be read ejusdem generis with the preceding words, the genus being reward for services. Thus, for the purposes of the definition of “monetary remuneration”, the words “emolument ... or other benefit in money” are not confined to rewards for services.

In *Shell* the Court found it important that the employees were only in a position to receive compensation payments (for changing the employees’ place of employment) because of their employment relationship with the employer. So, although the employees received compensation for the costs of moving rather than payments for services, this was still monetary remuneration. Similarly, the personal grievance claim which gives rise to an award for lost wages or other remuneration arises directly out of and as a result of an employee’s employment relationship with the employer. Again, although this is not a payment for services, it is within the definition of “monetary remuneration”.

The earlier TRA decisions on the previous legislation are consistent with the decision in the *Shell* case. In *Case L92* (1989) NZTC 1,530, Barber DJ considered the term “monetary remuneration” in relation to a payment of compensation for unjustified dismissal under the Industrial Relations Act 1973. The compensation was calculated on the basis of the personal hurt and procedural unfairness suffered by the objector. Barber DJ found that, even though the compensation was damages in nature, it was money received in respect of the objector’s employment. He stated that the words “compensation for loss of office or employment”, “emolument (of whatever kind), or other benefit in money” and “in respect of or in relation to the employment or service of the taxpayer” have a wide embrace and go beyond the narrower concept of “salary, wage, allowance, bonus gratuity, extra salary” which precede them. He said that “monetary remuneration”, interpreted widely, covered the payment in issue.

Barber DJ reached the same conclusion in relation to a similar compensation payment in *Case L78* (1989) 11 NZTC 1,451. This case examined the nature of an ex gratia payment made to an employee as a result of a personal grievance claim brought against the employer under section 117 of the Industrial Relations Act 1973 which covered reimbursement for lost wages. The ex gratia payment was made up of six weeks’ holiday pay and pay for untaken sick leave. This holiday and sick leave was not owing to the taxpayer. The payment was held to fall within the definition of “monetary remuneration” in section 2 of that Act.

In *Case P19* (1992) 14 NZTC 4,127, Barber DJ examined whether a severance payment of \$77,598 paid to an objector by his overseas employer was assessable income. The objector was a jockey who entered into a three-year oral contract to ride his employer’s horses.

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The employer became dissatisfied with the objector's performance and unilaterally terminated the contract after about 4 months. After negotiation, the matter was settled on the basis that the employer made the severance payment. Barber DJ held that "the severance payment was made as compensation for the objector's loss of income due to the millionaire having terminated the contractual relationship". He inferred that "the payment was a top-up of the first year's minimum income" made to "assist the objector re-build his income earning process" and said that that type of payment "must be revenue in nature". He stated that:

In terms of the definition of "monetary remuneration", the payment made to the objector must be "compensation for loss of office or employment, emolument (of whatever kind), or other benefit in money, in respect of or in relation to the employment or service of the taxpayer;".

Although not concerning a Court award, *Case P19* supports the proposition that payments made as compensation for loss of income fall within the definition of monetary remuneration.

As an award for lost wages or other remuneration is "... other benefit in money, in respect of or in relation to the employment or service of the taxpayer ...", it is monetary remuneration. All monetary remuneration is gross income of the employee.

When the employment relationship has ended

In some cases the employment relationship of the employer and employee will have ended by the time the employer pays the court award to the employee. The fact that the employment relationship may have ended by the time the employer pays the award does not change the fact that the award is made "in respect of or in relation to the employment or service" of the former employee. In the case of *Freeman & Ors. v FC of T* (1982) 82 ATC 4629 the Supreme Court of Victoria found that a payment is made "in relation to the employment" of a former employee when the entitlement to that payment arises out of the employment or from services performed by the employee before the termination of employment.

In *Freeman* the taxpayers were directors, shareholders, and employees of the appellant company which ceased to carry on business. The next day the business was sold to another company controlled by the taxpayers and carried on business as before. Six months later it was decided that the appellant company should pay to each of the taxpayers certain lump sum payments. The evidence suggested that the source of the greater part of the payments consisted of fees (or "salaries") received by the appellant company after it ceased carrying on business. The Court found that the payments received by the appellants were assessable income under section 26(e) of the Income Tax Assessment Act 1936-1978. Section 26(e) provided that assessable income included the value to the taxpayer of all allowances, gratuities, compensations, benefits, bonuses and premiums given to him or her in relation directly or indirectly to their employment or services rendered by him or her. Kaye J

stated that "payments out of the income of the appellant company to employees by way of allowances for past services, which had been rendered by them, were within section 26(e)".

Awards for lost wages or other remuneration arise out of the employee's previous service with the employer. A court award that compensates for lost wages or other remuneration is made as a result of the employee's service with the employer, and so is made in relation to the employment of the employee.

Employer's liability to make tax deductions from the award for lost wages or other remuneration

The Rulings state that the payment of an award for lost wages or other remuneration is a source deduction payment. Under section NC 2 (1), an employer must make the appropriate tax deduction from every source deduction payment made to an employee.

Award is a source deduction payment

Section OB 2 (1) states that a "source deduction payment" is a payment by way of salary or wages, an extra emolument, or a withholding payment.

Section OB 1 defines "extra emolument" as:

... in relation to any person, means a payment in a lump sum (whether paid in one lump sum or in 2 or more instalments) made to that person in respect of or in relation to the employment of that person (whether for a period of time or not), being a payment which is not regularly included in salary or wages payable to that person for a pay period, but not being overtime pay ...

An award for lost wages or other remuneration is generally paid in a lump sum. As discussed above, the payment of an award for lost wages or other remuneration is made to a person in respect of or in relation to the employment of that person. As the payment of an award for lost wages or other remuneration is made in a lump sum, is in respect of or in relation to employment of a person, and is not a payment of salary or wages, it is an extra emolument. As the payment of the award is an extra emolument, it is included in the definition of "source deduction payment".

A former employee is an "employee"

Section NC 2 requires an employer to make tax deductions from source deduction payments to *employees*. Section OB 1 defines "employee" as a person who receives or is entitled to receive a source deduction payment.

As discussed above, the payment of an award for lost wages or other remuneration constitutes a source deduction payment. A payment can still be "monetary remuneration" and a source deduction payment when it is paid to a former employee. A former employee who is entitled to receive this source deduction payment is also an "employee" for the purposes of section NC 2 (even though he or she may no longer be in an employment relationship with the employer).

The appropriate tax deduction

Section NC 2 requires the employer to make the appropriate tax deduction from source deduction payments to employees. As the payment of an award for lost wages or other remuneration constitutes an “extra emolument”, the employer must deduct tax at the extra emolument rate as provided for in section NC 6 and set out in Schedule 19 (currently 24 cents in the dollar). The employer must also:

- deduct ACC earner premium from the payment; and
- account for the deductions to Inland Revenue in the normal way and pay the remaining amount to the employee; and
- pay employer premium to Inland Revenue in respect of the gross award for lost wages or other remuneration.

By deducting tax from the gross award and paying the net sum to the employee, the employer will satisfy the requirements under both the court award and the Income Tax Act. When an employer has deducted tax from a source deduction payment, section NC 19 (a) deems the employer to have paid the amount deducted to the employee. Thus, the employer is deemed to have paid the total amount of the award to the employee for the purposes of satisfying the obligation imposed by the Court or Tribunal.

When the Court or Tribunal awards a net sum

In some cases a Court or Tribunal may make an award for lost wages or other remuneration net of tax, i.e. the sum that the employee would have received as remuneration after the deduction of tax. Because it is a “source deduction payment”, in such cases the employer would normally “gross up” the award to take account of the PAYE and the ACC earner premium. The employer would then pay the tax on the gross of the net award to Inland Revenue and pay the net award to the employee. In this way the employer would fulfil his or her obligations to both the employee and the Commissioner. If the employer breaches the Court’s or the Tribunal’s direction to pay the net sum to the employee, the onus will be on the employee to enforce the terms of the award by requiring the employer to pay the employee the full net amount of the award. The required tax deduction must be made from whatever amount is paid to the employee.

When an employer fails to make tax deductions

Under section 168 of the Tax Administration Act 1994, if the employer fails to make the correct tax deductions from the payment of the award, the unpaid tax deductions become a debt owed by the employer to the Commissioner. The debt is due and payable on the date that the tax deductions were due to be paid to the Commissioner. Where an employer fails to make a deduction, the employee is liable, under section NC 16, to:

- furnish the Commissioner with a return in the prescribed form of the source deduction payment (i.e. the

award) by the 20th of the month following the payment of the award; and

- pay the Commissioner a sum equal to the tax deductions that the employer should have made on that source deduction payment (unless the employee is exempted from this requirement) by the 20th of the month following the payment of the award.

When the payment is derived by the shareholder-employee

Under section EB 1, a person is a shareholder-employee if he or she is a shareholder-employee in a close company and has met the criteria set out in section OB 2 (2).

Example 1

An employee is dismissed from her job. She issues proceedings against her former employer alleging unjustifiable dismissal. She seeks reinstatement and damages for wages lost as a result of the unjustifiable dismissal.

The Employment Tribunal orders the employer to reinstate the employee and awards her \$27,000, a sum equivalent to the employee’s wages from the time of redundancy to the time of reinstatement, to compensate for the wages lost as a result of the unjustified dismissal.

The Tribunal makes the award for lost wages on 20 March 1996. The employer pays this award to the employee on 10 April 1996.

1. The award for lost wages is derived by the employee in the 1996-97 income year, as this is the year of receipt.
2. The employer must deduct tax and ACC earner premium from the court award, and pay the following amounts to the employee and Inland Revenue respectively (in the 1997 income year):

Award for lost wages	\$27,000
Less tax at the extra emolument rate of 24%	\$6,480
Less ACC earner premium (\$27,000 x 0.007)	<u>\$ 189</u>
Total payable to Inland Revenue	<u>\$ 6,669</u>
Total payable to the employee	\$20,331

The employer must also calculate the employer premium on the award and pay this to Inland Revenue in the 1996-97 income year in the normal manner.

Example 2

The facts are the same as in Example 1, except that the Tribunal awards damages of \$27,000 and states that this sum is net of tax. In order to ensure that it pays the employee a net sum of \$27,000, the employer “grosses up” the payment by the extra emolument tax rate plus ACC earner premium. The employer should make the following calculations and payments:

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Award for net lost wages	\$27,000.00
Divided by 0.753 (1 - 0.24 - 0.007) to give the gross wage	\$35,856.57
Less tax at the extra emolument rate of 24%	\$ 8,605.57
Less ACC earner premium (\$35,856.57 x 0.007)	\$ 251.00
Total payable to Inland Revenue	<u>\$ 8,856.57</u>
Total payable to the employee	\$ 27,000.00

In both examples:

- The employer must also calculate the employer premium on the gross award and pay this to Inland Revenue in the 1997 income year in the normal manner; and
- The employee will include the amount of the award for lost wages in their return of income for the 1996-97 income year and claim the tax paid as a credit.

Questions we've been asked

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

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

Income Tax Act 1994

Whether doctor companies can return income using the cash basis

Sections CD 3 and CH 3 – Business and Monetary Remuneration: A taxpayer has asked whether he can return the income from his medical practice using the cash basis of income calculation. The medical practice is operated as a limited liability closely held company.

Section CD 3 states:

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

Section CH 3 states:

All monetary remuneration derived by a person is gross income.

Monetary remuneration is defined in section OB 1 as:

- (a) Means any salary, wage, allowance, bonus, gratuity, extra salary, compensation for loss of office or employment, emolument (of whatever kind), or other benefit in money, in respect of or in relation to the employment or service of the taxpayer; and includes -
 - (i) Any expenditure on account of an employee:

...

It is a settled matter of law that the method used to calculate income for tax purposes must give the correct reflex of income for a particular taxpayer. (*C of T (SA) v Executor Trustee & Agency Co of South Australia Ltd*(1938) 63 CLR 108 - *Cardens Case*.)

The cash basis has been held to be appropriate to give a correct reflex of income for professional taxpayers who earn income as a direct result of their personal exertions, and do not have large levels of stock or accounts receivable, nor use employees or assets in a significant way to generate their income. (*FC of T v Firstenburg*(1977) 6 ATR 297 and *FC of T v Dunn*(1989) 89 ATC 4,141.)

If the earning of income is a result of the efforts of staff in more than a subsidiary or minimal way, and not solely related to the personal exertions of the taxpayer in question, the accruals or earnings method of calculating income is more appropriate. Other factors such as the size of the business, levels of stock or accounts receivable held, or accounting method used by the taxpayer may also mean that the accruals or earnings method will give the more correct reflex of income for a taxpayer. (*Henderson v FC of T*(1970) 119 CLR 612 and *Barratt & Ors v FC of T*(1992) 92 ATC 4,275.)

These cases have decided the determining factors to be considered, regardless of profession or any impediments to recovery of fees.

Accordingly, it is not possible to say that any particular profession is entitled to use the cash basis. Each case must be considered in light of its own facts, but Inland Revenue considers that the requirements outlined above will only be met if a professional provides services in a small practice, earning income as a direct result of his or her personal exertions.

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Note that the Commissioner has for some time permitted doctors who trade on their own account to compute their income for tax purposes on a cash basis. Although there may be some question as to whether this practice is entirely endorsed by the decisions in the cases discussed above, the Commissioner intends to continue the practice.

However, in the case of this taxpayer who conducts his practice as a company, the cash basis will not give a correct reflex of his income. According to the decided cases, the predominant requirement before the cash basis can be used is for the taxpayer's income to be earned as a result of his or her personal exertions. If the taxpayer in question is a company, it is not possible for the company to exercise personal exertion. This distinguishes it from the case of doctors trading on their own account. A company earns its income as a result of the exertions of others, including the registered medical practitioner who may be the principal shareholder. This will be the case regardless of the size of the practice, the number of staff employed, and whether the individual doctor would have been permitted to use the cash basis if he or she were practising as a sole trader. The company must use the accrual method to calculate its income.

Depreciation of intangible assets

Section EG 8 (section 108G, Income Tax Act 1976) – Annual depreciation rate for fixed life intangible property: A taxpayer uses a registered trademark, and has asked what depreciation she is able to claim on this intangible asset. She acquired the right to use the trademark for five years by making a lump sum payment of \$10,000.

Intangible assets are now included in the depreciation regime, and can be depreciated under the general rules applying to other depreciable assets. The only difference is that the rules apply to intangible assets acquired or created on or after 1 April 1993, rather than from a taxpayer's 1993/94 income or non-standard accounting year.

Intangible assets acquired or created after 1 April 1993 which are depreciable, are limited to those listed in Schedule 17, (Twenty-second Schedule, Income Tax Act 1976). The right to use a trademark is included in the Schedule.

The depreciation rules vary according to whether or not intangible assets are fixed life intangible property (FLIP). "Fixed life intangible property" is defined in section OB 1 as:

...any intangible property that -

- (a) Is depreciable property; and
- (b) Has a legal life which could reasonably be expected, on the date of the creation or acquisition of the property, to be the same length as the property's remaining estimated useful life.

If an intangible asset is a FLIP, the depreciation rate is self-assessed by the owner under section EG 8 using the formula:

$$\frac{1}{\text{legal life}}$$

"Legal life" is also defined in section OB 1 as:

in respect of any intangible property and the owner of that property, means the number of years and any monthly fraction that the property may remain or continue to remain in existence by virtue of the contract or statute that creates the property for the owner assuming any rights of renewal or extension that are essentially unconditional, or conditional on the payment of pre-determined fees, are exercised:

The formula gives a straight-line depreciation rate, as the straight-line method is the only depreciation method that can be used for FLIPs, as per section EG 3(2). FLIPs are not eligible for the 20% loading applying from the 1995/96 income year.

If the intangible asset is not a FLIP, i.e., the asset can be expected to have an economic life which is shorter than its legal life, the Commissioner determines its depreciation rate using the same method that is applied to all tangible depreciable assets. Unlike FLIPs, economic life intangibles can be depreciated using a diminishing value or straight-line depreciation rate. They can also be pooled, and are eligible for the 20% loading applying from the 1995/96 income year. Taxpayers can also apply for a special or provisional depreciation rate for economic life intangibles.

In this taxpayer's case, the right to use the registered trademark was acquired from 1 June 1993 with a value of \$10,000, and a legal life of 5 years. Using the above formula, the depreciation rate to be used is:

$$\frac{1}{5} = .2 \text{ or } 20\%$$

The taxpayer is able to claim a \$2,000 deduction for depreciation each year.

Tax Information Bulletin Volume Four, No. 9 (May 1993) carries a full commentary on the depreciation of intangible assets.

Non-resident withholding tax on royalties paid to overseas holder of copyright

Section NG 1 (2) (section 310(2), Income Tax Act 1976) - Non-resident withholding income: A local operatic society intends to perform an internationally known musical. As a condition of putting on this production, the society is required to pay royalties to the copyright holder in the United States. The contract between the society and the copyright holder requires all royalties to be paid "free of all deductions, including local taxes". The society's secretary has asked if she must deduct non-resident withholding tax (NRWT) from the payments, and if so, how they would be calculated, given the requirement that the payment is to be free of local taxes.

Even though the contract requires the payments to be "free of all deductions, including local taxes", the society must still comply with the New Zealand tax legislation. Under section NG 1 (2), the NRWT rules apply to income, including royalties, that is derived from New Zealand by a person who is not resident in New Zealand.

Under section NG 2 (1)(c) (section 311(1)(b), Income Tax Act 1976), NRWT must be deducted at a rate of 15% of the gross amount of the payment. The rate of 15% is reduced to 10% under Article 12 of the double tax convention between New Zealand and the United States.

In this case, so that the society could comply with both the NRWT legislation and the contract requirements, the secretary was advised that the payment should be "grossed up", and that tax should be deducted from the resulting figure.

Example:

Royalties due to copyright holder	\$25,000.00
Gross up payment to include NRWT	\$27,777.77
Deduct NRWT	<u>\$ 2,777.77</u>
Payment to copyright holder	\$25,000.00

Resident withholding tax on interest paid on GST refunds paid late

Section OB 1 (section 327A, Income Tax Act 1976) - Definition of “exempt interest”: An accountant has asked if interest is paid on delayed GST refunds and, if it is, if Inland Revenue deducts resident withholding tax (RWT) from the interest.

Under section 46 of the Goods and Services Tax Act 1985, the Commissioner is required to pay interest on GST refunds not paid out within 15 working days of receipt of the return, unless he is not satisfied with the return and decides to investigate further, or requests further information.

Under section NF 1 (2) (section 327B(2), Income Tax Act 1976), the RWT rules do not apply to interest that is exempt. Under section OB 1, for RWT purposes exempt interest includes interest paid by the Commissioner under section 46 of the Goods and Services Tax Act.

Although the interest remains taxable under section CE 1 (1)(a) (section 65(2)(j), Income Tax Act 1976), section NF 1 (2) through section OB 1 releases the Commissioner from an obligation to deduct RWT.

Estate and Gift Duties Act 1968

Gift Duty exemption clarified

Section 75A(5) – relief from gift duty: A taxpayer is considering seeking a court order under the Matrimonial Property Act 1976 giving her husband, her 15 year-old son, and her niece a portion of her share in the family farm. She has been advised that the disposition of her share may be subject to gift duty if it is given to them by way of a discretionary trust. She has asked whether this is so.

Note that there are different gift duty exemption provisions for matrimonial property agreements and court orders. Section 75A(5) deals with court orders and states:

Any disposition of property by or pursuant to any order of the Court under section 25 of the Matrimonial Property Act 1976 shall not constitute a gift to the extent that the disposition is to a spouse or former spouse or is solely for the benefit of minor or dependent children of the marriage.

Dispositions of property made directly to a spouse, former spouse, or minor or dependent children are clearly exempt from gift duty under section 75A(5). A single disposition made to more than one of the spouse, former spouse, or minor or dependent children in one court order would also be exempt from gift duty under section 75A(5), due to the existence of the words “to the extent that”.

If a disposition of property were made to a fixed trust for (only) minor or dependent children this would also come within section 75A(5) as being “solely for the benefit of” those children. The Commissioner also accepts that a disposition of property made to a trust for only a spouse or former spouse can satisfy section 75A(5) (notwithstanding the section’s reference to a disposition “to” such a person). Further, a disposition to a trust for (only) a spouse, former spouse, and/or minor or dependent children would also qualify (again, due to the words “to the extent that”).

The Commissioner does not accept that a disposition of property to a discretionary trust would be exempt, as the trustee would normally have discretion as to which, if any, of the beneficiaries were to benefit and by how much. A disposition to such a trust would not necessarily be “to” the spouse or former spouse or “solely for the benefit of” the relevant children.

Note that in 1993 when this provision was amended to include reference to minor and dependent children, the Minister said in his Second Reading Speech to Parliament that “the exemption will now not apply to transfers made to discretionary family trusts”.

In the taxpayer’s case, the proposed court order would not be exempt from gift duty if a discretionary trust were used. If a direct disposition or a fixed trust disposition were made, it would be exempt to the extent of the dispositions made to the taxpayer’s husband and son.

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.

Conveyance duty - land acquisition

Case: Fulton Hogan Canterbury Limited v CIR

Decision date: 20 May 1997

Act: Stamp and Cheque Duties Act 1974 – sections 24(1)(b) and 24(2)

Keywords: *conveyance duty, dwellinghouse*

Summary: The Court held that the objector was not entitled to an exemption from conveyance duty pursuant to section 24(1)(b) of the Stamp and Cheque Duties Act 1971 as the property conveyed was not land acquired for the purpose of having a dwellinghouse erected upon it.

Facts: In 1992 the objector purchased a block of land in Christchurch. Before entering the agreement for the sale and purchase of the land the vendor obtained approval for the subdivision of the land into 264 lots. At the date of the hearing the objector had started stage 4 out of 10 of the planned stages of the subdivision, and had sold 44 of the 264 proposed lots.

A term was included in the contracts for the sale of the individual lots requiring building plans to be approved by the objector and some of the sections were sold with builders' terms. A number of sections were sold before October 1994 and the decision in *Baillie v CIR*. None were sold with covenants requiring building to take place by the sub-purchaser within a specified time. However, all sections sold after November 1994 included such covenants.

Decision: The Court held that the objector was not entitled to an exemption from conveyance duty pursuant to section 24(1)(b). The objector's purpose at the time the land was acquired was subdivision and not the erection of dwellinghouses. His Honour was unable to distinguish this case from the case of *Baillie*.

His Honour rejected the objector's submission that they could obtain relief under section 24(2) even if they failed to satisfy the test under section 24(1). Justice Holland held that section 24(2) will apply only when part of the land comes within section 24(1) and the balance does not.

Judicial review – assessment under appeal

Case: Miller & O'Neill v CIR

Decision date: 29 May 1997

Act: Income Tax Act 1976 - sections 99 and 25

Keywords: *tax avoidance*

- Summary:** The High Court held that the taxpayer's transactions constituted a device the dominant purpose and effect of which was tax avoidance.
- Facts:** This is both the appeal from *Case R25 (1994) 16 NZTC 6,120* and the final part of the Judicial Review reported at (1996/97) 18 NZTC 13,001 and 13,127.
- The taxpayers were involved in a complex financial arrangement. The effect of this was to enable the taxpayer to receive income from their company as a tax free capital sum and for the company to access tax losses in unassociated companies.
- Decision:** The Court rejected the taxpayer's appeal and held that section 99 should be applied. His Honour, Baragwanath J, held that whether the transactions were viewed broadly or in minute detail, the dominant purpose of the transactions was tax avoidance.
- The Court held that the fees in relation to the transactions were largely non-deductible as part of a tax avoidance scheme, but that some fees relating to ordinary accountancy work were deductible.
- The Court rejected the suggestion that *Challenge Realty Ltd v CIR(1990) 12 NZTC 7,022*, was no longer good law in New Zealand. The Court found that the changes to section 191 were not intended to limit section 99's application.
- The Court held that the Commissioner was not statute barred by section 25. Furthermore, His Honour rejected the objector's argument that full disclosure had been made and held that it was the taxpayer's responsibility to provide all relevant information within a single package.

Penal tax – failure to account for PAYE

- Case:** TRA 96/18
- Decision date:** 13 May 1997
- Act:** Income Tax Act 1976 – sections 369 and 423(1)
- Keywords:** penal tax, employer, PAYE
- Summary:** The TRA held that the failure to return PAYE by an employer is viewed very seriously by Parliament. Consequently, in the circumstances of the case, penal tax assessed at 75% was not excessive.
- Facts:** Inland Revenue assessed the taxpayer for penal tax in respect of his failure as an employer to account for PAYE for the periods September 1992 to June 1993. The taxpayer alleged that this imposition of penal tax breached an agreement between himself and Inland Revenue in relation to the payment of outstanding tax.
- Decision:** The TRA held that in the circumstances of the case, the penal tax assessed at 75% was not excessive. The objector had been investigated three times before this incident and on one of those occasions suffered a penalty of 25%.
- In the current case, the Commissioner reduced the penal tax to half of the maximum amount. Judge Willy found that in the circumstances of the case, this was an appropriate and fair result.
- The Authority found that it was necessary to keep in mind the fact that Parliament takes a serious view of the wilful failure by an employer to return payments of PAYE tax.

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
Electronic article surveillance systems	5	33	24	DEP26	9.6:3
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
“Kiwiplus” – kiwifruit packhouse software	1	100	100	PROV6	9.6:8
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
Mulchers (commercial)	4	40	30	DEP25	9.6:6
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. To order any of these booklets, call the forms and stationery number listed under "Inland Revenue" in the blue pages at the front of your phone book. This is an automated service, and you'll need to have your IRD number handy when you call.

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 private pensions (IR 258A) - Oct 1996: *Explains the tax obligations for people who have interests in a private superannuation scheme or life insurance annuity policy that is outside New Zealand.*

Overseas social security pensions (IR 258) - Jul 1996: *Explains how to account for income tax in New Zealand if you receive a social security pension from overseas.*

Problem Resolution Service (IR 287) - Nov 1993: *An introduction to Inland Revenue's Problem Resolution Service. You can use this service if you've already used Inland Revenue's usual services to sort out a problem, without success.*

Provisional tax (IR 289) - Jun 1996: *People whose end-of-year tax bill is \$2,500 or more must generally pay provisional tax for the following year. This booklet explains what provisional tax is, and how and when it must be paid.*

Putting your tax affairs right (IR 282) - May 1994: *Explains the advantages of telling Inland Revenue if your tax affairs are not in order, before we find out in some other way. This book also sets out what will happen if someone knowingly evades tax, and gets caught.*

Rental income (IR 264) - Apr 1995: *An explanation of taxable income and deductible expenses for people who own rental property. This booklet is for people who own one or two rental properties, rather than larger property investors.*

Reordered tax acts (IR 299) - Apr 1995: *In 1994 the Income Tax Act 1976 and the Inland Revenue Department Act 1974 were restructured, and became the Income Tax Act 1994, the Tax Administration Act 1994 and the Taxation Review Authorities Act 1994. This leaflet explains the structure of the three new Acts.*

Self-employed or an employee? (IR 186) - Jun 1997: *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) - May 1997: *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

A guide for parents who pay child support (CS 71A) - May 1997: *Information for parents who live apart from their children.*

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 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

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.

August 1997

- 5 Large employers: PAYE deductions and deduction schedules for period ended 31 July 1997 due.
- 7 Provisional tax and/or Student Loan interim repayments: first 1998 instalment due for taxpayers with April balance dates.
Second 1998 instalment due for taxpayers with December balance dates.
Third 1997 instalment due for taxpayers with August balance dates.
Income tax returns due for non-IR 5 taxpayers with April balance dates.
- 20 Large employers: PAYE deductions and deduction schedules for period ended 15 August 1997 due.
Small employers: PAYE deductions and deduction schedules for period ended 31 July 1997 due.
Gaming machine duty return and payment for month ended 31 July 1997 due.
RWT on interest deducted during July 1997 due for monthly payers.
RWT on dividends deducted during July 1997 due.
Non-resident withholding tax (or approved issuer levy) deducted during July 1997 due.
- 31 GST return and payment for period ended 31 July 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

3549: Interest repayments imposed as a result of the early repayment of a financial arrangement – deductibility 31 July 1997

✓ Interpretation guidelines

Comment Deadline

9701: "Sham" – meaning of the term 31 July 1997

9702: Form and substance in taxation law 31 July 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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