

TAX INFORMATION BULLETIN

Volume Nine, No.7

July 1997

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Questions we've been asked

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Notes on recent cases heard by the Taxation Review Authority, the High Court, the Court of Appeal and the Privy Council. See the inside front cover for a list of cases covered in this bulletin.

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Inland Revenue
Te Tari Taake

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

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Get your TIB sooner via Internet

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

You can find us at:

www.ird.govt.nz

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

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

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

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.

Accrual determinations – fee setting

Regulations 3(1) and 11(1) of the Income Tax (Determinations) Regulations 1987 require that fees be charged for accrual regime determinations made in terms of section 90 of the Tax Administration Act 1994. Under section 90 the Commissioner is empowered to determine certain matters relating to financial arrangements. A taxpayer may wish to apply for a determination to ascertain the tax treatment of a particular financial arrangement.

The criteria for setting these fees are set out in Regulations 11(2) and 11(3). For the year beginning 1 July 1997 the GST inclusive fees are:

Application fee (non-refundable)	\$210
Processing fee (per hour or part thereof, exclusive of the first two hours)	\$105

Regulation 13 allows the Commissioner to waive fees in exceptional circumstances, either in full or in part.

Applications for determinations should be made to:

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

The information relating to applications is set out in Regulation 3(1).

Computer Numerically Controlled (CNC) Wood-Turning Machines – draft general depreciation determination

The Commissioner has been made aware that there is currently no depreciation rate for computer numerically controlled (CNC) wood turning machines used for specialised wood turning operations in the timber and joinery industries. These machines are variously referred to as tooling machines or machine centres. The Commissioner proposes to issue a general depreciation determi-

nation, applicable from the 1997/98 and subsequent income years, which inserts these machines into the “Timber & Joinery” industry category. The determination, which is reproduced below in draft form, will set a depreciation rate of 22% DV for these assets. The proposed new depreciation rate is based on an estimated useful life (EUL) of 8 years and a residual value of 13.5%.

General Depreciation Determination DEP[X]

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

1. Application

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

This determination applies to “depreciable property” other than “excluded depreciable property” for the 1997/98 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 “Timber & Joinery” industry category the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below:

Timber & Joinery	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Tooling Machine, CNC	8	22	15.5
Machine Centre, CNC	8	22	15.5

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3. Interpretation

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

If you wish to make a submission on these proposed new depreciation rates, please write to:

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

We need to receive your submission by 29 August 1997 if we are to take it into account in finalising the determination.

ACC premium assessments – applications for review

Introduction

This article provides commentary on the review procedures to be followed if you disagree with an ACC premium assessment.

Overview

The disputes resolution process does not apply to ACC premium assessments. Part VI of the Accident Rehabilitation and Compensation Insurance Act 1992 (ARCI Act) provides for reviews and appeals relating to the administration of the ACC scheme generally.

Briefly,

- Premium payers have three months from the date of the assessment notice to apply for a review.
- The review must start within three months of the lodging of the application. If it doesn't, the decision can be deemed in the premium payer's favour.
- Even if the premium payer lodges an application for review, the assessed premium must be fully paid by the due date.

A full legislative analysis and the administrative procedures to be followed is set out below.

Application for review

Legislation

Section 89 of the ARCI Act states –

....

- (4) Any person who is dissatisfied with any decision of the Corporation relating to any premium payable or claimed to be payable by that person under this Act may apply to the Corporation for a review of that decision; but no such right shall exist under this Act in respect of the calculation for the purposes of the Income Tax Act 1994 of the taxable income of any person.
- (5) An application pursuant to this section -

- (b) In any other case an application in the prescribed form may be made within 3 months after the date on which notice in writing has been given of the decision in respect of which the review is sought –

and each such application shall state briefly the grounds on which the application is made.

Section 90(9) of the ARCI Act states -

Where the hearing of a review has not commenced within 3 months after the lodging of the application for review, and the delay is not caused or contributed to by the applicant, the application shall be deemed to have been determined in favour of the applicant.

Commentary

You have three months from the date of the premium assessment notice to apply for a review. The new notices of assessment contain the following message, which tell you what to do if you disagree with the ACC premium:

If you disagree with the ACC premium amount on this notice, you can apply for a review. Fill in an ARC 33 form and send it to us within three months of the date of this notice. You can get an ARC 33 form from any Inland Revenue or ACC office. If you disagree with the income the ACC premium is charged on you must follow the tax disputes procedures (mentioned above).

To apply for a review, you must fill in an ARC 33 form (and usually include a letter detailing the objection), and lodge it with the Inland Revenue office that issued the assessment.

The review must start within three months from the date Inland Revenue receives the application. Inland Revenue is not delegated to consider these reviews. We refer applications to ACC for its consideration.

Under section 89(4), you can't use the premium review process to challenge the amount of **taxable income** on which premium is assessed. In practice this relates only to self-employed people because their premiums are based on their taxable income. Employers' and close companies' premiums are calculated on the employee earnings; not the taxable income.

Also, you can't seek a review of premium rates because they are set by Regulation. However, the applicability of a particular classification unit is reviewable.

On receipt of the application for review, the ACC may either:

- refer it to an independently appointed review officer for hearing in terms of section 90 of the ARCI Act, or
- concede the case.

Once a decision is made, the ACC will advise both the applicant and Inland Revenue of the outcome. Appeal rights are available through the courts.

Premium payable despite application for review

Section 79(2) of the ARCI Act states -

No obligation to pay any premium or right to receive or recover any premium shall be suspended because any review or appeal or other proceeding may have been commenced in respect of that premium.

This means the assessed premium must be fully paid by the due date even when an application for review has been lodged. There are no discretionary powers to allow payment to be deferred.

Library books and periodicals – draft depreciation determination

Currently there are ten asset classes for library books and periodicals.

The Commissioner proposes to issue a general depreciation determination that will set two new asset classes for library books, as reproduced below. The determination will set a new depreciation rate of 63.5% DV for books

whose editions are published annually or more frequently. This proposed rate is based on a useful life of 2 years and a residual value of 13.5 % of cost.

The other new asset class will cover all other books, for which the rate proposed is 18% DV. This rate is based on a useful life of 10 years and a residual value of 13.5% of cost.

Exposure Draft – General Depreciation Determination DEPX

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

1. Application

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

This determination applies to “depreciable property” other than “excluded depreciable property” for the 1997/98 and subsequent income years.

2. Determination

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

- Deleting from the “Books, Music and Manuscripts” asset category, the general asset class, estimated useful life, and diminishing value and straight-line depreciation rates listed below:

Books, Music and Manuscripts	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Library books, and periodicals (if to be bound) (lending) (not specified)	8	22	15.5
Library books, and periodicals (if to be bound) (in-house)	20	9.5	6.5
Library books, and periodicals (if to be bound) (law)	20	9.5	6.5
Library books, and periodicals (if to be bound) (public)	8	22	15.5
Library books, and periodicals (if to be bound) (school)	8	22	15.5
Library books, and periodicals (if to be bound) (scientific)	20	9.5	6.5
Library books, and periodicals (if to be bound) (university)	8	22	15.5
Newspapers and periodicals (if not to be held)		expense	expense
Newspapers and periodicals (if to be held)	2	63.5	63.5
Periodicals (if to be held but not to be bound)	2	63.5	63.5

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- Inserting into the “Books, Music and Manuscripts” asset category, the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below:

Books, Music and Manuscripts	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Books, editions of which are published annually or more frequently	2	63.5	63.5
Other books	10	18	12.5
Newspapers and periodicals		expense	expense

3. Interpretation

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

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

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

We need to receive your submission by 15 August 1997 if we are to take it into account in finalising the determination.

Binding rulings

This section of the TIB contains binding rulings that the Commissioner of Inland Revenue has issued recently.

The Commissioner can issue binding rulings in certain situations. Inland Revenue is bound to follow such a ruling if a taxpayer to whom the ruling applies calculates tax liability based on it.

For full details of how binding rulings work, see our information booklet "Binding Rulings" (IR 115G) or the article on page 1 of TIB Volume Six, No.12 (May 1995) or Volume Seven, No.2 (August 1995). You can order these publications free of charge from any Inland Revenue office.

Taylor Paris Group Ltd's Key Person Loyalty Plan

Product Ruling BR Prd 97/58

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

Taxation Laws

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

This Ruling applies in respect of sections BD 2, CH 3, HH 3, EB 1, and CI 1.

The Arrangement to which this Ruling applies

The Arrangement is the operation of the Taylor Paris Group Limited Key Person Loyalty Plan (the "Plan") whereby the New Zealand Guardian Trust Company Limited ("NZGT") is the trustee. The three components of the Plan are:

- Employer contributions are paid monthly to the trust in respect of designated employees;
- Trust income is derived by the trust from the investment of the employer contributions;
- The trust pays out to designated employees on the occurrence of six years of continuous service.

The Plan is designed to reward designated loyal employees for staying in the employment of the employer for a set number of years. It is not designed to provide superannuation or other retirement related benefits. Where a person is an owner and employee of the business, and the business is not operated through a separate legal entity, the owner may not participate in the Plan.

There are two agreements:

- A Participation Agreement between the employer and the employee.
- A trust deed under which the employer is the settlor, NZGT is the trustee, and named employees are the beneficiaries.

Participation Agreement: Under the Participation Agreement between the employer and the designated employee, the employer agrees to pay to the trust a set monthly amount for each complete month that the designated employee remains in the service of the employer. The employee has no current entitlement whatsoever to that monthly contribution. At most, the employee can enforce:

- the employer to make the contribution to the trust, and
- the trustees to comply with the trust deed.

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Trust Deed: The trustee holds the contributions received on trust for the named employees. The trust deed contains detailed rules covering the terms on which the trustee holds the employer contributions in the Trust. Both the participation agreement and the trust deed cover the circumstances where the trustee may pay out amounts to the employees. An employee will only ever receive one payment from the Trust and that will be at the earliest of:

- the expiry of continuous service for a set number of years (six years).
- the happening of a certain listed termination event (death, resignation within three months of a takeover offer, redundancy, retirement due to ill-health or by resignation in special circumstances).

If the employee ceases employment before the set number of years the employee will receive nothing from the Trust. If the employee stays in the employment of the employer for the set number of years, the employee will receive an amount based on the employer contributions and any investment gains made on that amount.

In no circumstances will the employee have any entitlement to the trust fund or any claim on it, or use it as collateral to obtain funds or as security for any other purposes.

There is the possibility for the employees to receive a larger amount should other employees who have participated in the Plan leave before they reach the set number of years. If all participating employees leave before reaching the set number of years, the trustee must find the last participating employees in the preceding 12-month period and distribute the remaining amount to them (clause 4.3 of the Trust Deed).

In no circumstances will the employer ever receive any of the contributions back from the Trust. The total amount of the Trust's fund must always vest in one or more of the named beneficiaries.

There is no requirement that an employee stay within the employ of the employer for any set period of time after the payment has been made by the Trust.

Investment: The Trust will invest the employer contributions in a suitable investment vehicle. From a substantive practical viewpoint any investment vehicle will be designed to give a "fair" return from a balanced portfolio of "safe" investments.

Currently only unit trust based investments are being considered. Those presently included for consideration are:

- Armstrong Jones Balanced Fund.
- BNZ Active Growth Fund.
- National Mutual Balanced Growth Fund.
- Tower Multi Sector Fund.

The trustee will invest the employer contributions and pay tax on any gross income derived in relation to such investments.

Assumptions made by the Commissioner

This Ruling is based on the assumptions that:

- An employer may not participate in the Plan in the capacities of both employer and employee.
- The trust will return the employer contributions as gross income of the trust in terms of section HH 1 (7) of the Act.

- In a year of an employee payout, the trust, as agent, will meet the income tax liability on any portion of the employee payout which qualifies as beneficiary income.
- The trust is not established principally to provide retirement benefits.
- In no circumstances will any of the employer contributions ever flow back to the employer.
- GST input tax credit will not be claimed on the employer contributions.
- The Trust will not be registered or be liable to be registered for GST.
- The Trust Deed is in the form supplied with the rulings application.
- No employer contributions to the Trust, nor any distribution from the Trust is made directly or indirectly in lieu of or in substitution for any remuneration or bonus that an employee would otherwise have received or would have been likely to have received or become entitled to if not for the inclusion in the Participation Plan.
- The Participation Plan is not a condition of employment.
- Superannuation surtax may apply to an amount that is distributed from the trust notwithstanding that tax may have been paid by the trustee of the Trust on distribution from the Trust.
- There will be no employer contributions to the Trust in respect of a named participant in any quarter in which a contingent event leads to a distribution from the Trust in respect of that named participant, resulting in a benefit that is used, enjoyed or received by that participant or any person associated with that participant in the Plan in that quarter.

How the Taxation Laws apply to the Arrangement

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

- The employer contributions will qualify as allowable deductions to the employer under section BD 2 (1) and will not be excluded as allowable deductions under section BD 2 (2).
- The employee payout will comprise either or both of beneficiary income which is gross income of the employee under section HH 3 (1) and distributions which are not gross income of the beneficiary under section HH 3 (5).
- No gross income arises, under sections CH 3 or EB 1 (1), to any designated employee as a result of participation in the Plan.
- No fringe benefit as defined in section CI 1 arises as a result of the participation of a designated employee in the Plan.

The period for which this Ruling applies

This Ruling will apply for the period from 4th July 1997 to 31st March 2000.

This Ruling is signed by me on the 4th day of July 1997.

Martin Smith
General Manager (Adjudication & Rulings)

Questions we've been asked

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

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

Income Tax Act 1994

Cost price of repairable spares acquired under a warranty contract – income tax implications

Section EE 1 – Valuation of trading stock: A taxpayer is in the business of retailing photocopying equipment. She backs up her products with a warranty either as part of the sale price or for a fee based on the value of the equipment provided. All warranty contracts include the following clause:

... repairing or replacing, at [the taxpayer's] option, any product or parts thereof, which, under normal and proper use and maintenance proves defective in material or workmanship.

Further, it is either an actual or an implied term of the warranty contracts that the retailer has the right to retain any defective parts removed from items requiring repairs.

The taxpayer has asked what the cost price of defective parts recovered is.

Recovery of defective parts occurs when the taxpayer simply removes the defective part and replaces it with either a new or used part. Under the above term of the warranty contract, she is then entitled to retain the defective part or parts recovered. Those defective parts may later be repaired and placed into the taxpayer's trading stock for future use in making repairs under other warranty contracts.

Under section EE 1, "cost price" is one option available for valuing trading stock at the end of an income year. Trading stock includes anything acquired or purchased for the purposes of manufacture, sale, or exchange.

The repairable parts are "acquired" for the purpose of "exchange", and so are trading stock.

To establish the cost price it is necessary to determine what was given up and what was obtained. In this case, a client has paid for a warranty in return for the taxpayer ensuring that the product operates properly for a specified period from the date of purchase.

The taxpayer gives up new or used parts and labour to meet the obligations as repairer under the warranty and, when possible, recovers any repairable defective parts to mitigate the cost of repairs made under the warranty. The taxpayer therefore gives up labour to meet the obligations under the repair contract, and gives up the replacement parts both to meet obligations under the repair contract *and* to obtain the defective part for repair. As the cost price of the replacement part is given up for two purposes, that cost price must be apportioned between the two purposes.

It is necessary in any particular circumstance to determine the most appropriate means of apportionment, and this will depend on the available facts. An example of one method that might be appropriate for the taxpayer is as follows.

Example

The taxpayer chooses to repair the defective part and return it to the client's machine, rather than put in a replacement part and keep the defective part for repair and later use. The estimated cost of repairs to the defective part may provide a good approximation of the cost price given up in order to meet the obligations under the warranty. Any remainder of the cost price of the replacement part is then attributable to the cost of the defective part recovered.

Applying this approach *before* repair:

$$\begin{array}{r} \text{cost of defective part} \\ \text{recovered} \end{array} = \begin{array}{r} \text{cost of replacement} \\ \text{part put into machine} \end{array} - \begin{array}{r} \text{estimated cost to} \\ \text{repair defective part} \end{array}$$

Applying this approach *after* repair:

$$\text{cost of defective part recovered} = \text{cost of replacement part.}$$

If the replacement part costs \$1,000 and the estimated cost of repairing the defective part recovered is \$400, then the cost attributed to repair under the warranty will be \$400, and the cost price attributable to the defective part recovered will be \$600 (\$1,000 less \$400).

Once the defective part recovered has been repaired, its cost price is \$600 plus the cost of repair. If the estimated cost of repair is accurate, then the cost price of the defective part after repair will be \$1,000 (\$600 + \$400).

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.

Declaration – legal professional privilege, litigation privilege

Case: *A J Dinsdale v CIR & ANZ Banking Group (New Zealand) Ltd*

Decision date: 6 June 1997

Act: Tax Administration Act 1994 – section 17

Keywords: Legal professional privilege, litigation privilege,

Summary: The Court dismissed the application for a declaration that the Commissioner's notice under section 17 of the Tax Administration Act 1994 ("TAA") was invalid on the ground that no legal professional privilege or litigation privilege attached to interview notes that were taken.

Facts: The Plaintiff sought a declaration that a notice issued on behalf of the Commissioner under section 17 of the TAA was invalid by reason both of legal professional privilege and litigation privilege.

Bage Investments Limited ("Bage") and Post Office Bank Limited ("Postbank") had entered into a redeemable preference share ("RPS") transaction with Capmar Investments Limited. The second respondent the "Bank" subsequently acquired ownership of Bage and Postbank.

The Commissioner requested and received documents relating to the RPS transaction but did not receive any preliminary documentation covering the consideration and negotiation of the investment.

Two letters from the Commissioner addressed the concerns relating to this non-disclosure, alerting the Bank to the possibility of prosecution. The Commissioner also requested a statutory declaration to the effect that all relevant papers had been made available under section 17(5) of the TAA.

Counsel for the Bank recommended that KPMG carry out an audit of all the relevant documents as well as a full review of all matters relating to the threatened prosecution. A number of documents not previously provided to Inland Revenue were then found including notes from interviews with 34 people about the RPS transaction.

The Commissioner requested notes of interviews with six of these people, but the Bank declined to provide them arguing litigation privilege and legal professional privilege. The Commissioner then made a formal request for the notes of the interviews under section 17 of the TAA.

Decision: The Court held that there was no legal professional privilege attaching to the interview notes. The interviews were conducted by KPMG to enable them to prepare their report. The court found there was no basis for holding that the

interviews were communications passing between a legal practitioner and the practitioner's client. At most these communications were between a legal practitioner and third parties. The notes themselves do not purport to be and were not communications between solicitor and client.

Likewise no litigation privilege attached to the interview notes. Although the Court held the bank did have a reasonable apprehension that litigation would ensue, the dominant purpose test was not satisfied. That is, the plaintiff could not show that the dominant purpose of the preparation of the interview notes was to enable the legal adviser to conduct litigation or advice regarding the litigation. Therefore the plaintiff could not invoke litigation privilege.

Although this matter did not arise, Eichelbaum CJ stated that if he had to make a decision on waiver, he would decide against the Commissioner because there would be no unfairness to him in doing so.

Superannuation surcharge assessment

Case: *Reginald Stevens Shawv CIR*

Decision date: 1 July 1997

Act: Income Tax Act 1976 – section 336B(1)

Keyword: superannuation surcharge, Magna Carta

Summary: The Court held that the Commissioner acted correctly in assessing the objector as liable to the National Superannuation surcharge, and held that the natural and ordinary provisions of the Magna Carta have no application in this case.

Facts: The objector is the recipient of New Zealand superannuation. He had been assessed by the Commissioner for the surcharge pursuant section 336B(1) of the Income Tax Act 1976 (“the Act”) in respect of his superannuation.

The objector challenged the assessments arguing that section 336B(1) of the Act is unlawful and invalid on the basis that it is discriminatory and offends against the principles of the Magna Carta.

Decision: In appropriate cases, the Courts can consider whether statutes have been properly enacted. The Courts do not however have the power to consider the validity of properly enacted laws. The Courts’ power is simply to determine whether or not the laws have been properly enacted.

Further, Parliament must have the right to take with one hand what it has given by another hand.

The Court held that the natural and ordinary provisions of the Magna Carta can have no application in this case.

Demolition cost deductibility – decision on appeal

Case: *CIR v Lyttelton Port Company*

Decision Date: 25 June 1997

Act: Income Tax Act 1976 – section 104 & 106(1)(a)

Keywords: Deductibility of demolition costs

Facts: Under a statutorily enforced transfer of assets, the respondent was obliged to acquire certain buildings irrespective of whether they held any value to it. The respondent did not want these buildings, and decided to demolish them. The

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respondent then claimed a deduction of \$13,500 for the costs of the demolition.

The High Court held that these costs were deductible under section 104 of Income Tax Act 1976, but the Commissioner appealed this as previous Australian decisions held that these costs were non-deductible as they were capital in nature.

The Commissioner appealed this to the Court of Appeal so that the status of demolition costs in New Zealand could be clarified.

Decision:

The Court of Appeal held unanimously that the High Court erred in finding that the demolition costs were deductible. The present case came squarely within the principles enunciated in the Australian decisions and was particularly analogous to *Mount Isa Mines Ltd v Federal Commissioner of Taxation*(1992) 24 ATR 261.

The demolition improved the Respondent's capital asset by providing an upgraded and uncluttered wharf area. Its effect was to enhance the assets deployed by the respondent in the production of revenue. Further, the demolition of the buildings as an isolated incident of the respondent's operations could not be characterised as maintenance or upkeep.

The Court of Appeal concluded that the expenditure was capital in nature and therefore non-deductible.

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

continued on page 14

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) - Jun 1997: *An explanation of who is a New Zealand resident for tax purposes.*

Overseas private pensions (IR 258A) - Jun 1997: *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 1997: *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) - Jun 1997: *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) - Jun 1997: *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) - Jul 1997: *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.*

continued on page 16

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) - Jun 1997: *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

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.
- 29 GST return and payment for period ended 31 July 1997 due.

September 1997

- 5 Large employers: PAYE deductions and deduction schedules for period ended 31 August 1997 due.
- 7 Provisional tax and/or Student Loan interim repayments: first 1998 instalment due for taxpayers with May balance dates.

- 7 Second 1998 instalment due for taxpayers with January balance dates.
- Third 1997 instalment due for taxpayers with September balance dates.
- 1997 end of year payments due (income tax, Student Loans, ACC premiums) for taxpayers with October balance dates.
- 1997 income tax returns due to be filed for all non-IR 5 taxpayers with May balance dates.
- QCET payment due for companies with October balance dates, if election is to be effective from the 1998 year.
- (We will accept payments received on Monday 8 September as in time for 7 September.)*
- 20 Large employers: PAYE deductions and deduction schedules for period ended 15 September 1997 due.
- Small employers: PAYE deductions and deduction schedules for period ended 31 August 1997 due.
- Gaming machine duty return and payment for month ended 31 August 1997 due.
- RWT on interest deducted during August 1997 due for monthly payers.
- RWT on dividends deducted during August 1997 due.
- Non-resident withholding tax (or approved issuer levy) deducted during August 1997 due.
- (We will accept payments received on Monday 22 September as in time for 20 September.)*
- 30 GST return and payment for period ended 31 August 1997 due.
- Non-resident Student Loan repayments - second 1998 instalment 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 _____

✓ **Interpretation statements**

Comment Deadline

- 3394:** Property previously used otherwise than for deriving income or carrying on a business in New Zealand – application for a special depreciation rate and meaning of "estimated useful life"

31 August 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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Team Leader (Systems)
Adjudication & Rulings
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Inland Revenue Department
P O Box 2198
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