

# TAX INFORMATION BULLETIN

Volume Nine, No.8

August 1997

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Inland Revenue  
*Te Tari Taake*

ISSN 0114-7161

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](http://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.

### Family Support increase at 1 January 1998

#### Introduction

From 1 January 1998 the amount of Family Support payable for qualifying children aged 16 and over will increase to \$60 per week.

#### Background

This change was introduced in the Youth Income Support Bill, which was split into the following Acts when enacted in June:

- The Social Security Amendment Act (No. 3) 1997
- The Income Tax Act 1994 Amendment Act 1997
- The Child Support Amendment Act 1997

The Youth Income Support Bill was introduced by the previous Government and was part of that Government's youth employment strategy. That strategy, which was based on the recommendations made by the Prime Ministerial Task Force on Employment, was designed to send a clear message that 16 and 17 year olds should remain in education if they do not have a job to go to.

#### Key features

The Social Security Amendment Act (No. 3) 1997 makes changes to the age of entitlement to the sickness, unemployment and training benefits; amends the eligibility criteria for the independent youth benefit; abolishes the job search allowance; and creates a new job seeker's allowance. These benefits are paid by the New Zealand Income Support Service.

The Income Tax Act 1994 Amendment Act 1997 increases the rate of Family Support to \$60 per week for

qualifying children aged 16 and over. Because the change takes place on 1 January 1998, Family Support for the 1997/98 income year will be a composite rate comprising the amounts payable to 30 June 1997, from 1 July 1997 to 31 December 1997 and from 1 January 1998 to 31 March 1998. Set out below are the composite rates for the 1997/98 income year and the full year rate for the 1998/99 income year.

	<b>1997-98 income year</b>	<b>1998-99 income year</b>
For the eldest child:		
aged 0 to 15 years	\$2,411.50*	\$2,444.00*
aged 16 years and over	\$2,580.50	\$3,120.00
For each additional child		
aged 0 to 12 years	\$1,631.50*	\$1,664.00*
aged 13 to 15 years	\$2,047.50*	\$2,080.00*
aged 16 years and over	\$2,307.50	\$3,120.00

\* Unchanged from increased Family Support that applied from 1 July 1997

Two consequential changes arise from the creation of the new job seeker's allowance. This allowance has been added to the definition of a social security benefit in the Child Support Act 1991 by the Child Support Amendment Act 1997. The allowance has also been added to the definition of an income-tested benefit in the Income Tax Act 1994 by the Income Tax Act 1994 Amendment Act 1997.

#### Application date

The increased Family Support is payable from 1 January 1998.

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# Computerised Ink Mixing Systems – Depreciation Determination DEP27

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In TIB Volume Nine, No.6 (June 1997) at page 7, we published a draft general depreciation determination for Computerised Ink Mixing Systems used in the printing industry.

No submissions were received on this draft and the Commissioner has now issued the determination. It is

reproduced below and may be cited as, “Determination DEP27: Tax Depreciation Rates General Determination No.27”. 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%.

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## General Depreciation Determination DEP27

This determination may be cited as “Determination DEP27: Tax Depreciation Rates General Determination Number 27”.

### 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 1994/95 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 “Printing & Photographic” industry 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 (%)
<b>Printing and Photographic</b>			
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.

This determination is signed by me on the 29th day of July 1997.

Jeff Tyler  
Assistant General Manager (Adjudication & Rulings)

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# Trailers (Class TD – over 10 tonnes) – when rented for periods of 1 month or less

## Draft general depreciation determination

We have been advised there is currently no general depreciation rate for heavy truck trailers (Class TD, as included in First Schedule to the Miscellaneous Transport Regulations, – over 10 tonnes) which are rented out for short periods. These trailers are usually rented to front line major transport and distribution companies to cover emergencies and excess workload requirements. The period of rental is short-term: generally, for only 1-2 weeks at a time.

The Commissioner proposes to issue a general depreciation determination, applicable from the 1997/98 and subsequent income years, which inserts a new category into the “Hire Equipment (Where on short-term hire of 1 month or less only)” Industry Category. The determination, reproduced below in draft form, will set a depreciation rate of 18% D.V. for these assets and is based on an estimate useful life (EUL) of 10 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 “Hire Equipment (Where on short-term hire of 1 month or less only)” industry category the general asset class, estimated useful life, and diminishing value and straight-line depreciation rate listed below:

Hire Equipment (Where on short-term hire of 1 month or less only)	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Trailers, class TD (for transporting heavy goods that have a gross vehicle mass exceeding 10 tonnes)	10	18	12.5

#### 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 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 26 September 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.

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## Maori trust boards: declaration of trust for charitable purposes made under section 24B of the Maori Trust Boards Act 1955 – income tax consequences

### Public Ruling – BR Pub 97/8

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

#### Taxation Law

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

This Ruling applies in respect of sections CB 4 (1)(c) and CB 4 (1)(e) of the Income Tax Act 1994.

#### The Arrangement to which this Ruling applies

This Ruling applies to income derived by a trust established by a Maori Trust Board pursuant to the execution of a declaration of trust, under section 24B(1) of the Maori Trust Boards Act 1955, declaring that it stands possessed of any of its property upon trust for charitable purposes.

#### How the Taxation Law applies to the Arrangement

Where a Maori Trust Board executes a declaration of trust that it shall stand possessed of property for charitable purposes, under section 24B(1) of the Maori Trust Boards Act 1955, the income of such a trust is exempt from income tax under sections CB 4 (1)(c) or CB 4 (1)(e) of the Income Tax Act 1994 if:

- all of the purposes specified in the declaration of trust are purposes that are specified in sections 24 or 24A of the Maori Trust Boards Act 1955; and
- the Commissioner is satisfied that, with the exception of the charitable purpose requirement and the public benefit test, all other requirements of charitable status are met; and
- the declaration of trust has been submitted to and approved by the Commissioner of Inland Revenue, as required by section 24B(3) of the Maori Trust Boards Act 1955.

## The period for which this Ruling applies

This Ruling applies to income derived by such a Maori Trust Board during income years falling within the period 1 April 1997 and 31 March 2001 (inclusive).

This Ruling is signed by me on the 1st day of August 1997.

Martin Smith  
General Manager (Adjudication & Rulings)

## Commentary on Public Ruling BR Pub 97/8

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Ruling BR Pub 97/8 ("the Ruling").

### Background

Sections CB 4 (1)(c) and (e) of the Income Tax Act 1994 provide the following exemptions from income tax for income derived by a charitable trust:

- Under section CB 4 (1)(c), income derived by trustees in trust for charitable purposes or by any institution established exclusively for charitable purposes (except income to which section CB 4 (1)(e) applies).
- Under section CB 4 (1)(e), income derived from a business carried on by trustees in trust for charitable purposes or by any institution established exclusively for charitable purposes.

Neither exemption is available if any person is able to influence the amount of any private pecuniary benefit from the trust. The exemption under CB 4 (1)(e) only applies to the extent that the charitable purposes are limited to New Zealand.

Under section 24B of the Maori Trust Boards Act 1955, a Maori Trust Board may declare that it holds property in trust for charitable purposes. The income of the trust can only be applied for those purposes set out in sections 24 and 24A of that Act and which are specified in the declaration of trust. Section 24B deems the income of such a trust to be income derived by trustees in trust for charitable purposes for the purposes of the Income Tax Act 1994.

### Legislation

#### Cross-reference table

Income Tax Act 1994	Income Tax Act 1976
CB 4 (1)(c)	61(25)
CB 4 (1)(e)	61(27)

### Income tax exemption – section CB 4 (1)(c) and (e)

Section CB 4 (1) provides an exemption from income tax for:

...

- (c) Any amount derived by trustees in trust for charitable purposes or derived by any society or institution established exclusively for charitable purposes and not carried on for the private pecuniary profit of any individual, except where the income so derived is income to which paragraph (e) applies:

...

- (e) Any amount derived directly or indirectly from any business carried on by or on behalf of or for the benefit to trustees in trust for charitable purposes within New Zealand, or derived directly or indirectly from any business carried on by or on behalf of or for the benefit of any society or institution established exclusively for such purposes and not carried on for the private pecuniary profit of any individual.

Provided that if those purposes are not limited to New Zealand the Commissioner may apportion the income in such manner as the Commissioner deems just and reasonable between those purposes within New Zealand and the like purposes out of New Zealand, and accordingly only a part of the amount may be exempt:...

### Maori Trust Boards Act 1955

Section 24B of the Maori Trust Boards Act 1955 states:

- (1) Any Board may from time to time, in its discretion, execute under its seal a declaration of trust declaring that it shall stand possessed of any of its property, whether real or personal, upon trust for charitable purposes.
- (2) Any income derived by the Board from any property to which the declaration relates shall be applied for such purposes referred to in section 24 or section 24A of this Act as may be specified in the declaration of trust; and, for the purposes of the Income Tax Act 1994, any such income shall be deemed to be income derived by trustees in trust for charitable purposes.
- (3) No declaration of trust under this section shall have any force or effect unless it has been approved by the Commissioner of Inland Revenue.

Sections 24 and 24A specify the purposes for which a Maori Trust Board may apply money.

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## Application of the Legislation

### Charitable purposes

For a trust to be considered charitable for the purposes of the Income Tax Act, it must generally meet the common law requirements of charity. That is, a trust must be established for a “charitable purpose”, and must meet what is known as the “public benefit test”.

The term “charitable purpose” is defined in the Income Tax Act, as:

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

The Court of Appeal noted in *Molloy v CIR* (1981) 5 NZTC 61,070 that the definition of charitable purpose in the Income Tax Act does not have the effect of enlarging or altering the ordinary, general law, meaning of charity. This means that it is necessary to refer to general law to determine whether any specific taxpayer, or activity, is charitable. In *Comms of IT v Pemsel* [1891] AC 531, p.583, Lord Macnaghten determined that all charitable purposes fall within four classes of charity (known as the “Pemsel Heads”), namely:

- the advancement of religion;
- the relief of poverty;
- the advancement of education; and
- any other matter beneficial to the community.

In addition to falling within one of the “Pemsel Heads”, with the exception of a trust for the relief of poverty, to be charitable in law a trust must be established for *the benefit of the community or a sufficiently important class of the community*, rather than for the benefit of private individuals. This requirement, which is in addition to the objects of the charity falling within one of the four heads listed above, is known as the public benefit test.

The public benefit test has been endorsed and further developed by a large body of case law, including *Verge v Somerville* [1924] All ER 121, *Oppenheim v Tobacco Securities Trust Company Limited* [1951] 1 All ER 31, *Davies v Perpetual Trustee Co. (Ltd.)* [1959] 12 All ER 128 and *New Zealand Society of Accountants v CIR* [1986] 1 NZLR 148.

### Section 24B, Maori Trust Boards Act 1955

Section 24B of the Maori Trust Boards Act 1955 was inserted into that Act by section 3 of the Maori Trust Boards Amendment Act 1962. Section 24B permits the establishment of charitable trusts by Maori Trust Boards, and provides a concessionary tax treatment of the income of such trusts.

There are two possible interpretations of the meaning of section 24B of the Maori Trust Boards Act:

The first interpretation is that a declaration can only be made under section 24B(1) if the purposes of the trust are exclusively *charitable*, i.e. ‘charitable’ being interpreted as the common law meaning of the term. Although section 24B(2) only requires that the income of

the trust must be applied for purposes referred to in section 24 and 24A, it follows from this approach that, as the trust must be also charitable, the income can only be applied for section 24 and 24A purposes that are themselves charitable. Such income would therefore be exempt under the provisions of the Income Tax Act.

The second interpretation is that the income of a section 24B trust can be applied for *any* of the purposes referred to in section 24 or 24A – whether those purposes are charitable under general law or not. However, this approach proceeds upon the basis that any income derived by the trust is *deemed* by section 24B(2), to the extent that it is applied for purposes specified in sections 24 and/or 24A, to be income derived in trust for charitable purposes for the purposes of the Income Tax Act, and therefore exempt from income tax. This is irrespective of whether the purpose is a purpose that would generally be considered charitable in law.

The background papers relating to the introduction of section 24B, including *Hansard*, indicate that the new section was intended to remedy the concern, at the time, that trusts established by Maori Trust Boards were not considered charitable in terms of both the common law and the income tax legislation.

This view of the law was confirmed by the Court in *Arawa Maori Trust Board v Commissioner of Inland Revenue* (1961) 10 MCD 391. In that case Donne S M ruled that a trust established by the Arawa Maori Trust Board was not charitable because:

- Many of the purposes specified in section 24 of the Maori Trust Boards Act 1955 were not charitable purposes under the general law; and
- The trust failed the public benefit test because it was for the benefit of a group of persons determined by their bloodline, or *whakapapa*. The Court determined that such a group of people did not satisfy the public benefit test.

### Analysis

The Commissioner believes the better view of the law to be that contained in the second interpretation, as set out above, and that the first interpretation was not what was intended by Parliament.

As has been noted, at the time that section 24B was enacted it was strongly arguable, taking into account the Court decision in *Arawa*, that a trust that benefits a specific tribe or *iwi*, or the members of such a tribe or *iwi*, cannot be charitable at common law because it will not meet the requirements of the public benefit test. Therefore, it would be arguable that any trust established under section 24B could not be charitable, irrespective of the purposes for which it was established, because Maori Trust Boards are acknowledged by the Maori Trust Boards Act to be for the benefit of *iwi* and *hapu* determined on the basis of *whakapapa*.

This would give rise to a situation where, despite the enactment of section 24B, trusts established by Maori



Trust Boards would possibly continue to be denied charitable status, and the amendment would have no effective operation. Clearly, this cannot have been the intention of Parliament.

Taking this into account, and after considering the available background documents, the Minister's statement (as recorded in *Hansard*) and the Commissioner of Inland Revenue's practice immediately following the enactment of section 24B, the Commissioner believes that the second interpretation is the correct view of the law.

Under this interpretation, section 24B(1) allows a Maori Trust Board to declare that it holds property in trust for charitable purposes, and authorises the Trust Board to settle some of the Trust's assets to a charitable trust.

Section 24B(2) contains two limbs. The first limb states:

Any income derived by the Board from any property to which the declaration relates shall be applied for such purposes referred to in section 24 or section 24A of this Act as may be specified in the declaration of trust; ...

The Commissioner considers that this limb limits the purposes for which the income of a charitable trust can be applied to those purposes that are referred to in sections 24 and 24A. The purposes for which the income is to be applied must be specified in the declaration of trust.

As previously noted, many of the purposes referred to in sections 24 and 24A may not be charitable purposes under common law. In addition, any trust established by a Trust Board is only allowed to apply its income for the benefit of the Trust Board's beneficiaries, which are restricted, by the Maori Trust Boards Act, to the members of specified *iwi*. Such a requirement could mean that a trust would fail the public benefit test applied under the common law.

However, the second limb of section 24B(2) *deems* the income of the trust to be "income derived by trustees in trust for charitable purposes". The second limb states:

and, for the purposes of the Income Tax Act 1994, any such income shall be deemed to be income derived by trustees in trust for charitable purposes.

Therefore, the effect of this section is to deem the income of the trust, even though it is established for purposes that may not be charitable in general law, to be "income derived by trustees in trust for charitable purposes" for the purposes of the Income Tax Act 1994. This means that the requirements of sections CB 4 (1)(c) and (e) of the Income Tax Act 1994, to the extent that those sections only apply to "income derived by trustees in trust for charitable purposes", have been satisfied. It is therefore not necessary for such a trust to satisfy the common law requirements of "charitable purpose" and the "public benefit test".

However, note that section 24B(2) of the Maori Trust Boards Act only modifies the requirements of the Income Tax Act. It does not apply for any other purposes.

Therefore, whatever may be the position of such a trust under common law and irrespective of whether the public benefit test would be failed in other contexts, the Commissioner is satisfied that in this provision Parliament intended for a trust established under section 24B to be treated as being a charitable trust for income tax purposes. The income of such a trust is therefore treated as having been derived for charitable purposes and as such is exempt from income tax under sections CB 4 (1)(c) or (e) of the Income Tax Act 1994.

Nevertheless, before that exemption can be applied, the requirements of section 24B(3) must be satisfied. That section requires a declaration of trust under section 24B(1) to be approved by the Commissioner of Inland Revenue before it will take effect. The Commissioner must still be satisfied that the constituting documents of the trust meet the legal requirements of a charitable trust, other than the public benefit test discussed above.

## Approval of charitable trust

As has been outlined earlier in this commentary, section 24B(2) of the Maori Trusts Board Act 1955 modifies the general law requirements of a trust established under subsection (1) to the extent that the trust is not required to satisfy the meaning of "charitable purpose" in section OB 1 of the Income Tax Act 1994 or the public benefit test. However, before such a trust will be approved by the Commissioner under section 24B(3), the trust must still meet the other criteria of a charitable trust.

For example, the Commissioner must also be satisfied that the declaration of trust provides that:

- the charitable activities are restricted to New Zealand;
- the rules of the trust cannot be changed in order to allow the income of the trust to be applied to purposes that are not specified in sections 24 or 24A of the Maori Trust Boards Act, or to otherwise affect the charitable nature of the trust;
- no person is able to derive a personal pecuniary profit from the trust;
- trustees are unable to materially influence their remuneration;
- professional services provided by trustees to the trust are provided at commercial rates and that conflicts of interest are avoided; and
- upon winding up, any remaining trust assets must be applied for charitable purposes.

This is not an exhaustive list of all matters that the Commissioner will consider when deciding whether or not a trust is charitable, and therefore entitled to the tax exemptions under sections CB 4 (1)(c) and (e). Further information regarding the Commissioner's requirements is contained in the booklet "Charitable Organisations" (IR 255), which can be obtained from any Inland Revenue office.

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When a section 24B trust has previously obtained the approval of the Commissioner, as required by section 24B(3) of the Maori Trust Boards Act, that approval will continue to apply. Approval given by the Commissioner under section 24B(3) cannot be revoked. However, continued tax exemption in respect of the income of the trust is dependent on the trust continuing to apply its income for the purposes specified in the declaration.

## Comments on technical submissions received

When a draft public binding ruling on this subject was first made available for public comment, a number of submissions were received that disagreed with the views expressed in that draft ruling. In particular, those submissions noted that the Commissioner did not appear to have taken into account the use of a deeming provision in section 24B. That view, that the deeming provision effectively creates a charitable trust where one would not exist under general charitable law, has been incorporated into this ruling.

A number of commentators also disagreed with the Court decision in *Arawa* and the general position of trusts for the benefit of *iwi* under the public benefit test. That issue has only been referred to in this commentary in so far as it is relevant to the issue being considered. Following requests for him to do so, the Commissioner intends to consider the position of such trusts generally as a separate matter, and it is likely that an interpretation statement on that issue will be prepared. That statement, when drafted, will be subject to consultation (and submissions will be sought on it) in the usual way.

A submission was also received that argued that the Commissioner was not legally able to issue a binding ruling on the effect of a declaration made under a provision of an Act other than one of the Inland Revenue Acts. The Commissioner is of the view that he is able to issue this Ruling because it relates to the consequences of such a declaration under the income tax law and, in particular, to the application of sections CB 4 (1)(c) and CB 4 (1)(e) of the Income Tax Act 1994.

Te Runanga O Ngai Tahu asked for the ruling to be expanded to deal specifically with its specific circumstances. The Ngai Tahu Trust Board executed a declaration of trust pursuant to section 24B in 1975. That Trust Board was dissolved by the Te Runanga O Ngai Tahu Act 1996, which also established the Runanga. All of the assets and liabilities of the former trust board were vested in the new Runanga. Section 30(1)(c) of the Te Runanga O Ngai Tahu Act provides:

**30. Taxes and duties**-(1) For the purposes of the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994) and any other enactment that imposes or provides for the collection of any tax, levy, or other charge,-

(c) Notwithstanding the dissolution of the Ngaitahu Maori Trust Board by this Act, any income derived by Te

Runanga o Ngai Tahu from any property to which a declaration of trust made by the Ngaitahu Maori Trust Board under section 24B of the Maori Trust Boards Act 1955 and dated the 24th day of March 1975 relates shall, if applied for the purposes specified in the declaration, be deemed, for the purposes of the Income Tax Act 1994, to be income derived by Te Runanga o Ngai Tahu in trust for charitable purposes.

It is the Commissioner's view that, notwithstanding the fact that the Trust Board has been dissolved and no longer exists, section 30(1)(c) provides that any income derived from property that was subject to the original declaration, to the extent that it is applied for the purposes specified in the declaration, shall be treated for tax purposes as being derived in trust for charitable purposes. This means that the income of the trust created under section 24B of the Maori Trust Boards Act will continue to be exempt for tax purposes.

Similar provisions may apply to other section 24B trusts established by Trust Boards that have since been dissolved.

## Application of this Ruling

Section 91DA(1)(d) of the Tax Administration Act 1994 requires the Commissioner to state the period for which a public binding ruling applies. The Commissioner has determined that this public ruling will apply to income derived by approved trusts during income years falling within the period 1 April 1997 to 31 March 2001, inclusive.

## Examples

### Example 1

A Maori Trust Board executes a declaration of trust under section 24B of the Maori Trust Boards Act 1955. The declaration provides that the trust will hold certain assets upon trust for charitable purposes. The declaration specifies that the income of the trust will be applied by making grants to reimburse any dental costs incurred by any of the beneficiaries, being members of the *iwi*.

The declaration is submitted to the Commissioner who is satisfied that the purpose for which the trust's income will be applied is a purpose specified in section 24 of the Maori Trust Boards Act (*section 24(2)(a)(iii) "The promotion of health ... by providing, subsidising, or making grants for medical, nursing, or dental services"*) and that there are adequate provisions in the Trust Deed to prevent the Trust's income and assets from being used for other purposes.

The Commissioner will therefore approve the declaration and the income of the trust will be exempt from income tax under sections CB 4 (1)(c) and CB 4 (1)(e) of the Income Tax Act 1994.

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### **Example 2**

A Maori Trust makes a declaration under section 24B for the same purpose as described in Example 1. The Commissioner is satisfied that the purpose for which the Trust's income is to be applied is a purpose that is specified in either section 24 or section 24A of the Maori Trust Boards Act.

However, it is found that the declaration does not prohibit the trustees from materially influencing the

amount of remuneration that they receive. The declaration also does not provide for the disbursement of assets, upon winding up, to other charitable entities or purposes.

The Commissioner will therefore decline approval until such time as the declaration is amended in such a manner to satisfy the Commissioner's requirements.

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## **Tower SuperPlus Income Fund**

### **Product Ruling – BR Prd 97/65**

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

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

### **Taxation Law**

This Ruling applies in respect of sections HH 3 (5), JB 3, and the definition of "qualifying trust" in section OB 1.

### **The Arrangement to which this Ruling applies**

All defined terms have the meanings set out in the SuperPlus Income Fund Trust Deed and Rules dated 2 November 1992.

The Arrangement relates to a superannuation scheme entitled "Tower SuperPlus Income Fund" ("SuperPlus Fund"). The SuperPlus Fund was established by Tower Trust Services Limited by trust deed dated 2 November 1992. The SuperPlus Fund is a registered superannuation scheme under the Superannuation Schemes Act 1989.

The SuperPlus Fund is established for the purpose of providing retirement benefits for Members of the SuperPlus Fund. The SuperPlus Fund comprises all Assets held by the Trustee of the SuperPlus Fund upon the trusts of the Deed dated 2 November 1992, including income arising therefrom.

Contributions made by Members of the SuperPlus Fund are allocated to the SuperPlus Fund. At the time of investment, each Member is allocated a number of Units. The number of Units allocated represents the interest each Member has in the SuperPlus Fund. The value of the Units (and therefore the Unit Price) rises and falls depending on market conditions and earnings' performance.

Members can receive payments from the SuperPlus Fund by either:

- cancelling all or any of the Units a Member holds in the SuperPlus Fund and receiving a Benefit which reflects the Unit Price at the time less any amount deducted by the Trustee; or
- the Trustee, at its discretion, allocating any part of the Distributable Income to Members at the end of the Distribution Period.

Other aspects relating to the operation of the Superplus Fund are contained in the Deed dated 2 November 1992.

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## Assumptions made by the Commissioner

This Ruling assumes that Unit Withdrawals and allocation of Distributable Income are made in accordance with the Deed of the SuperPlus Fund dated 2 November 1992.

This Ruling also assumes that:

- Unit Withdrawals made by a Member are not made at a frequency greater than four times in any twelve-month period at three-monthly intervals.

This assumption means that a Member cannot rely on this Ruling if the Member makes Unit Withdrawals at a frequency greater than four times in any twelve-month period at three-monthly intervals.

- The allocation of Distributable Income by the Trustee is not made at a frequency greater than four times in any twelve-month period at three-monthly intervals.

This assumption means that a Member cannot rely on this Ruling if the Trustee has allocated Distributable Income at a frequency greater than four times in any twelve-month period at three-monthly intervals.

## How the Taxation Law applies to the Arrangement

In terms of the arrangement and assumptions set out above:

- The SuperPlus Fund is a “qualifying trust” as defined in section OB 1.
- Distributions to Members of the SuperPlus Fund are not gross income by virtue of section HH 3 (5).
- For the purposes of calculating “other income” under section JB 3 (1), distributions to Members of the SuperPlus Fund on account of Unit Withdrawals and Distributable Income are not received in the form of a pension, and are not received in the form of an annuity.

## The period for which this Ruling applies

This Ruling applies from the commencement of the 1997/98 income year to 27 March 1999.

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

Jeff Tyler

Assistant General Manager (Adjudication & Rulings)

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## Notice of withdrawal of Product Ruling

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1. This is a notice of a withdrawal of a product ruling made under section 91FJ of the Tax Administration Act 1994.
2. Product ruling 97/64 is hereby withdrawn, due to a numerical typographical error and so that the operation of the arrangement is able to be clarified in a replacement ruling. It is replaced by Product Ruling 97/67.
3. Product ruling 97/64 originally applied to a share option scheme for the period 5 August 1997 to 1 April 2004, and notice of its making appears in the *New Zealand Gazette* of 14 August 1997.
4. Product ruling 97/64 is withdrawn on and from 14 August 1997.

Martin Smith  
General Manager (Adjudication & Rulings)

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## 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.

## Ostriches and emus – valuation for income tax purposes

This interpretation statement outlines the various valuation options available to taxpayers who farm ostriches and/or emus. It focuses on the cost price valuation option, and suggests a self-assessed cost price valuation method for ostriches and emus on hand at the end of an income year.

The self-assessed cost price valuation method is a guideline only; taxpayers can adopt any other method that leads to an appropriate allocation of cost.

### Introduction

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

Ostriches and emus are livestock and come within the definition of “non-specified livestock” in section OB 1. Under section EL 9 (1), the value of any non-specified livestock to be taken into account at the end of the income year shall be any of the following, at the taxpayer's option:

- its cost price
- its market value
- the price at which it can be replaced
- its standard value, if the Commissioner concurs.

Only non-specified livestock that is “trading stock” must be taken into account at the end of the income year. (See section EE 1 which contains the rules for the valuation of trading stock.)

It is clear that all livestock is “trading stock” for the purposes of section EE 1, and therefore all ostriches and emus, regardless of the purpose for which they were purchased, must be taken into account at the end of the income year and valued using one of the options contained in section EL 9 (1).

“Livestock” is not defined in the Act. It is necessary to consider the ordinary meaning of the word. “Livestock” is often used in contradistinction with “deadstock”. The Court in *Wardhaugh (AF) Ltd v Mace*[1952] 2 All ER 28 at 31, stated that:

“Livestock” generally means live animals. If the live and dead stock on a farm are advertised for sale, everybody knows what that means. The dead stock are the implements, the livestock are the animals on the farm.

In *Land Projects Limited v C of IR*[1964] NZLR 723, Barrowclough CJ said:

I think that [livestock] must mean all animals. Probably, though I need not now decide, it would include all fowls, bees, fish, silkworms and anything else which can be described as livestock and which are assets of the business.

Nothing in the ordinary meaning of “livestock” suggests that animals must be purchased for the purpose of resale in order to constitute livestock. All ostriches and emus are therefore livestock.

“Trading stock” is defined for the purposes of section EE 1 in section OB 1. The definition includes livestock. Therefore, on a strictly literal interpretation all livestock are trading stock.

A number of New Zealand and Australian cases have specifically addressed the issue of livestock as trading stock. In particular, a number of the cases refer to the fact that the definition of trading stock includes things not ordinarily regarded as trading stock, e.g. breeding stock (which is usually considered to be a capital asset).

In *Land Projects Limited*, the issue was whether profits from the sale of livestock resulted from a sale or disposal of trading stock, and were therefore properly taken into account under section 98 of the Land and Income Tax Act 1954.

[Section 98(1) provided that “for the purposes of this section the term “trading stock” includes anything produced or manufactured, and anything acquired or purchased for purposes of manufacture, sale, or exchange; and also includes livestock; but does not include land”.]

The Commissioner argued that under section 98(1) all the livestock sold was included in the expression “trading stock”. Barrowclough CJ held that:

It [the Legislature] declares that the expression “trading stock”, for the purposes of s. 98 and only those purposes, includes livestock. I think that must mean all live animals...With respect, I adopt the language of Dixon and Fullagar JJ. in *Wade's* case and say that our New Zealand Act places all animals in the category of trading stock but only of course for the purposes of s.98.

*Land Projects Limited* was followed in *Case B15* (1975) 2 NZTC 60,112 and *Case J30* (1987) 9 NZTC 1,176.

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A number of Australian cases have considered the meaning of “livestock” in the context of the Australian definition of “trading stock”.

“Trading stock” is defined in section 6(1) of the Income Tax Assessment Act 1936. “Trading stock” includes livestock. Unlike in New Zealand, “livestock” is a defined term. It excludes only beasts of burden and working beasts in businesses other than primary production.

In *Federal Commissioner of Taxation v Wade*(1951) 84 CLR 105, the Court considered whether the definition of “trading stock” referred to all livestock including breeding stock. Dixon and Fullagar JJ stated that:

The definition of ‘trading stock’, as has already been mentioned, brings ‘live stock’ within sec 36(1). There is a definition of live stock which, by inference, makes it clear that *all* animals are to be included in the case of a business of primary production.

In *Riddle v Federal Commissioner of Taxes*(1952) 5 A.I.T.R 225, the issue was whether the racehorse was trading stock. The Court held that the racehorse was a “working beast”, and therefore did not fall within the definition of “livestock”. However, dicta in the case make it clear that the racehorse was excluded from the definition of “trading stock” because it was a working beast (and therefore not “livestock”), not because the racehorse was purchased or acquired for sale.

In Case C20 (1971) 71 A.T.C. 91, the Board of Review considered whether a stud bull was trading stock. The Board recognised that treating a stud bull as trading stock was artificial, but by virtue of the statutory definition the bull was trading stock and was accounted for as such.

It may be argued that the decision of the High Court in *Horizon Homes Limited v CIR*(1994) 16 NZTC 11,064 is support for the proposition that livestock cannot be regarded as trading stock, unless there is a sufficient accompanying purpose of selling the livestock in the ordinary course of trade.

In *Horizon Homes*, the taxpayer was in the business of constructing houses. It erected a number of show homes, which were later available for sale by removal. The taxpayer’s policy was to sell off show homes after two years. The taxpayer treated the unsold show homes as trading stock for the purposes of section 85 of the Income Tax Act 1976 (now section EE 1). The Commissioner considered that the show homes had been incorrectly treated as trading stock.

The Court held that the show homes were not trading stock. The dominant purpose of erecting the show homes was for use as a marketing tool, not for sale. The Court recognised that on a strictly literal interpretation the show homes were items “produced or manufactured”, and therefore were within the definition of trading stock. However, McGechan J at page 11,068 stated that:

There is a severe problem with any such literal approach. It leads to manifest absurdity. A taxpayer may construct machin-

ery (not affixed to land) for his own indefinite use as part of his own operational business structure. The taxpayer will recognise some possibility, or even a high likelihood, at some day in the future such machinery may be sold, but there is no present intention to sell. The machinery certainly would be “produced or manufactured”, but few would argue such sensibly could be regarded as “trading stock”. It is fixed, not circulating, capital...Did Parliament intend such items be treated as trading stock? A commonsense approach is required, guided by the purposes of the section. Section 85(1)(a), despite literal content, and a seeming contrast with adjacent s 85(2)(b), inevitably imports a concept of accompanying purpose that items be within inventory. I am unable to accept the objectors’ submissions based on s 85(1)(a). These showhomes cannot be regarded as “trading stock” simply because they were “produced or manufactured”, and without further inquiry. There must also be sufficient accompanying purpose to sell in the ordinary course of trade.

However, the better view is that all livestock are trading stock. *Horizon Homes* was decided in relation to a different limb of the definition of “trading stock”. The New Zealand and Australian courts have specifically considered whether all livestock are trading stock and have acknowledged that the inclusion of some livestock (e.g. breeding animals) in the definition of trading stock is artificial. However, the courts have interpreted “trading stock” as including all livestock. This interpretation has not been regarded by the courts as leading to a manifest absurdity which would justify departing from the literal interpretation of the definition.

## Options

As it is clear that all livestock are “trading stock” for the purposes of section EE 1, all ostriches and emus, regardless of the purpose for which they were purchased, must be taken into account at the end of the income year and valued using one of the options contained in section EL 9 (1).

## Cost price

Taxpayers can value their ostriches and emus at cost price.

Certain taxpayers are not allowed to value specified livestock at cost price, i.e. bailors, lessors, and non-farming parties to a sharefarming agreement unless it is agreed that cost price is calculated by the owner of the livestock as if no sharefarming agreement existed.

Because the Act does not prohibit such taxpayers from valuing non-specified livestock at cost price, the cost price option is available to all taxpayers.

A suggested method for establishing the cost price of producing ostriches and emus is set out in detail later in this statement.

## Market value and replacement price

The valuation options of market value and replacement price are sufficiently similar in nature to be discussed together.

Market value is a concept which appears throughout the Act. It is regarded as the current selling value in the relevant taxpayer's own selling market.

In *Australasian Jam Co Pty Ltd v F.C. of T.*(1953) 10 A.T.D. 217, Fullagar J said:

But it is not to be supposed that the expression 'market selling value' contemplates a sale on the most disadvantageous terms conceivable. It contemplates, in my opinion, a sale or sales in the ordinary course of the company's business – such sales as are in fact effected. Such expression in such provisions must always be interpreted in a common sense way with due regard to business realities...

For example, a taxpayer who sells birds to other breeders cannot use the slaughter value of the birds as market value. In the course of the taxpayer's business the breeder market, not the slaughter market, is the taxpayer's relevant selling market.

Replacement price is a factual option. The replacement price is the current price at balance date when immediate replacement is possible.

Nothing in the legislation requires taxpayers to have their non-specified livestock valued by a recognised livestock valuer. However, when a taxpayer uses market value or replacement price the taxpayer must be able to substantiate the value used.

### Standard value

The Commissioner has not determined a standard value for ostriches or emus. It is likely that any standard value set would be based on average market value. This would be set close to market value to avoid unduly high or low figures being set.

### Inventory groupings

Birds generally reach physical maturity (and slaughter age) by the end of their second year. Therefore, there will be two main inventory groupings for birds on hand at the end of the income year (similar to those for most specified livestock).

Bird age at balance date	Inventory groupings
Zero to one year	Rising one year
Opening rising one year, plus all birds purchased which at the end of that income year would be over one year of age	Rising two year and older birds (mature birds)

In addition, if the farmer decides to value eggs separately another inventory group will be required for any eggs on hand at the end of the income year. [A full discussion of the valuation of eggs is contained immediately below.]

A strict legal interpretation of the trading stock valuation rules for non-specified livestock (section EL 9) requires

taxpayers who elect one valuation option to use that option to value all classes (age groupings) of birds as well as any other non-specified livestock on hand at balance date. Under this strict interpretation owners cannot use different valuation options to value different types of non-specified livestock or different inventory age groupings of non-specified livestock. (Refer TRA Case J30 (1987) 9 NZTC 1,176).

In *Case J30* it was decided that section 98(4) of the Land and Income Tax Act 1954 (now section EE 1 (3) of the 1994 Act) requires taxpayers to value all *the* livestock of the taxpayer under the same valuation option. It is not possible to use different options for different lines of trading stock. The wording of section EL 9 (1), which governs the valuation of non-specified livestock, is similar to that used in EE 1 (3) and it is considered that the same rules apply, i.e. only one option is available to value all of the non-specified livestock.

However, it has been the Commissioner's long-standing practice to allow different lines of trading stock to be valued under different valuation options – see PIB 164 (August 1987). In view of this practice, and the pending legislative changes proposed in the recently-released discussion document "*Trading Stock Tax Rules*", owners of birds will be able to value the different age groupings under the different valuation options of cost (as explained in these guidelines), market value, or replacement price.

### End of year valuation of eggs

A unique factor of these industries is that there will be artificially incubated eggs on hand at the end of the income year. A problem arises as to how these eggs should be valued.

Eggs on hand at the end of the income year have to be valued using one of the options contained in section EL 9 (1) only if the eggs are non-specified livestock. As discussed in the introduction to this statement, "live-stock" is not defined in the Act. Although it is clear that animals are livestock, there is some debate about what constitutes an "animal". It is not clear whether an ostrich or emu egg is an "animal".

On the basis that eggs are not "livestock", the correct legal position appears to be that only eggs on hand at the end of the income year which are intended for sale will meet the definition of "trading stock", i.e. "anything produced or manufactured" or "anything acquired or purchased for purposes of manufacture, sale, or exchange". Eggs produced or acquired for the purpose of resale are "trading stock" and have to be valued under section EE 1 (3) at cost price, market selling value, or replacement price.

Eggs not intended for resale do not meet the definition of "trading stock" and do not need to be valued at the end of the income year. However, ostrich and emu farmers may value eggs on hand, whether intended for sale or not, if they so wish.

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However, the question of valuing eggs on hand at the end of any income year is largely academic. Most ostrich and emu eggs will be hatched by March or June. There should be very few eggs on hand at the end of the income year for a 30 June or later balance date (30 June being the common balance date for farmers).

## Suggested guidelines for using cost price as a valuation option

This part outlines a suggested method for a self-assessed cost price valuation for ostriches and emus on hand at the end of an income year. It is based on the self-assessed cost method for specified livestock detailed in the Appendix to Inland Revenue's *Tax Information Bulletin*, Volume Four, No. 7, (March 1993). Certain departures from this method occur due to the unique nature of farming birds.

The method is a guideline only – taxpayers can adopt any other method that leads to an appropriate allocation of cost. The suggested method covers both ostriches and emus. If both types of bird are farmed on the same property, the two types should be treated as separate enterprises and the costs allocated between them.

### Step 1: Establish deductible farm costs

List all deductible costs incurred in running the farm. Defining the costs to be included in the costing of birds on hand at the end of an income year is important. Taxpayers can include all deductible costs incurred, but may exclude certain categories of cost relating to the running of the business or enterprises other than the production of ostriches or emus.

### Step 2: Identify direct bird enterprise costs

Identify the direct costs relating to ostriches and emus (the bird enterprise costs), including the purchase cost of birds and eggs which have hatched at balance date.

Calculate the bird enterprise costs (BEC) by *excluding* the following expenses from the total deductible farm costs:

- all direct costs relating to any enterprise other than ostrich and emu production when these costs can be identified or estimated on a fair and reasonable basis
- all costs of harvesting any products in any way, e.g. feathers from ostriches or emus, as these are not associated with producing and growing immature birds
- repairs, maintenance, and depreciation of all farm buildings, except those specifically used by the ostrich or emu enterprises (which would include ostrich and emu related paddock sheds, quarantine facilities, and hatcheries)
- repairs, maintenance, and depreciation on plant and equipment used in producing secondary (dual) livestock products or non-livestock enterprises, e.g. cropping

- all outward freight from the farm, and all inward freight of livestock other than ostriches or emus, or inward freight relating to non-livestock enterprises
- deductible share of car expenses
- accounting and legal fees, consultancy fees, rates, and general farm (non-livestock) insurance
- interest and rent
- all livestock purchase costs including ostriches, emus, and eggs. These are treated separately within the cost of production formulae.
- imputed costs of labour or livestock depreciation (the latter being specifically disallowed as a cost for ostriches and emus)

The livestock owner may apportion the cost of wages, salary, or management fees paid (which are tax deductible) over all enterprises/activities in the farming operation on a fair and reasonable basis. This applies regardless of whether the payment is made to an individual, a partner, a shareholder-employee, or anyone else. These expenses could be apportioned on the following activities:

- activities excluded from BEC, such as accounting and administration
- other farm enterprises, such as forestry and cropping
- specified livestock production
- non-specified livestock production, e.g. ostriches or emus.

Note that a dual product multiplier is not included. Dual product multipliers are used in preparing costs of production for specified livestock. These multipliers remove a portion of the costs allocated to a livestock group to account for the cost of producing secondary or dual products. For example, the dual product multiplier for sheep is 0.8, thus removing 20% of the costs associated with wool production rather than growing livestock. A dual product multiplier for ostriches or emus is not included as the dual product (feathers) is generally harvested at slaughter.

Under steps 1 and 2, the total deductible farm costs have been reduced by the allowable exclusions in order to determine the BEC relating to the ostriches and emus.

The next step in the costing process is to assign those costs specifically relating to a bird type or inventory age grouping.

### Step 3: Assign BEC to inventory groups

Assign the BEC to the rising one year or rising two year inventory groups. Specific cost allocations between age groups are suggested below. Other appropriate allocations that the taxpayer can substantiate are allowed.

(a) Rising one year grouping:

- repairs and maintenance and depreciation on paddock buildings, incubators and hatcheries, and any other buildings or plant and equipment



specifically used in the production of rising one year birds

- specific costs of incubation and early rearing facilities (or contracts to outside organisations for these activities)
- inward freight of eggs and live birds which would be valued (if on hand) at the end of the income year in the rising one year group
- all identifiable costs associated with breeding birds, including vet and bird health, and all feedstuffs (including freight) other than that fed to non-breeding rising two year olds and older
- fencing associated with breeding areas.

(b) Rising two year and older grouping:

- inward freight of live birds classified in this group
- any direct costs including feedstuffs (plus freight), and vet and animal health costs identifiable as being incurred by this group or which are the residual of total costs after allocation to the rising one year bird group
- bird fencing not associated with (a) above.

#### **Step 4: Identify BEC not assigned to inventory groups or other enterprises**

Identify the BEC that have not been assigned to rising one year or rising two year inventory groups, or to any other farm enterprise (“remaining bird enterprise costs”)

Total farm tax deductible costs *minus* exclusions from costs *equal* bird enterprise costs.

Bird enterprise costs *minus* costs specifically assigned *equal* remaining bird enterprise costs.

#### **Step 5: Calculate proportion of farm used in producing ostriches and emus**

To allocate the remaining bird enterprise costs between the bird enterprises and other enterprises on the farm (e.g. sheep and cattle), you need to calculate the total area involved in producing ostriches and emus, and convert this to a proportion of the total farm holding.

#### **Step 6: Apportion remaining BEC based on proportional area calculation**

Only costs shared with other livestock enterprises are apportioned under this step (e.g. non-specific animal health, fertiliser, wages paid, and repairs and maintenance of a general nature).

Allocate the remaining bird enterprise costs between enterprises on an area-related basis or any other fair and reasonable basis which can be substantiated, e.g. invoice documentation, a payment recording system, best estimate.

Here the remaining bird enterprises costs have been allocated on an area-related basis. This approach assumes that the remaining bird enterprise costs are averaged over the total farm area.

$$\text{Allocation to birds} = \text{BEC} \times \frac{a}{d}$$

In this formula:

- BEC = remaining BEC
- a = the area of the bird enterprise
- d = total farm area

This calculation determines the share of remaining bird enterprise costs to be allocated to the bird enterprise.

#### **Step 7: Apportion remaining BEC between inventory groupings**

Apportion the remaining bird enterprise costs allocated to the bird enterprise between the rising one year and rising two year groupings on an area basis or any other fair and reasonable basis which can be substantiated.

Here the remaining bird enterprise costs allocated to the bird enterprise are allocated between the inventory age groupings on an area basis reflecting the grazing demand of the age groupings and breeding stock.

(a) Allocation to the rising one year group:

$$\text{Amount allocated} = \text{BEC} \times \frac{b}{a}$$

In this formula:

- BEC = remaining bird enterprise costs relating to the bird enterprise
- b = the ostrich or emu area used by the breeding stock, their offspring, and purchased birds which would be valued as rising one year of age if they were still on hand at the end of the income year
- a = the area of the bird enterprise

(b) Allocation to the rising two year and older group:

$$\text{Amount allocated} = \text{BEC} \times \frac{c}{a}$$

In this formula:

- BEC = remaining bird enterprise costs relating to the bird enterprise.
- c = the ostrich or emu area used by the birds classified as rising one year stock at the end of the preceding income year, together with all birds purchased and which would be valued as rising two years or older if they were still on hand at the end of the income year.
- a = the area of the bird enterprise.

If ostriches and emus are being run on the same farm, this calculation would be based on four inventory groupings, two inventories for each bird type.

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### Step 8: Calculate average cost per head for each inventory grouping

Calculate the average cost per head by dividing the bird enterprise costs plus costs of bird (and egg) purchases allocated to each inventory grouping (plus the opening inventory value in the case of rising two year and older group) by the total number of birds in each grouping passing through the enterprise in that year. Make a separate calculation for each age grouping.

(a) Rising one year age group:

Calculate average cost by dividing all costs including purchase cost allocated to this group by the number of rising one year stock which passed through the enterprise during the year. For the rising one year group, this number is the closing number of birds on hand in that group plus all sales of birds which would have been valued as rising one year of age if still on hand at the end of the income year.

[Note that purchases are not included in this formula. Adding together closing rising one years on hand plus sales of that age group automatically calculates the total number of live birds passing through the farm. Any purchases will already be included as either birds on hand or birds sold. To include both purchases and sales in the formula would result in counting birds twice.]

This calculation is represented by the following formula:

$$\text{Average cost/head} = \frac{\text{BEC} + f + g + w + y}{h + j}$$

In this formula:

BEC = the share of the remaining bird enterprise costs allocated to the rising one year group

f = specific costs allocated to this group

g = the total purchase costs of birds purchased where the birds would be valued in the rising one year group if still on hand at the end of the income year

w = total closing cost of eggs on hand (if any) at the end of the preceding income year

y = total cost of eggs purchased during the year that have hatched by the end of the income year

h = the closing number of rising one year birds on hand at the end of the income year

j = the total number of birds sold that would be valued in the rising one year group if still on hand at the end of the income year

(b) Rising two year and older group:

This average cost increases the average valuation of rising one year birds on hand at the end of the previous income year by the average costs allocated to the rising two year and older age grouping (including purchase costs) during the income year. For the rising two year and older group, the number of rising one year birds on

hand at the end of the preceding income year plus all purchases of birds which would be valued in the rising two year and older class if still on hand at the end of an income year.

This is achieved through the following formula:

$$\text{Average cost/head} = \frac{\text{BEC} + m + n + o}{p + q}$$

In this formula:

BEC = the share of the remaining bird enterprise costs allocated to the rising one year group

m = total closing value (cost) of the rising one year birds on hand at the end of the preceding income year

n = specific costs allocated to this group

o = the total purchase costs of birds purchased that would be valued in the rising two year and older group if still on hand at the end of the income year

p = the closing number of rising one year birds on hand at the end of the preceding income year

q = the total number of birds purchased that would be valued in the rising two year and older group if still on hand at the end of the income year

Apply the average cost for each inventory group so calculated to the new intake of birds on hand at the end of the income year.

If all birds in either inventory group are purchased during the year, i.e. none homebred or on hand as rising one year birds at opening, simply value these at their average purchase cost and don't make the above calculations. This will usually only occur in the start-up year.

### Step 9: Apply average cost to new intake on hand at year end in each grouping

Apply the average cost per head for the rising one year group to all rising one year birds on hand at the end of the income year. Any change between the opening and closing valuation in the income year is assessable for income tax purposes.

### Step 10: Valuing multi-age bird groups

For the rising two year and older grouping, an inventory system for multi-aged bird groups will be required unless individual recording and tracing is undertaken. This may be accomplished using the FIFO or Average Cost Inventory System currently used for specified livestock.

For the rising two year and older group, the allocation of average cost is a little more difficult. This is because this group will contain birds of various ages, possibly over a range from 2 to 30 years. Each will have an associated historical cost relating to the year in which it reached maturity. If individual bird recording is practised, then no complexities will arise. New birds will enter with

current year average cost, and any deaths or sales of older birds will have a deduction from the total book value of birds on hand at their historical cost. Any net change between the opening and closing values for the income year will be assessable for income tax purposes.

If individual bird recording is not practised for the mature group, an inventory system of some description will be needed. The FIFO system is the most likely to be used as it will allow a faster phasing out (larger deduction) for the very high cost birds originally purchased as these are progressively replaced by lower costing stock (either at purchase or homebred as the industry expands).

The Average Cost Inventory System is an alternative system, and is the method most commonly used for specified livestock enterprises. This method allows sales and deaths to reduce book values at last year's average cost, and the new intake of birds (e.g. replacements) to be brought in at this year's calculated cost per head. A new average over all the closing birds on hand is then calculated for the year. Details of this system, together with examples are contained in the Appendix to Inland Revenue's *Tax Information Bulletin*, Volume Four, No 7, (March 1993) for specified livestock. Under either of these inventory systems, any difference in the total opening and closing values for the income year is assessable for income tax purposes.

## Example of ostrich costing

### Calculation of average cost

This example sets out a suggested calculation of the costs of production for an ostrich enterprise. The analysis is for example purposes only and does not reflect the financial viability of the current or future ostrich industry, or the actual valuation at cost of birds in any real enterprise.

Table 1 provides the necessary physical information about the farm. It considers a small farm of 60 hectares, of which only 9 hectares are used for ostrich farming. The ostrich enterprise is increasing in numbers over the year as well as selling both young and older stock. Eggs are also purchased and sold.

Table 2 calculates the bird enterprise costs (other than bird and egg purchases) for each inventory grouping. The costs incurred in running the farm are identified. The bird enterprise costs are identified and assigned to the bird inventory groups and other farm enterprises. The remaining bird enterprise costs are shared on either an area related basis or a fair and reasonable estimate.

In this example the allocation between the bird enterprise and the rest of the farm is mainly made on an area basis (of 15% or 0.15 allocated to the birds), but a fair and reasonable basis has been used in the case of the 'Animal Health General' category. (However, we note that taxpayers may be able to identify actual costs.)

Table 3 summarises the calculation of average costs per head. The average cost per head for the rising one year group is \$1,624. The average cost per head for the rising two year and older group is \$19,317. In the case of the rising two and older group, the large difference in value (from the rising one year olds) occurs because of the much higher opening value of rising one year olds (\$12,000 per head), and the purchase of rising two year and older birds at an average cost of \$40,000 per head.

### Farming policy

This enterprise is part of a larger farm. It breeds its own replacements, sells some chicks at 4 months, and rears others for sale at 18 months. It keeps the rest to increase breeding numbers. This operation is in its second year after initial purchase of the birds.

**Table 1 – Ostrich and emu cost of production model for income tax purposes**

<b>Physical farm information</b>			
Total area of farm:			60 hectares
Area running breeding ostriches and rising one year chicks:			6 hectares (10% of farm)
Area running rising two year and older non-breeding birds:			3 hectares (5% of farm)
<b>Opening ostrich numbers and costs</b>			
<b>Ostriches at start of year</b>	<b>No.</b>	<b>Average value per head</b>	<b>Total opening value</b>
Breeding ostriches (8 Hens @ \$60,000) (8 Cocks @ \$50,000)	16	\$55,000	\$880,000
Rising one year ostriches (average cost from last yr \$12,000)	30	\$12,000	\$360,000
Total number and value (cost) of live birds	46		\$1,240,000
Purchased eggs in incubation	5	\$3,000	\$15,000
<b>Ostrich purchases, sales and natural increase</b>			
<b>Transaction</b>	<b>No.</b>	<b>Cost per head</b>	<b>Total cost</b>
Natural increase (incl. purchased eggs which hatched during year)	100	N/A	
<i>Purchases:</i>			
Eggs	10	\$3,000	\$30,000
Rising one year birds	10	\$10,000	\$100,000
Rising two year and older birds	10	\$40,000	\$400,000
<i>Sales:</i>			
Rising one year birds hatched in this income year	70	N/A	
Opening 1-2 year and mature birds	34	N/A (incl 4 hens)	
Eggs bred on farm	20	N/A	
<i>Closing numbers at end of year:</i>			
Rising 2 yr ostriches (both sexes)	22	N/A	
Rising 1 year ostriches	40	N/A	
Total closing birds on hand	62		
Purchased eggs in incubation	5	N/A	
<i>Other livestock farmed (start of year opening stock):</i>			
Sheep	400		
Beef cattle	25		

*example continued on page 18*

Table 2 – Farm Expenditure Account 1996: bird enterprise cost (BEC) calculation for ostriches

Expenditure item	Farm cost	BEC Y/N?	Specific cost allocations		Allocated to other activities	Remaining BEC	Area based other enterprise multiplier		Age group multipliers		Total BEC to R.1 year ostrich	Total BEC to R.2 year ostrich
			R.1 year	R.2 year			R.1 year	R.2 year	R.1 year	R.2 year		
<i>Feed:</i>												
Breeding chicks	\$2,750	Y	\$2,750			0	1	0.667	0.333		\$2,750	0
Chicks	\$1,400	Y	\$1,400			0	1	0.667	0.333		\$1,400	0
1-2 year birds	\$1,800	Y		\$1,800		0	1	0.667	0.333		0	\$1,800
Other farm feed general	\$500	Y			\$500	0	0.15	0.667	0.333		0	0
Vet. for birds	\$3,000	Y	\$2,800	\$200		0	1	0.667	0.333		\$2,800	\$200
Animal health general	\$5,000	Y			\$1,000	\$4,000	0.75	0.667	0.333		\$2,000	\$1,000
Electricity incubation	\$4,000	Y	\$4,000			0	1	0.667	0.333		\$4,000	0
Electricity general	\$1,200	Y				\$1,200	0.15	0.667	0.333		\$120	\$60
Freight out	\$1,500	N				0	1	0.667	0.333		0	0
Freight in	\$230	Y	\$150			\$80	0.15	0.667	0.333		\$158	\$4
Fertiliser and seeds	\$2,600	Y				\$2,600	0.15	0.667	0.333		\$260	\$130
Vehicle expenses	\$1,400	Y				\$1,400	0.15	0.667	0.333		\$140	\$70
<i>Repairs &amp; maintenance:</i>												
Water supply	\$350	Y				350	0.15	0.667	0.333		\$35	\$18
Bird buildings	\$1,100	Y	\$1,000	\$100		0	1	0.667	0.333		\$1,000	\$100
BEC related general R&M	\$1,400	Y				\$1,400	0.15	0.667	0.333		\$140	\$70
Weed and pest control	\$650	Y				\$650	0.15	0.667	0.333		\$65	\$33
Depreciation - new fences	\$2,600	Y				\$2,600	1	0.667	0.333		\$1,733	\$867
Depreciation: bird facilities	\$860	Y	\$700	\$160		0	1	0.667	0.333		\$700	\$160
Other BEC related deprec.	\$450	Y				\$450	0.15	0.667	0.333		\$45	\$23
Wages paid	\$24,500	Y				\$24,500	1	0.667	0.333		\$16,333	\$8,167
Interest and rent	\$39,500	N				0	1	0.667	0.333		0	0
Acct/admin/mail/rates	\$3,750	N				0	1	0.667	0.333		0	0
Shearing	\$1,250	N				0	1	0.667	0.333		0	0
Sheep and cattle purchases	\$4,000	N				0	1	0.667	0.333		0	0
<b>Total costs</b>	<b>\$105,790</b>		<b>\$12,800</b>	<b>\$2,260</b>	<b>\$1,500</b>	<b>\$39,230</b>					<b>\$33,680</b>	<b>\$12,700</b>

**Table 3 – calculation of average cost per head for a year's intake of ostriches****Rising one year average cost per head**

$$\text{Average cost/head} = \frac{\text{BEC plus specific costs allocated plus rising one year purchase cost plus egg purchase cost during year plus opening value of eggs on hand}}{\text{Closing number of rising one year birds on hand plus birds sold that would be in the rising one year group if on hand at the end of this income year}}$$

Thus: average cost of rising one year birds

$$= \$33,680 \text{ [made up of } (\$12,800 + \$20,880 + \$100,000 + \$30,000 + \$15,000) \text{ divided by } (40 + 70)]$$

$$= \$1,624 \text{ per head}$$

**Rising two year and older average cost per head**

$$\text{Average cost/head} = \frac{\text{BEC plus specific costs allocated plus rising two year and older purchase cost plus opening value of rising one year birds on hand}}{\text{Opening number of rising one year birds on hand plus birds purchased that would be in the rising two year group if on hand at the end of this income year}}$$

Thus: average cost of rising two year and older birds

$$= \$12,700 \text{ [made up of } (\$2,260 + \$10,440 + \$400,000 + \$360,000) \text{ divided by } (30 + 10)]$$

$$= \$19,317 \text{ per head}$$

**End of year inventory valuation (all relevant data in table 1)**

The end of year valuation of birds on hand will use the average costs calculated for each year. In the case of rising one year birds, the inventory value would change to:

Opening value (cost): 30 rising 1 year birds @ \$12,000/head	\$360,000	
Closing value (cost): 40 rising 1 year birds @ \$1,624/head	\$64,960	
Change in assessable value of birds on hand	(\$295,040)	(deduction)

This results in a reduction (tax deductible) of the value of rising one year birds on hand at the end of the income year of approximately \$295,000, despite an increase in numbers of 33%. This arises as a result of much lower homebreeding costs compared to initial purchase costs in the previous year.

The rising two year and older valuation also changes significantly. On the basis that four of the breeding ostriches are sold, and an increase in total numbers over the year from 16 to 22 occurs, the following inventory adjustments could occur:

**(a) Individual tracing**

On the basis that the four birds sold were all hens, their sale would reduce the book value by \$240,000, and their replacement and increase (numbering ten) which were purchased at \$40,000 per head would increase the value of birds on hand by \$400,000. In summary form:

Total opening value (cost)	\$880,000
Less four sold/dead @ \$60,000	- \$240,000
	\$640,000
Plus intake of 10 this year @ \$40,000	+ \$400,000
Total closing value (cost)	\$1,040,000
Assessable change in value	+ \$160,000

**(b) FIFO inventory**

Using an FIFO inventory system, the outgoing birds would be valued at their average opening value of \$55,000. The intake for the year (ten in number) would come in at their average cost for the year of \$19,317. In summary:

Total opening value (cost)	\$880,000
Less four sold at FIFO value (cost) \$55,000	- \$220,000
	\$660,000
Plus intake of 10 this year @ \$19,317	\$193,170
Total closing value (cost)	\$853,170
Assessable change in value	(\$26,830) (deduction)

Under the FIFO system, the sale of mature birds in subsequent years would continue to reduce book values by the average \$55,000 per head until all original 16 birds are disposed of. The next sales would be accounted for at \$19,317 until they are also disposed of, after which the next oldest cost would apply.

*continued on page 20*

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(c) Average inventory system

Using an average inventory system, the four sold would go out of the books at last year's average value (cost) of \$55,000. The incoming ten would enter at their average value for the year (\$19,317), and there would be a new average for the 22 birds of rising two years and older (\$38,780 per head). In the following income year, mature birds disposed of would exit the accounts at the average value of \$38,780, and a new average per head would be calculated for the end of the year. The average inventory system is summarised below:

Total opening value (cost)	\$880,000	
Less four sold at average value (cost) \$55,000	- \$220,000	
	\$660,000	
Plus intake of 10 this year @ \$19,317	\$193,170	
Total closing value (cost)	\$853,170	
Assessable change in value	(\$26,830)	(deduction)
New average value per head	\$38,780	

Note that this change in book value is the same as under the FIFO system. However, in subsequent income years it will not be, as the FIFO system will reduce book value at the rate of \$55,000 per bird sold (until all of the original 16 are disposed of), and the average inventory system will reduce next year's breeding bird sales by the average opening cost of \$38,780 (and probably lower average values in subsequent income years).

## Other issues

### Choice of inventory system

As seen, the choice of inventory system may have significant income tax implications. Taxpayers can change between inventory systems without notice, but if they are going to adopt the 'cost of production' valuation option, it is essential that they take advice at the outset of developing an ostrich or emu enterprise.

### Movement between options

The rules for movement between options are those that apply to other industries, i.e. free movement between cost price to market value or replacement price.

### Fencing costs

The cost of ostrich farm fencing is high. Birds are run in pairs or trios in separate paddocks of about 0.25 hectares. Fences are similar to deer fences, and represent a high cost at the time of farm set-up or enterprise expansion.

There has been some debate over whether fencing costs should be included in the calculation of a cost price for ostriches and emus. If so, there is the question of whether the total costs should be factored into the cost calculation in the year incurred or be spread over a number of years.

Fences are an essential factor in the management of birds because breeding pairs and offspring need separation, so fencing costs are part of the "plant" of an ostrich farm. Depreciation of plant associated with the production or manufacture of trading stock should be factored into the cost of production of trading stock – see *Phillip Morris Ltd v FC of T* [1979] ATC 4,352. Also, The New Zealand Society of Accountants' (now ICANZ) Members Handbook (Financial Reporting Standards) FRS-4 and Inland Revenue's *Public Information Bulletin* No. 82 (December 1974) both require fixed production overheads such as depreciation on factory plant and equipment to be absorbed into the cost of trading stock.

The cost of fencing must be included in the cost calculation for ostriches and emus.

It has also been suggested that because section DO 3 allows taxpayers carrying on a farming or agricultural business to claim the full cost of fencing in the year incurred, the full costs should be factored into the cost of livestock produced in the same year. The section DO 3 deduction is a concession available only to farmers and is similar to the "incentive" provisions for development expenditure available some years ago. In *Greive v C of IR* [1984] 6 NZTC 61,682, Richardson J adopted the view that, in determining the meaning of "pecuniary profit" any incentive deductions or allowances should be ignored. At 61,682 he said:

Such a profit cannot sensibly be equated with the profit for tax purposes which depends on the shifting sands of almost endless amendments to the incentive provisions in the legislation.

By inference, the same approach is applicable in determining the cost price of livestock for income tax purposes. Incentive deductions should be ignored.

Therefore, the cost of fencing should be spread over the expected life of the fencing in similar fashion to other items of depreciable plant or equipment used in the production of trading stock. If it were not for section DO 3, farmers would be required to write-off the cost of fencing at the rate of 10% annually as provided for in section DO 4. This seems to be the most appropriate rate of spreading fencing costs as it aligns with the income tax deductions that are available to farmers other than the current year deduction in terms of section DO 3.

Fencing costs must be factored into the costs of producing ostriches and emus at the rate that would be available as deductions under section DO 4.

### High priced scheme

The valuation of specified livestock includes a high priced scheme incorporating a straight-line depreciation

rate over the expected breeding life of the animal. "High-priced livestock" is defined in section OB 1. As non-specified livestock is not high-priced livestock, ostriches and emus cannot be depreciated.

## Submissions received

The subject matter of this interpretation statement was previously the subject matter of an issues paper (IP3151/IRRU IP 1) on the valuation of ostriches and emus for income tax purposes.

We received a number of submissions from taxpayers on the issues paper and, as a result, an amended paper (IS 9702) was prepared and issued for comment in March/April/May 1997. Additional submissions were received, resulting in further consideration.

In particular, the ability to value different classes (age groupings) under different valuation options was of concern to some commentators in the light of TRA *Case J30*. The Commissioner's policy of allowing the valuation of trading stock on a line by line basis has been maintained despite the decision in *Case J30*. Therefore, we will continue to permit a line by line (or class by class) valuation of non-specified livestock, bearing in mind that the recently issued discussion paper "*Trading Stock Tax Rules*" proposes legislative change to allow a line by line valuation.

A further issue was the inclusion of fencing costs in the cost price of producing ostriches and emus. The matter has been considered further and the guidelines amended to provide that the cost of fencing should be spread over a number of years.

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## ACC Accredited Employer Programme

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This item confirms that payments made by accredited employers to meet the costs of employee work injury claims are not subject to fringe benefit tax.

### Introduction

Section 105 of the Accident Rehabilitation and Compensation Insurance Act 1992 (ARCI Act) allows employers to act as agents for the Accident Rehabilitation and Compensation Insurance Corporation (ACC) for the purposes of managing claims and meeting the costs of claims for work injury. Administratively the process is referred to as the Accredited Employer Programme. A key component of the programme is the discounting of the employer's employer premium liability.

In recent times, some commentators have observed that a liability for fringe benefit tax (FBT) may arise on the payments made by the accredited employer. This view is based on the fact that ACC does not directly reimburse the employer as its agent, as would normally be expected. The question then is whether the accredited employer is acting as agent for the Corporation or whether the employer is a principal and thus liable for such payments.

### Legislation

Section ND 1 of the Income Tax Act 1994 (the Act) imposes an FBT liability on an employer "who has provided or granted a fringe benefit to an employee".

Section CI 1 defines fringe benefit to mean-

.....

(h) Any benefit of any other kind whatever, received or enjoyed by the employee....

being a benefit that is....enjoyed, or received, whether directly or indirectly, in relation to, in the course of, or by virtue of the employment of the employee....and which is provided or granted by the employer of the employee....

### Discussion

FBT applies to benefits provided or granted by an employer. The issue is whether the employer or ACC

provides or grants a benefit. This depends in turn on whether in meeting the costs of an employee's work injury, the accredited employer is acting as agent for ACC or as a principal.

Ultimately, the issue turns on the arrangement between an accredited employer and the ACC. Inland Revenue's view is that even though the arrangement between ACC and an accredited employer does not provide for the reimbursement of the agent's expenses, the arrangement is still one of agency. A principal and agent may agree to exclude or limit any right of indemnity that would otherwise be implied in the absence of any such exclusion or limitation. If the parties expressly agree that there is to be no reimbursement of expenses, that does not make their relationship any less one of agency.

As expressed in Halsbury 4th ed., vol1, para 807-

"The relationship of principal and agent raises by implication a contract on the part of the principal to reimburse the agent in respect of all expenses, and to indemnify him against all liabilities, incurred in the reasonable performance of the agency, provided that such implication is not excluded by the express terms of the contract between them, and provided that such expenses and liabilities are in fact occasioned by his employment."

In the standard accreditation agreement, the express terms of the contract make it clear no reimbursement is required. Nonetheless the arrangement is still one of agency.

### Conclusion

Reference to the standard accreditation agreement makes it clear that the employer is exercising functions on behalf of ACC. Even though there is no provision for direct reimbursement of employer's costs, the agreement still constitutes an agency agreement as explained above. The programme provides for the employer's premium to be discounted which clearly acknowledges the cost of payments the accredited employer may have to make in the event of an accident. If there is a benefit, it is provided by ACC, not by the employer.

Inland Revenue therefore concludes that there is no fringe benefit and FBT does not apply.

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## 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.

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## Estate and Gift Duties Act 1968

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### Dispositions where the transferor reserves a benefit or advantage in real property – gift duty implications

**Section 70(2) – reservation of a benefit or advantage:** The Commissioner issued public ruling BR Pub 96/1 on 23 January 1996 (see page 1, TIB Volume Seven, No. 8 – February 1996). The ruling relates to a situation where a taxpayer disposes of real property to another person or persons (often trustees of a family trust) and keeps or reserves a benefit or advantage in that property.

The ruling concerns the potential application of section 70(2), which operates to prevent a reduction in the value of a dutiable gift when there is a disposition of property with a reservation of an interest in that property by the transferor. Very broadly speaking, the ruling states that if a taxpayer can legally grant an interest in the property to himself or herself, and then dispose of the remaining interests in the property to another person, there is no reservation of interest. On the other hand, if a taxpayer disposes of the property to another person and the other person then grants an interest back to the taxpayer, there is a reservation of interest. Once there is a reservation of interest, the provisions of section 70(2) may apply in the manner set out in the ruling.

A taxpayer has asked whether public ruling BR Pub 96/1 applies to dispositions of all types of real property for the period of the ruling, or whether it is limited to dispositions of dwelling houses.

The taxpayer notes that the part of the ruling entitled “Arrangements to which this ruling applies” states that it applies “when a taxpayer disposes of real property and keeps or reserves a benefit or advantage in that property”. However, she advises that certain seminar presenters have commented that the ruling only applies to dispositions of dwelling houses. In light of this uncertainty, she has written asking for clarification of the point.

The ruling applies to dispositions of all types of real property for the period of the ruling and is not limited to dispositions of dwelling houses. Although the type of arrangement to which the ruling applies usually involves a disposition of a dwelling house, the ruling is not limited to these situations. Accordingly, we have advised the taxpayer that the ruling will apply to dispositions of real property other than dwelling houses, including, without limitation, dispositions of commercial buildings and farms.

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### Gift duty exemption further clarified

**Section 75A(5) – relief from gift duty:** In TIB Volume Nine, No. 6 (June 1997), we published an item on the gift duty exemption for certain court orders granted under the Matrimonial Property Act 1976.



That item stated that a disposition of property made directly to a spouse, former spouse, or for the benefit of minor or dependent children of the marriage would qualify for the section 75A(5) gift duty exemption. In addition, a disposition to a fixed trust for (only) minor or dependent children would come within the section as being “solely for the benefit of those children”, and a disposition to a trust for (only) a spouse, former spouse, and/or minor or dependant would also qualify due to the words “to the extent that” in the section. The item also stated that the Commissioner did 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 taxpayer has asked for clarification as to whether or not the exemption applies when a court order provides for a disposition to a trust and the only beneficiaries are the three infant children of the marriage. The trustees in this case are given a discretion as between those three infant children, but cannot add further beneficiaries at any stage.

As there is a closed class of beneficiary, limited to only minor or dependent children of the marriage, we consider that the disposition is solely for their benefit, and the exemption applies.

Such dispositions to trusts will only gain the exemption from gift duty when:

- the closed class of beneficiaries is limited to the spouse, former spouse, and/or minor or dependent children of the marriage; and
  - there are no other possible beneficiaries named or described (including default beneficiaries); and
  - no ability exists for the trustee to subsequently add further beneficiaries.
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## 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.

### Double deduction not available under sections 85 and 104

**Case:** BASF New Zealand Limited v CIR

**Decision Date:** 23 July 1997

**Act:** Income Tax Act 1976 – sections 85 and 104

**Keywords:** *Double deduction*

**Summary:** The Court held that it is implicit in section 85 that opening stock of a business which is taken into account for the purposes of that section is not also subject to a deduction under section 104 in that income year.

**Facts:** BASF New Zealand Limited (“BASF”), an importer and wholesale merchant, made an adjustment under the proviso to section 85(3) of all the trading stock acquired during its first year and treated these purchases as a double deduction in terms of sections 85(3) and 104 of the Act. Inland Revenue amended the assessment and the company subsequently objected to it.

The objection was disallowed on the grounds that the purchases had been taken into account under section 104 and could not be deducted again under section 85.

Inland Revenue later advised that the value of the purchases had been allowed in terms of section 85 and that no deduction was available under section 104.

BASF requested a case stated to the High Court. A second amended assessment was sent stating that if the expenditure was deductible under section 104 no further deduction was available under section 85 and vice versa.

**Result:** The Court held that it is implicit in section 85 that the opening stock of a business which is taken into account for the purposes of that section is not also subject to a deduction under section 104 in that income year.

In respect of the purchase of opening stock, section 85 provides for a deduction whether the stock was purchased in the year in which the business commenced or in an earlier year.

It is not however deductible under section 104 as the expenditure on that stock was incurred in the previous year and not in that income year. It is an amount brought forward from the previous year that has to be taken into account, and is taken into account under section 85 in order to reflect the result of the year's trading. However, a deduction is allowable in the case of a continuing business.

The Court held that there were no policy considerations for treating the same trading stock as attracting two deductions in the same year.

As a result, the Court held that the second amended assessment achieved nothing and that it was unnecessary to consider the status of it.

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## Lease inducement payment – assessability

**Case:** Bruce James Wattie & Michael Gordon Lawrence v CIR

**Decision Date:** 31 July 1997

**Act:** Income Tax Act 1976 (“the Act”) sections 65(1) & 65(2)(a)

**Keywords:** *Lease inducement*

**Summary:** The majority of the Court of Appeal held that a \$5 million lease inducement payment to the Objectors was not assessable income under section 65(2)(a), and was not a form of rent subsidy.

**Facts:** The Objector, a partner in Coopers and Lybrand, negotiated a “deed collateral” lease with the lessor, Pacific Tower Ltd whereby a cash inducement sum of \$5 million was paid to the Objector as part of the leasing deal. In addition, the lessor made a contribution of \$4.7 million to fitout the premises and provided a rental subsidy which reduced the rent to \$20.90 per square foot over a period of six years.

**Decision:** The Court of Appeal (“the Court”) held that the \$5 million cash inducement was not assessable income under section 65(1) & (2)(a) of the Act and was not a form of rent subsidy.

The Court held that the characterisation of a payment for tax purposes is to be made by examining the bargain made and recorded by the parties in its factual setting. Here, the documentation does not expressly categorise the payment of the \$5 million. It does however describe the lessor’s monthly payments as a rent subsidy, thereby suggesting that the cash inducement is not. Instead, the \$5 million is rather baldly called a cash inducement.

The Court held that the Objector was right to categorise the cash inducement as a negative premium. It is a mirror image of the *McKenzies* decision where the payment by the lessee to obtain surrender of its lease was a capital item. The Court also expressed concern about the *Myers* decision. There, the Australian High Court was referring to a profit from an adventure in the nature of trade. The present case does not fit comfortably within that concept and should not be applied to the facts of this case.

Also, the Australian decision of *Cooling* which held that a lease inducement is assessable income, should not be followed in New Zealand.

Justice Thomas (dissent) held that the payment was revenue in nature therefore assessable income. On a closer analysis of the contractual arrangement, Justice Thomas held that commercial reality requires recognition of the fact that the payment induced the Objector to enter a lease containing an obligation to pay rent significantly higher than the market rent. The inducement payment is inextricably linked with the rent, the payment of which is a revenue obligation.

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## Loan guarantee payments – deductibility

**Case:** Louis Patrick McElwee v CIR

**Decision Date:** 15 July 1997

**Act:** Income Tax Act – sections 64B(1)(b), 64F(8)

**Keywords:** Guarantor

**Summary:** The Court held that the Commissioner correctly disallowed the deduction claimed in respect of the payments made by the Objector under the guarantee.

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**Facts:** The Objector was involved in a coal mining business (which operated as a partnership) and carried on its business “per medium” of a company called Tiller Mines Limited. (“Tiller Mines”)

The company borrowed substantial sums of money from the ANZ Bank, which required various directors, including the Objector to provide personal guarantees.

In 1987, the shares in Tiller Mines were sold to Starline Minerals Limited, but after a year the sale was cancelled and the shares reverted to the partnership.

Tiller Mines could not meet its financial obligations and the bank turned to its rights under its guarantees.

**Decision:** The Court held that the link between the Objector’s income and the payment was too remote to meet the “Sufficient Nexus test”. Also, if the Guarantor is not in the business of giving guarantees, these payments are regarded as capital in nature, and are therefore not assessable. Here, the objector was not in the business of giving guarantees, as the partnership which owned Tiller Mines earned income which was several steps removed from the income earning process to which this payment related.

The Court also held that on a purposive application of section 64(1)(b), a guarantee given without valuable consideration does not fall within the general purview of the accruals regime.

In terms of whether the Objector had the influence under section 64F(8) to effect the loss which was sustained, the Court found that the Objector had resigned his offices in the company and transferred his interests as a result of the sale of Tiller Mines to Starline before the default which caused his loss occurred. Consequently, during the critical times, the Objector lacked the required influence and could not have altered the course of events.

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## Land subdivider – whether in business

**Case:** TRA 92/15

**Decision Date:** 16 July 1997

**Act:** Income Tax Act 1976 (“The Act”) sections 67(4)(ba) and (c)

**Keyword:** Subdivision

**Summary:** The Authority held that the Objector was not in the business of developing land or subdivision and that the Commissioner could not rely on section 67(4)(c) of the Act.

**Facts:** The Objector was a member of a partnership which purchased two residential properties. In mid 1978 these were commenced as a four flat cross-lease building project. By October 1978, the subdivision and building development work was underway.

The Objector was also a member of a syndicate which purchased 4.5 acres of land on 2 titles. One title comprised of rural land and one of residential land. The syndicate intended to rezone the rural land as residential and subdivide it into residential sections. The residential land was eventually subdivided into 4 lots, and was eventually sold, as was the rural land.

**Decision:** The Authority held that the Objector was not in the business of developing land or subdivision. Judge Barber found with regard to the partnership that it had no

profit purpose from carrying on a business of developing or subdividing land. Similarly, he found with regard to the syndicate's activities that it had no profit purpose from subdivision and that subdividing land into lots had been well completed with regard to the residential land and had failed with regard to the rural.

The Authority found on the evidence that the Commissioner could not rely on section 67(4)(c) therefore he could not change the substance of his case against the Objector.

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## 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 <sup>3</sup> )	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
Ink mixing systems, computerised	3	50	40	DEP27	9.8:2
“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

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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.

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**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.*

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## Due dates reminder

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### 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.

### October 1997

- 5 Large employers: PAYE deductions and deduction schedules for period ended 30 September 1997 due. *(We will accept payments received on Monday 6 October as in time for 5 October.)*
- 7 Provisional tax and/or Student Loan interim repayments: first 1998 instalment due for taxpayers with June balance dates.
- Second 1998 instalment due for taxpayers with February balance dates.
- Third 1998 instalment due for taxpayers with October balance dates.
- 1997 end of year payments due (income tax, Student Loans, ACC premiums) for taxpayers with November balance dates.
- 1997 income tax returns due to be filed for all non-IR 5 taxpayers with June balance dates.
- QCET payment due for companies with November balance dates, if election is to be effective from the 1998 year.
- 20 Large employers: PAYE deductions and deduction schedules for period ended 15 October 1997 due.
- Small employers: PAYE deductions and deduction schedules for period ended 30 September 1997 due.
- FBT return and payment for quarter ended 30 September 1997 due.
- Gaming machine duty return and payment for month ended 30 September 1997 due.
- RWT on interest deducted during September 1997 due for monthly payers.
- RWT on interest deducted 1 April 1997 to 30 September 1997 due for six-monthly payers.
- RWT on dividends deducted during September 1997 due.
- Non-resident withholding tax (or approved issuer levy) deducted during September 1997 due.
- 31 GST return and payment for period ended 30 September 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 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

<input checked="" type="checkbox"/> <b>Public binding rulings</b>	<b>Comment Deadline</b>
<input type="checkbox"/> <b>0005:</b> Importers and GST input tax deductions	30 Sept 1997
<input type="checkbox"/> <b>0007:</b> Commercial rental property owners' liability to register for GST	30 Sept 1997

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



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