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Contents

This TIB has no appendix

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Inland Revenue
Te Tari Taake

Contents continued - questions and legal case notes

Questions we've been asked (pages 20-21)

Legal decisions - case notes (pages 22-24)

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Legislation and determinations

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

Superannuitant surcharge abolished

Sections DB 1, MB 2B, NC 14, OB 6, OZ 1, subparts JB and NI, Income Tax Act 1994
Section 33A, Tax Administration Act 1994

The New Zealand superannuitant surcharge has been abolished from 1 April 1998.

Background

The New Zealand superannuitant surcharge, introduced in 1985, is a form of targeting which imposes a surcharge of 25 cents in the dollar on a superannuitant's "other income" above a certain threshold. From 1 April 1998, the surcharge is abolished.

Key features

Those sections and definitions of the Income Tax Act 1994 and the Tax Administration Act 1994 which provide for the imposition and collection of the surcharge have been repealed.

Provisional taxpayers may calculate their provisional tax based on their residual income tax, the amount remaining after making certain deductions from the total amount of income tax and New Zealand superannuitant surcharge payable.

A transitional provision, section MB 2B, has been enacted which ensures that superannuitants who are provisional taxpayers and paying on a prior year basis do not effectively pay surcharge as part of their 1998/99 and 1999/2000 provisional tax payments. The taxpayer's residual income tax used to calculate provisional tax for the 1998/99 and/or 1999/2000 income years is reduced by its superannuitant surcharge component.

No legislative amendment has been made for provisional taxpayers who estimate their provisional tax liability, as they are able to take the surcharge abolition into account in their estimations.

Application date

The amendments take effect from 1 April 1998 for the 1998/99 and subsequent income years.

Computer numerically controlled (CNC) wood turning machines – Depreciation Determination DEP28

In TIB Volume Nine, No. 7 (July 1997) at page 2, we published a draft general depreciation determination for computer numerically controlled (CNC) wood turning machines used for specialised wood turning operations in the timber and joinery industries. These machines are variously referred to as tooling machines or machine centres.

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 DEP28: Tax Depreciation Rates Determination General Determination No.28". The determination is based on as estimated useful life (EUL) as set out in the determination and a residual value of 13.5%.

General Depreciation Determination DEP28

This determination may be cited as "Determination DEP28: Tax Depreciation Rates General Determination Number 28".

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:

continued on page 2

from page 1

- Inserting into the "Timber & Joinery" industry category the general asset classes, estimated useful lives and diminishing value and straight-line depreciation rates listed below:

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

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 5th day of September 1997

Jeff Tyler
Assistant General Manager (Adjudication & Rulings)

Schedule of items omitted from Depreciation Schedule

We have been made aware of a number of items that were omitted from the original Depreciation Schedule, or inconsistencies in that Schedule, as published as an appendix to Tax Information Bulletin Volume Four, No.9 (May 1993), and as subsequently amended.

The Commissioner proposes to issue the following general depreciation determination which will correct these errors.

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:

- Deleting from the "Bakeries" industry category the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below.

Bakeries	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Utensils (miscellaneous kitchen type)	5	33	24

- Inserting into the "Bakeries" industry category the general asset class, estimated useful live, and diminishing value and straight-line depreciation rates listed below:

Bakeries	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Utensils (including Pots & Pans)	3	50	40

- Inserting into the "Engineering (including automotive)" industry category the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below:

Engineering (including automotive)	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Puller Set	5	33	24
Screwing Machine	8	22	15.5
Slotting Machine	25	7.5	5.5
Welding Positioner	15.5	12	8
Wheeling Machine	20	9.5	6.5

- Inserting into the "Hotels, Motels, Restaurants, Cafes, Taverns and Takeaway Bars" Leisure industry category the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below:

Hotels, Motels, Restaurants, Cafes, Taverns, Takeaway Bars	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Bedding	3	50	40
Dance Floor	20	9.5	6.5
Skidoo	5	33	24
Stage	20	9.5	6.5

- Inserting into the "Leisure" industry category the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below:

Leisure	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Dance Floor	20	9.5	6.5
Skidoo	5	33	24
Stage	20	9.5	6.5

- Inserting into the "Residential Rental Property Chattels" industry category the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below:

Residential Rental Property Chattels	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Bedding	3	50	40
Crockery	3	50	40
Cutlery	3	50	40
Glassware	3	50	40
Utensils (including Pots & Pans)	3	50	40

- Deleting from the "Shops" industry category the general asset class, estimated useful life and diminishing value and straight-line depreciation rates listed below:

Shops	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Utensils (kitchen)	5	33	24

continued on page 4

from page 3

- Inserting into the "Shops" industry category the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below:

Shops	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Utensils (including Pots & Pans)	3	50	40

- Inserting into the "Factory and Other Sundries" asset category the general asset class, estimated useful live, and diminishing value and straight-line depreciation rates listed below:

Factory and Other Sundries	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Rams (Hydraulic or Pneumatic)	5	33	24

- Inserting into the "Medical and Medical Laboratory Equipment" asset category the general asset class, estimated useful live, and diminishing value and straight-line depreciation rates listed below:

Medical and Medical Laboratory Equipment	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Bedding	3	50	40

3. Interpretation

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

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

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

We need to receive your submission by 31 October 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.

Interest repayments imposed as a result of early repayment of a financial arrangement – deductibility

Public Ruling – BR Pub 97/9

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 BD 2 (1)(b), BD 4 (4), and EH 1-10 of the Income Tax Act 1994.

The Arrangement to which this Ruling applies

The Arrangement involves the following facts:

- A person places a sum of money on term deposit with a person or institution;
- The deposit is a "financial arrangement" for the purposes of the "qualified accrual rules";
- A condition of the term deposit contract is that the rate of interest payable will be reduced in the event of the withdrawal, in part or in full, of the principal sum before the contractual maturity date;
- The depositor withdraws the whole or part of the term deposit prior to the contractual maturity date; and
- The application of the reduced rate of interest requires the actual repayment of interest already derived by the depositor, or the set-off of interest owed against the principal sum ultimately repaid to the depositor.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

Cash basis holders

If the person making the deposit ("the holder") is a cash basis holder:

- A full withdrawal of the deposit by the holder leads to a cash base price adjustment ("cash BPA") under section EH 4 (2). If the holder has to repay interest, the amount repaid will be taken into account under the cash BPA. No allowable deduction arises under general rules of deductibility, outside the qualified accruals rules, by virtue of section EH 8 (1).

continued on page 6

from page 5

- A partial withdrawal of the deposit by the holder does not lead to a cash BPA, because the deposit has not matured. If the holder has to repay interest the repaid amount will be an allowable deduction under section BD 2 (1)(b), providing that the partial withdrawal is to pay a business expense or if the holder incurs the amount in deriving other gross income. If the holder can make a deduction under section BD 2 (1)(b), no second deduction will arise under the cash BPA. If the amount repaid is not an allowable deduction under section BD 2 (1)(b), the repayment will not be taken into account until the deposit fully matures, by virtue of the cash BPA.

Non-cash basis holders

If the person making the deposit ("the holder") is a non-cash basis holder:

- A full withdrawal of the deposit by the holder leads to a base price adjustment ("BPA") under section EH 4 (1). If the holder has to repay interest, the amount repaid will be taken into account under the BPA. No allowable deduction arises under general rules of deductibility, outside the qualified accruals rules, by virtue of section EH 8 (1).
- A partial withdrawal of the deposit by the holder does not lead to a BPA, because the deposit has not matured. However, Determination G25 applies to a partial withdrawal by a non-cash basis holder with the results set out in that Determination. Any repayment of interest will be taken account of in the calculation required by Determination G25. No allowable deduction arises under general rules of deductibility, outside the qualified accruals rules, by virtue of section EH 8 (1).

The period for which this Ruling applies

This Ruling will apply for the period from 1 November 1997 to 31 March 2001.

This Ruling is signed by me on the 20th day of August 1997

Martin Smith
General Manager (Adjudication & Rulings)

Commentary on Public Ruling BR Pub 97/9

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 97/9 ("the Ruling").

Background

The contract between lenders ("holders") and borrowers ("issuers") in respect of term deposits often includes a condition that early withdrawal of the principal sum will result in a reduced interest rate, calculated as from the date of deposit. In some cases, holders who withdraw funds early may have to repay part of any interest they have derived previously. An example illustrates this:

Example 1

On 1 October 1996 Holder invests $10,000 for 12 months at 7%, interest to be credited to Holder's nominated bank account six-monthly. On 1 May 1997 Holder wishes to withdraw $5,000, prior to maturity. On 31 March 1997 Holder had been credited with six-monthly interest of $350. $175 of the $350 interest related to the $5,000 to be withdrawn.

On the $5,000 to be withdrawn, Holder is credited 5% interest for the period from 1 October to 1 May, which is $146. As Holder has already been credited with $175 in respect of the $5,000, she owes the bank $29. This will be deducted from the $5,000 so that she receives $4,971.

This poses the question of how holders account for the repayment of the interest (in the example, $29) when they have already derived income in respect of the amount.

Legislation

Cross-reference table

Income Tax Act 1994[1]	Income Tax Act 1994[2]	Income Tax Act 1976
BD 2 (1)(b)	BB 7	104
BD 4(4)	BB 8 (d)	106(1)(o)
EH 1-10	EH 1-9	64B-M

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

Section BD 2 (1)(b) states:

An amount is an allowable deduction of a taxpayer

...

(b) to the extent that it is an expenditure or loss

(i) incurred by the taxpayer in deriving the taxpayer's gross income, or

(ii) necessarily incurred by the taxpayer in the course of carrying on a business for the purpose of deriving the taxpayer's gross income, or

(iii) allowed as a deduction to the taxpayer under Part...E (Timing of Income and Deductions)...

Section BD 4 (4) states:

If an expenditure or loss gives rise to more than one allowable deduction, the allowable deductions may be allocated to income years to the extent that their total does not exceed the amount of that expenditure or loss.

Section EH 8 (1) states:

Notwithstanding any other provision in this Act, gross income or expenditure in an income year in respect of a financial arrangement under the qualified accruals rules shall be calculated under those rules.

Application of the Legislation

Nature of the repayment of interest by a holder to the issuer

For the purposes of the Ruling it is assumed that the legal nature of the repayment of interest from the holder of the term deposit to the issuer of the term deposit is that of a set-off. That is, there are two independent obligations that are set-off against each other. The issuer must repay the holder the principal amount of the deposit, and the holder must repay the issuer an amount of interest for early withdrawal. The issuer will set-off the holder's obligation by deducting the repayable interest from the amount of the principal outstanding. However, for the purposes of the qualified accrual rules the transaction will be considered to be the payment of the full amount of principal by the issuer to the holder, and the repayment of the interest by the holder to the issuer. Later we consider the implications of there not being a set-off and the issuer simply paying a reduced amount of principal to the holder. This does not alter the ultimate tax results of the transaction.

Derivation of interest subject to repayment on early withdrawal

The fact that a holder may have to repay interest if the deposit is withdrawn early does not mean that interest already received is not derived. At the time of receipt or crediting the holder has "earned" the relevant interest, and it is the holder's to deal with as he or she wishes. The fact that a liability to repay may arise later, if certain events occur, does not alter the fact that derivation has occurred.

Support for this proposition, in the context of salary that had to be repaid if an employment bond was breached, comes from *Bowcock v CIR* (1981) 5 NZTC 61,062. Mr Bowcock was an employee of the Post Office, and while on study leave continued to receive full salary. He had agreed to repay certain amounts of salary if he left within four years of the end of his study leave. He did leave within that time and was required to repay salary in respect of two income years. He sought to deduct these sums from his income tax returns for the two years. In the High Court he claimed he had never derived the amounts because they were contingent receipts not absolute receipts.

Vautier J rejected the taxpayer's argument. At page 61,069 he said:

Upon a consideration of the terms of the bond and the course pursued in this case, I am quite unable to come to the conclusion that the moneys which were paid to the objector during the two years in question can be said to have been received by him conditionally in the sense referred to in the judgments in the High Court in the *Arthur Murray* case. Those moneys clearly in my view became the absolute property of the objector when they were paid. No conditions or stipulations were attached to those payments themselves. They were clearly received and accepted as of right. Whether or not any liability arose in the future to repay any part of those moneys depended entirely on the course which the objector chose to take.

The *Bowcock* principle supports the view that if a taxpayer is liable to repay an amount (e.g. for breaching a bond, or for the early withdrawal of funds), the repayment of the amount does not reconstitute the nature of the original derivation of funds from being absolute to being conditional. At the time the amount is received it is derived, as the recipient has done all that is necessary to earn the income.

Vautier J distinguished Mr Bowcock's circumstances from those of the taxpayer in *Arthur Murray (NSW) Pty Ltd v FCT* (1965) 114 CLR 314. There the taxpayer sold dancing lessons. The taxpayer would sell blocks of lessons with payment being made in advance. Although not a contractual obligation, the taxpayer would refund money to customers who did not wish to use all their pre-paid lessons. The taxpayer would transfer pre-paid lesson revenue to a suspense account, and amounts would be transferred from that suspense account to a trading account as the dancing lessons were taken. The

continued on page 8

from page 7

Australian High Court found that the amounts in the suspense account were not derived until the lessons were taken. At page 319 of the case the High Court said:

> ...But those circumstances nevertheless make it surely necessary, as a matter of good business sense, that the recipient should treat each amount of fees received but not yet earned as subject to the contingency that the whole or some part of it may have in effect to be paid back...For that reason it is not surprising to find...that according to established accounting and commercial principles in the community the books of a business either selling goods or providing services are so kept with respect to amounts received in advance of [the provision of goods and services] that the amounts are not entered to the credit of any revenue account until the sale takes place or the services are rendered...

Arthur Murray concerns whether income has been derived in the first instance, and does not relate to the situation where the income has been derived but may have to be repaid. That second situation was covered in *Bowcock*, where the Court found that the possibility of repayment did not affect the derivation of the income. Accordingly, in the situation where a holder must repay some interest for the early withdrawal of a deposit, the *Arthur Murray* decision does not apply to mean derivation has not occurred. Instead, the principles in *Bowcock* can be applied such that derivation has occurred in spite of the subsequent repayment.

Cash basis holder: full withdrawal of term deposit

If a cash basis holder fully withdraws a financial arrangement, there is a maturity for the purposes of the accrual rules. ("Maturity" is defined in section OB 1 to mean the date on which the last payment contingent on the financial arrangement is made.)

Maturity of a financial arrangement triggers a cash BPA according to the section EH 4 (2) formula:

a - (b + c)

where-

"a" is the sum of all consideration derived in respect of the financial arrangement by the person, and amounts remitted by the person; and

"b" is the acquisition price of the financial arrangement; and

"c" is the sum of all amounts that are gross income derived by the person, less the aggregate of amounts of expenditure deemed to be incurred under sections EH 1 and EH 6 or deemed to be an allowable deduction under section EH 3.

A numerical example illustrates the effect of the cash BPA. Using the facts from Example 1 above, but assuming there is a full withdrawal of funds, gives the following result:

Example 2

Holder was credited with $350 in interest on 31 March 1997. On 1 May she fully "breaks" the deposit. Recalculated interest for the period from 1 October to 1 May is $290. Holder has been overpaid $60, so the bank repays $9,940, i.e. it sets off from the $10,000 principal the $60 "overpaid" interest.

For the cash BPA, item "a" is all the sum of all amounts derived in respect of the financial arrangement. This includes the $350 paid on 31 March 1997 and the $10,000 of principal which, because of the "set-off" analysis, the holder is deemed to have derived.

Item "b" of the cash BPA is the "acquisition price" of the financial arrangement. "Acquisition price" is defined in section OB 1 by a formula (y – z) where "y" is the "core acquisition price" and "z" is, roughly speaking, fees. Ignoring fees for this example allows us to focus on just the "core acquisition price". "Core acquisition price" is defined in section OB 1. The relevant paragraph of the definition here is paragraph (e). This provides that for a holder of a financial arrangement the core acquisition price (CAP) is "the value of all consideration provided by the holder in relation to the financial arrangement". The repayment of interest by a holder to an issuer involves the holder providing consideration to the issuer in relation to the financial arrangement. So too does the original provision of the deposit. So the acquisition price is made up of $60 repaid interest and $10,000 of principal.

Item "c" of the cash BPA is the sum of all amounts that are gross income derived by the person less the aggregate of expenditure deemed to be incurred under sections EH 1 or EH 6, or deemed to be an allowable deduction under section EH 3. The amount of $350, being interest derived by the holder, is the gross income already derived by the holder in respect to the financial arrangement.

Therefore, for the cash BPA, "a" is $10,350 ($10,000 + $350), "b" is $10,060, "c" is $350. This gives a result of:

$10,350 - $10,410 ($10,060 + $350) = **$-60**

Even if there were no set-off, and the amount of repaid interest were merely deducted from the principal repaid, the answer would be the same. For the cash BPA, "a" would be $10,290 ($9,940 of principal + $350 of interest), "b" would be $10,000 (as there would be no payment from holder to issuer), and "c" would still be $350. This would give the same result as:

$10,290 - $10,350 ($10,000 + $350) = **$-60**

Under section EH 4 (4)(b), when the amount so calculated is a negative amount, it is deemed to be an allowable deduction of the cash basis holder in the income year.

The amount of the deduction under section EH 4 (4)(b) is the amount of "overpaid" interest. Under section EH 8 (1), gross income or expenditure in an income year in respect of a financial arrangement under the qualified accruals rules must be calculated under those rules. The deemed allowable deduction under section

EH 4 (4)(b) is expenditure under the qualified accrual rules, meaning that section EH 8 (1) would operate to deny any deduction under the general deductibility provision, i.e. section BD 2 (1)(b).

Cash basis holder: partial withdrawal of term deposit

If the cash basis holder only partially withdraws the deposit, there is no maturity triggering a cash BPA as the last payment contingent on the deposit has not been made. (This assumes that the parties have contemplated that the principal may be repaid early, and the contract between them provides for that, irrespective of whether such a repayment would normally terminate a contract and require a new one to be created.)

For a partial withdrawal there are two possibilities: any repayment of overpaid interest is taken into account on the cash BPA that occurs on the eventual maturity of the deposit, or there is a deduction under the general deductibility provision section BD 2 (1)(b) prior to the cash BPA.

Cash BPA

If the holder's repayment of interest does not satisfy the general test of deductibility, the expenditure will be taken into account at the time of the cash BPA. Adopting the facts in Example 1, and considering what occurs on maturity and the cash BPA, leads to the following result:

Example 3

Holder was credited with $350 on 31 March 1997, but had to repay $29 at the time of partial withdrawal. On 30 September 1997 she receives interest of $175 (being her half-yearly interest on the remaining $5,000 at 7% interest), together with the return of the remaining principal of $5,000.

Item "a" of the cash BPA is $10,525 (being the $10,000 principal returned plus $350 of interest derived on 31 March 1997, plus $175 of interest derived on 30 September 1997). Item "b" of the cash BPA is $10,029 (as explained in Example 2, this is made up of the original sum deposited plus the repaid interest). Item "c" is $525 (being all gross income derived by the person in respect of the financial arrangement, namely the interest derived on 31 March 1997 and 30 September 1997).

The cash BPA formula gives the following result:

$10,525 – $10,554 ($10,029 + $525) = **$-29**

The amount of the deduction under section EH 4 (4)(b) (the cash BPA) is the amount of "overpaid interest".

Section BD 2 (1)(b): General test of deductibility

Expenditure incurred by a taxpayer will be an allowable deduction from gross income to the extent to which the expenditure or loss is incurred in deriving the taxpayer's gross income.

Generally, however, any repayment of interest does not meet the requirement that the expenditure be **incurred in deriving the taxpayer's gross income**. The leading case on the interpretation of a predecessor to section BD 2 (1)(b) is the Court of Appeal decision in *CIR v Banks* (1978) 3 NZTC 61,236 (CA). In that case Richardson J, in delivering the judgment of the court, made the following comments about section BD 2 (1)(b)(i):

> ...the expenditure must meet the statutory standards in relation to the assessable income of the taxpayer claiming the deduction. The deduction is available only where expenditure has the necessary relationship, both with the taxpayer concerned and with the gaining or producing of his assessable income. Relationship with the taxpayer is not, in itself, sufficient, as the prohibition of a deduction for capital expenditure...and private and domestic expenditure... makes clear. There must be the statutory nexus between the particular expenditure and the assessable income of the taxpayer claiming the deduction...

The Court made it clear that the test of deductibility is applied at the time the expenditure is incurred. Furthermore, at pages 61,241 to 61,242 His Honour continued:

> For reasons such as these it seems clear that the application of the first limb must involve an amalgam of considerations. In the Australian cases...there has been considerable stress on the character of an outgoing in the sense of its being incidental and relevant to the gaining or producing of the assessable income. Statements to that effect emphasise the relationship that must exist between the advantage gained or sought to be gained by the expenditure and the income earning process. They do not, and can not, specify in concrete terms the kind and degree of connection between the expenditure and the gaining or producing of assessable income required in individual cases for the expenditure to qualify for deduction....Dixon J said in *Amalgamated Zinc (de Bavay's) Ltd v FCT* (1935) 54 CLR 295, at p 309 and we respectfully agree:
>
> > "The expression 'in gaining or producing' has the force of 'in the course of gaining or producing' and looks rather to the scope of the operations or activities and the relevance thereto of the expenditure than to purpose in itself."
>
> **It then becomes a matter of degree, and so a question of fact, to determine whether there is a sufficient relationship between the expenditure and what it provided, or sought to provide, on the one hand, and the income earning process, on the other, to fall within the words of the section.** (Emphasis added.)

Applying the principles of *Banks* requires asking whether there is a sufficient relationship between the repayment of interest and the earning of interest income to fall within section BD 2 (1)(b). There is not a sufficient relationship: the income is earned as a result of lending money. Expenditure incurred to earn that income may include brokerage or financial advice, but a repayment of interest on an early withdrawal can not be said to be a cost of deriving the interest. Incurring the repayment can not be said to assist in the deriving of the interest. The repayment is imposed after the income has been derived, not in respect of the derivation process but in respect of not completing the term of the deposit. The repayment is a cost of not fulfilling the terms of the contract between the bank and the depositor.

continued on page 10

from page 9

Even if one focused on the purpose of breaking the investment, the repayment would still not be an allowable deduction on general principles. If the partial realisation of the deposit was for private purposes (e.g. to buy a car for private use), the nexus with the deriving of gross income would not be satisfied. The expenditure would not be incurred in deriving the taxpayer's gross income.

Thus the repayment of the interest falls to be dealt with on maturity of the deposit through the cash BPA. However, if a cash basis holder breaks the investment to pay a business expense, or if the holder applies the amount to deriving other gross income, the repayment amount will be an allowable deduction under section BD 2 (1)(b).

No double deduction under section BD 2 (1)(b) and the cash BPA

If expenditure of a cash basis holder is an allowable deduction under section BD 2 (1)(b), the expenditure will only be deductible under that section and not on the cash BPA.

It may appear that a cash basis holder could potentially be entitled to a double deduction for the expenditure. In Example 3 above, the cash BPA gave a result that there was a deduction of $29 available to the holder. If the holder had already deducted $29 under section BD 2 (1)(b), there would be no change to the result under the cash BPA, even though the holder would already have had a credit for that expenditure. It might be argued that there is nothing in the cash BPA to reflect this previous allowable deduction. The problem is that item "c" of the cash BPA only takes account of expenditure incurred under sections EH 1 or EH 6, or deemed to be an allowable deduction under section EH 3. As subsections EH 1 (2) to (6) (the methods that spread income and expenditure under the accrual rules) do not apply to cash basis holders by virtue of section EH 1 (8), expenditure in respect of the financial arrangement is not incurred under section EH 1. Neither is the expenditure of the type referred to in sections EH 3 or EH 6. Accordingly, by not coming within item "c" of the cash BPA a second deduction of the repaid interest may appear to be possible.

It is the Commissioner's view that a double deduction would not be allowed in such cases because of either or both of the following reasons:

- A court would read into item "c" of the cash BPA, a requirement to take account of amounts that had already been the subject of an allowable deduction; or
- A court would apply section BD 4 (4) and the policy behind that section to deny a deduction.

Item "c" of the cash BPA

The first alternative is that in these circumstances a court may read item "c" of the cash BPA more widely than its literal meaning so that the previous allowed deduction under section BD 2 (1)(b) would be taken account of in item "c" of the cash BPA. This is in spite of item "c" referring only to expenditure under sections EH 1, EH 3, or EH 6.

Looking at the definition of item "c" in the BPA formula in section EH 4 (1), it is clear that for a non-cash basis holder item "c" takes account of gross income and allowable deductions taken account of in previous income years. For item "c" in the cash BPA formula this intention to reverse previously allowable deductions is not fulfilled by the legislation. Only deductions taken under the accruals rules are taken account of in "c", yet a cash basis holder returns income and expenditure on a cash basis not an accrual basis. In these circumstances item "c" of the cash BPA should be read to include not just expenditure under the specific sections of the accrual rules mentioned in the definition, but also expenditure under section BD 2 (1)(b).

Giving item "c" this interpretation ensures that Parliament's intention, that expenditure previously taken into account is reversed out of the ultimate BPA calculation, is satisfied. This is consistent with cases such as *Mangin v CIR* [1971] NZLR 591 (PC), *FCT v Cooper Brookes (Wollongong) Pty Ltd* 79 ATC 4398, and *CIR v Alcan New Zealand Ltd* (1994) 16 NZTC 11,175 (CA). In *Mangin* Lord Donovan, delivering the judgment of the majority, noted certain rules of interpretation. One of these was to look at the ordinary meaning of the words. However, His Lordship went to on to say, at page 594:

> …the object of the construction of a statute being to ascertain the will of the Legislature it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.

In *Alcan*, McKay J quoted Lord Donovan's comments in *Mangin* with approval. At page 11,179 he said that "one should certainly approach the question of statutory interpretation on the premise that the legislature will not have intended absurdity or injustice". At page 11,180 he framed the interpretation issue in the following terms:

> That question is to be answered, however, by applying the provisions of the statute in accordance with the provisions laid down. Where the words are unclear, or are reasonably capable of more than one meaning, the Court will prefer an interpretation which does not lead to injustice or absurdity, and one which accords with the evident purpose.

Both these judgments favour reading into item "c" a need to take account of expenditure for which an allowable deduction has already been taken under section BD 2 (1). To find otherwise would be unjust to non-cash basis holders, and would go against the statutory intent obvious in sections such as section BD 4 (4) and its predecessor sections.

In the *Cooper Brookes* decision, the Full Federal Court was prepared to read extra words into a statute in a situation where it considered that a literal reading would not give effect to the legislature's clear intention (as ascertained from the context of the legislation). At page 4412 Fisher J said:

> In circumstances such as in the present case and particularly where the intention of the legislature is as clear as in my opinion it is, the terminology of the machinery provision is not so intractable as to deny a reasonable as opposed to a literal construction.

This is consistent with *Alcan*, where McKay J after noting the presumption against an interpretation that leads to injustice or absurdity, said (page 11,179):

> It would be a mistake, however, to regard these as the only situations in which words may be understood in some other meaning of which they are capable. One should always have regard to the total context of the words used and to the purpose of the legislation in order to arrive at the meaning intended. This does not mean some forced meaning to fit a preconceived idea of purpose, but a proper approach to ascertain the true meaning. The true meaning must be consonant with the words used, having regard to their context in the Act as a whole, and to the purpose of the legislation to the extent that this is discernible.

Section BD 4 (4)

The other alternative involves the application of section BD 4 (4). Section BD 4 (4) provides that if an item of expenditure or loss gives rise to more than one allowable deduction, those deductions may not exceed the amount of that expenditure or loss. In the circumstances discussed above the effect of the cash BPA is to give credit for an item of expenditure twice. However, it is difficult to describe the taking account of the expenditure in the cash BPA (through item "b" including the amount, and item "c" not being reduced by including the amount) as giving rise to an "allowable deduction". The expenditure is taken account of in the cash BPA, but that expenditure does not necessarily give rise to an allowable deduction; it is the result of the application of the cash BPA formula that gives rise to any allowable deduction.

Notwithstanding these difficulties, a court may be prepared to consider the policy behind section BD 4 (4) and refuse a second "effective" deduction on the cash BPA. Section BD 4 (4) suggests that amounts of expenditure should give a tax benefit only once. Furthermore, the original predecessor section to section BD 4 (4), section 108(1)(o) of the Income Tax Act 1976, was introduced at the same time as the qualified accrual rules, suggesting it was meant to prevent a holder taking a deduction under general principles of deductibility **and** an effective deduction under a BPA.

The Commissioner's view is that, while the wording used in the legislation is less than ideal, it is most likely that a court would adopt either of the two approaches discussed above to deny the potential second deduction. This seems to clearly accord with Parliament's intention to only allow one deduction.

Non-cash basis holder: full withdrawal of term deposit

The tax treatment of a non-cash basis holder on full withdrawal of a deposit is similar to that of a cash basis holder. The BPA formula in section EH 4 (1) is applied, and the final sum is calculated. Under section EH 4 (3), if a calculation gives a negative amount for the holder, the holder is deemed to have an allowable deduction in the income year. For a non-cash basis holder, the income and expenditure in relation to the financial arrangement will need to be spread under one of the methods mentioned in section EH 1. Under section EH 8 (1), gross income or expenditure in an income year in respect of a financial arrangement under the qualified accruals rules must be calculated under those rules. As the repaid interest expenditure is expenditure under the qualified accrual rules it must be dealt with under those rules, and there can be no allowable deduction under section BD 2 (1)(b).

Non-cash basis holder: partial withdrawal of term deposit

For non-cash basis holders, a partial withdrawal of a deposit will require the application of *Determination G25 "Variations in the terms of a financial arrangement"*; which appears to cover changes such as partial withdrawals of deposits. Example 2 in paragraph 7 of the determination gives an example of a partial repayment, albeit instigated by the issuer rather than the holder.

The Commissioner can not rule on a matter on which there is an accrual determination, but the determination can be discussed in the commentary to a ruling. The Commissioner is unable to rule because section 91C(1)(e)(i) of the Tax Administration Act 1994 prevents a binding ruling being issued on a matter that is, or could be, the subject of an accrual determination made under section 90 of that Act. This is clearly the case with Determination G25.

If there is a variation in the terms of a financial arrangement, the determination requires the following calculation to be performed:

> 6(1) In the income year in which a financial arrangement is varied, a person who is the issuer or holder of the financial arrangement shall include, in calculating assessable income for the income year, an amount in respect of the financial arrangement calculated in accordance with the following formula:
>
> a - b - c + d, where:
>
> a is the sum of all amounts that would have been income derived by the person in respect of the financial arrangement from the date it was acquired or issued to the end of the income year, if the changes had been known as at the date the financial arrangement was acquired or issued;
>
> b is the sum of all amounts that would have been expenditure incurred by the person in respect of the financial arrangement from the date it was acquired or issued to the end of the income year, if the changes had been known as at the date the financial arrangement was acquired or issued;
>
> c is the sum of all amounts treated as income derived of the person in respect of the financial arrangement since it was acquired or issued to the end of the previous income year; and
>
> d is the sum of all amounts treated as expenditure incurred of the person in respect of the financial arrangement since it was acquired or issued to the end of the previous income year.

continued on page 12

from page 11

The amount so calculated shall:

(a) Where it is a positive amount, be deemed to be income derived by the holder or the issuer as the case may be:

(b) Where it is a negative amount, be deemed to be expenditure incurred by the holder or issuer as the case may be:

Provided that expenditure incurred by the holder, in the year in which the financial arrangement is varied, using this method shall not exceed total income derived by the holder in previous income years.

6(2) In income years after the income year in which the financial arrangement is varied, income deemed to be derived or expenditure deemed to be incurred shall be calculated using the terms of the financial arrangement as varied and the provisions of the Act.

Example 4

On 1 October 1996, Holder, who is not a cash basis holder, invests $10,000 for 24 months at 7%, interest to be credited to Holder's nominated bank account six-monthly. On 1 May 1997 Holder wishes to withdraw $5,000 prior to maturity. On 31 March 1997 Holder had been credited with interest of $350. $175 of the $350 interest related to the $5,000 to be withdrawn.

On the $5,000 to be withdrawn, Holder is credited 5% interest for the period from 1 October to 1 May, which is $146. As Holder has already been credited with $175 on the $5,000, he owes the bank $29. This will be deducted from the $5,000 so that he receives $4,971.

On 30 September 1997 and 31 March 1998 he receives a further sum of $175, being the interest payable on the remaining $5,000 deposited. On 30 September 1998 he receives $5,175, being the repayment of the remaining deposit and the last interest payment. Assuming Holder is entitled to use a straight-line method, this gives the following results.

For the income year ending 31 March 1997 he has returned $350 of income. For the income year ending 31 March 1998 he must apply the formula in Determination G25. Item "a" is the sum of amounts that would have been income to the end of the income year in which the variation occurred, as if the changes had been known about at the time the financial arrangement was acquired or issued. This is made up of $525 in respect of the $5,000 that is not withdrawn ($175 for each of the three half years from 1 October 1996 to 31 March 1998) and $146 for the $5,000 that is withdrawn (the amount recalculated by the bank). The total is $671.

Item "b" is nil, because if changes had been known about at the start of the financial arrangement there would have been no expenditure, just less income which is taken account of in "a".

Item "c" is $350, being all amounts treated as income in respect of the financial arrangement to the end of the previous income year.

Item "d" is nil, being all amounts treated as expenditure in respect of the financial arrangement to the end of the previous income year.

Therefore,

a – b – c + d = $671 – 0 - $350 + 0 = $321.

Being a positive amount it is deemed to be income of Holder.

Thus for the income year ending 31 March 1998 Holder should return income of $321. Essentially, the formula takes the $29 of repaid interest and deducts it from the income derived in the 1998 income year.

For the income year ending 31 March 1999, Holder must perform a BPA under section EH 4 (1). The formula is: a – (b + c)

Item "a" is all amounts paid to Holder which will be $10,000 of principal plus $350 of interest for the first two years, and $175 for the last year, for a total of $10,875. (Note that amounts "paid" to Holder are different to amounts of income derived by Holder for tax purposes.)

Item "b" is the acquisition price, which is $10,029.

Item "c" is income derived in all previous income years, which is $350 in the first year, and $321 in the second year after applying Determination G25. Item "c" is thus $671.

Therefore, the BPA gives a result of:

a – (b + c) = $10,875 – $10,700 ($10,029 + $671)
= $175.

This is the correct amount as it is the income earned in the 1999 income year. There is no adjustment for the repaid interest, as that was taken into account in the 1998 income year.

Submissions received

A number of submissions have disagreed with some of the conclusions drawn in the Ruling and this commentary. In particular some commentators have argued that in a situation where a cash basis holder has to repay interest when an investment is withdrawn early:

- The holder has conditionally "derived" the part of the interest at risk of repayment, and has only "derived" the non-repayable amount; or
- The amount repaid has a clear nexus to the interest previously derived, sufficient to support an allowable deduction under section BD 2 (1)(b); or
- Such a repayment of interest may give rise to a deduction under general principles of deductibility and on the BPA. One commentator considered that the commentary's discussion on the possibility of a double deduction overlooked the first two principles of Lord Donovan in *Mangin*. Those first two principles require

that words be given their ordinary meaning, and that one looks merely at what is clearly said in the legislation.

The Commissioner recognises that the subject-matter of the Ruling is difficult and there is scope for differing interpretations and conclusions on some of the issues discussed. However, for the reasons discussed in the commentary under the subheadings relating to each of the bullet points above, it is considered that the better view is that set out in the Ruling and commentary.

Morgan Stanley Capital (Cayman Islands) Limited's OPALS investment product

Product Ruling - BR Prd 97/48

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

Taxation Laws

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

This Ruling applies in respect of sections CG 5 and CG 15, and the definitions of "foreign investment fund", "foreign entity", and "foreign company" in section OB 1, and Schedule 3.

The Arrangement to which this Ruling applies

The Arrangement is the issue, as more particularly set out in the relevant Offering Circular and Pricing Supplement, by Morgan Stanley Capital (Cayman Islands) Limited, of certain series of an investment product called OPALS. More specifically, this Ruling applies to OPALS Series Nos 1 to 5, 9 to 12, 17, 23, 35 and 36, and future series of OPALS predominantly in respect of shares in companies which are resident in countries which, in the relevant income year for the taxpayer, meet the requirements of section CG 15 (2)(b).

OPALS are hybrid securities issued by a special purpose Cayman Island company (Morgan Stanley Capital (Cayman Islands) Limited, the "Issuer"), and listed on the Luxembourg Stock Exchange. OPALS are not shares in the Issuer. They are unsecured obligations ranking pari passu with all other unsecured obligations of the Issuer.

OPALS provide investors with a return which tracks within agreed parameters the movement in a specified equity index (such as the S&P 500). This return is provided as follows. The issue proceeds from OPALS are indirectly invested in shares of companies making up the relevant index. The dividends received on these share baskets (net of any applicable withholding taxes) plus a percentage of any fees generated from the lending of the shares are paid to the OPALS holder as an annual coupon. Similarly any gains made through adjusting the composition of the share baskets are paid out as a component of this coupon. The application states that these adjustments are made without the intention of attempting to outperform the relevant index.

OPALS have a stated maturity of between one and seven years. Redemption is effected by the delivery to the investor of the physical shares then comprising the basket. In certain circumstances investors with a prescribed minimum holding of OPALS can elect to redeem early, but redemption is always by delivery of shares and never by cash.

continued on page 14

from page 13

The actual hedging mechanism involves the holding of the share baskets in a Morgan Stanley group company resident in Luxembourg (“Counterparty”). The Counterparty issues an equity linked note to the Issuer thus hedging the Issuer’s position. Therefore, the balance sheet of the Issuer is composed of Counterparty notes on the asset side and the OPALS on the liability side balanced by share capital. The notes issued by the Counterparty are redeemable in cash or through the delivery of shares.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- None of the interests held by holders of OPALS constitute direct income interests in the Issuer of the OPALS, in terms of section CG 5 (2)(a), (b), (c), and (d);
- None of the interests held by holders of OPALS constitute an interest in a foreign investment fund, being the Issuer of the OPALS, in terms of section CG 15 (1);
- None of the interests which holders of OPALS have constitute direct income interests in the shares in the Baskets, in terms of section CG 5 (2)(a), (b), (c), and (d); and
- The right of a holder of OPALS to acquire shares in the Baskets is not an interest in a foreign investment fund, in any particular income year, to the extent to which the shares are shares in a company incorporated in a country listed in Part A of Schedule 3 of the Act, which is not an entity specified in Part B of Schedule 4, thereby satisfying the requirements of section CG 15 (2)(b).

The period for which this Ruling applies

This Ruling will apply for the period from 5 June 1997 until 30 September 2002.

This Ruling is signed by me on the 5th day of June 1997.

Martin Smith
General Manager (Adjudication & Rulings)

National Bank of New Zealand Limited’s superannuation fund – withdrawals

Product Ruling – BR Prd 97/68

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

Taxation Law

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

This Ruling applies in respect of sections HH 3 (5), JB 3 (1), and the definitions of “beneficiary income”, “qualifying trust”, “superannuation scheme”, and “superannuation fund” in section OB 1.

The Arrangement to which this Ruling applies

The Arrangement is the withdrawal by members of benefits from The National Bank Superannuation Funds (“the Fund”). The Fund offers a regular savings plan and lump sum superannuation fund to the general public of New Zealand.

The principal purpose of the Fund is to provide retirement benefits to natural person beneficiaries, and it is anticipated that in practice the members of the Fund will largely be natural persons.

The Fund was established by trust deed dated 1 August 1997.

Members elect to have contributions invested in one of several types of investment fund within the 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 Fund. The price and value of the Units (and therefore the value of a member's interest) rises and falls, depending on the market conditions and earnings' performance.

Members can elect to make withdrawals of their interest from the Fund by way of a single lump sum withdrawal. Alternatively, members may elect to make withdrawals by way of several irregular lump sum withdrawals or by regular income payments, or a combination of both. The trustee may fix a maximum number of partial withdrawals that can be made on account of any member's interest.

All defined terms have the meanings set out in the deed.

Assumptions made by the Commissioner

This Ruling is based on the assumptions that:

- The Fund is a registered superannuation scheme under the Superannuation Schemes Act 1989.
- The Ruling will apply only in respect of "Personal Members" of the Fund.
- Payments made to members of the Fund are made in accordance with the Fund's trust deed.
- Withdrawals by a member (whether such withdrawals are made on an irregular and / or regular basis) are not made at a frequency greater than four times in any twelve-month period. This means that a member cannot rely on this Ruling if the member makes withdrawals at a frequency greater than four times in any twelve-month period.

How the Taxation Law applies to the Arrangement

Subject in all respects to the assumptions above, the Taxation Law applies to the Arrangement as follows:

- The Fund is a "qualifying trust" as defined in section OB 1.
- Withdrawals of benefits made by members of the Fund are not assessable for income tax by virtue of section HH 3 (5).
- For the purposes of calculating "other income" under section JB 3 (1), benefits paid upon withdrawal are not received by members in the form of a pension and are not received in the form of annuity.

The period for which this Ruling applies

This Ruling will apply for the period 14 August 1997 to 31 March 2000.

This Ruling is signed by me on the 13th day of August 1997.

Martin Smith
General Manager (Adjudication & Rulings)

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 pubic 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.

Pre-1993 net losses - carrying forward and satisfying shareholder continuity requirements

Summary

This item considers whether a company claiming to carry forward and offset net losses incurred in the 1991-92 and earlier income years ('pre-1993 net losses') must satisfy the shareholder continuity requirements contained in section IF 1 (1) and/or section IF 1 (6) of the Income Tax Act 1994.

A company claiming to carry forward and offset pre-1993 net losses must satisfy the shareholder continuity test in either section IF 1 (1) or (6). If a company satisfies the shareholder continuity test in section IF 1 (1), it need not also satisfy the shareholder continuity test in section IF 1 (6).

This item does not comment on the application of section IF 1 (5), which provides the shareholder continuity requirements for net losses incurred before the 1977-78 income year.

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

Issues

An issue that arises when a company has incurred net losses before the 1991-92 income year and seeks to offset those losses in the 1992-93 and later income years is whether the company may satisfy the shareholder continuity test in either sections IF 1 (1) or IF 1 (6).

A second related issue is whether the "continuity period" in section IF 1 (1) begins before the date from which section IF 1 (1) applies.

Legislation

Cross-reference table

Income Tax Act 1994[1]	Income Tax Act 1994[2]	Income Tax Act 1976
IE 1	IE 1	188
IF 1	IF 1	188
OD 5	OD 5	8E
OD 5A	OD 5A	–
OD 6	OD 6	8F

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

Section IE 1 (2) allows taxpayers to carry forward and offset net losses from net income in future income years. Section IE 1 (2) states:

> Any taxpayer who satisfies the Commissioner that the taxpayer has a net loss for any income year shall, subject to this section and section IF 1, be entitled to claim that-
>
> (a) The net loss be carried forward to the income year immediately succeeding that income year and be offset against the net income for that immediately succeeding income year, so far as that net income extends; and
>
> (b) So far as it cannot then be offset, the net loss be carried forward from that immediately succeeding income year to the next succeeding income year and be offset against the net income for that next succeeding income year and so on.

Section IF 1 (1) states:

> Subject to the succeeding provisions of this section, no taxpayer being a company (in this subsection referred to as the 'loss company') may carry forward, in accordance with section IE 1 (2), the whole or any part of a net loss for any income year (in this subsection referred to as the "year of loss") to any later income year (in this subsection referred to as the "year of carry forward"), unless there is a group of persons-
>
> (a) The aggregate of whose minimum voting interests in the loss company in the period from the beginning of the year of loss to the end of the year of carry forward (in this subsection referred to as the "continuity period") is equal to or greater than 49%; and
>
> (b) In any case where at any time during the continuity period a market value circumstance exists in respect of the loss company, the aggregate of whose minimum market value interests in the loss company in the continuity period is equal to or greater than 49%,-
>
> and, for the purposes of this subsection, the minimum voting interest or minimum market value interest (as the case may be) of any person in the loss company in the continuity period shall be equal to the lowest voting interest or market value interest (as the case may be) in the loss company which that person has during the continuity period.

Section IF 1 (6) is a transitional provision that applies to losses incurred in the 1991-92 and earlier income years, and states:

> Where any taxpayer (being a company) claims, in accordance with section IE 1 (2), to carry forward the whole or part of a net loss incurred by it in the 1991-92 income year or any

earlier year (in this subsection referred to as the "pre-1993 year of loss") to any later income year, the provisions of subsection (1) shall not preclude such claim where-

(a) The taxpayer would have been entitled to claim to carry forward the whole or part of the net loss to the later income year under section 188 of the Income Tax Act 1976, as that section applied before its repeal and replacement by section 22 of the Income Tax Amendment Act (No. 2) 1992, if that section 188 had continued to apply-

(i) As modified by section 188AA of the Income Tax Act 1976;

(ii) As if the continuity percentage referred to in section 188(7) of the Income Tax Act 1976 were always 40%,-

in respect of the later income year; and

(b) In respect of the period commencing on the first day of the 1992-93 income year and ending with the last day of that later income year (referred to in this subsection as the "relevant period"), there is a group of persons-

(i) The aggregate of whose minimum voting interests in the taxpayer in the relevant period is equal to or greater than 49%; and

(ii) In any case where at any time during the relevant period a market value circumstance exists in respect of the taxpayer, the aggregate of whose minimum market value interests in the taxpayer in the relevant period is equal to or greater than 49%,-

and, for the purposes of this paragraph, the minimum voting interest or minimum market value interest (as the case may be) of any person in the taxpayer in the relevant period shall be equal to the lowest voting interest or market value interest (as the case may be) in the taxpayer which that person has during the relevant period.

Application of the legislation

Whether continuity test in section IF 1 (6) overrides test in section IF 1 (1)

The primary shareholder continuity test that a company must satisfy in order to carry forward net losses is contained in section IF 1 (1). However, an alternative shareholder continuity test is contained in section IF 1 (6) for net losses incurred in the 1991-92 income year and earlier income years. Section IF 1 (6) was designed as a transitional provision, and includes shareholder continuity requirements that applied prior to the introduction of the 1992 company loss legislation.

In most circumstances, a company claiming to carry forward pre-1993 net losses will find it easier to satisfy the shareholder continuity requirements in section IF 1 (6) rather than those in section IF 1 (1). This is because section IF 1 (6) requires a 40% shareholder continuity for part of the relevant period, whereas section IF 1 (1) increases the shareholder continuity required to 49%.

However, there will be situations when a company can more easily satisfy section IF 1 (1) than section IF 1 (6). This is because some of the modifications to the tracing of shareholder interests in a company that apply to the shareholder continuity requirements in section IF 1 (1) do not apply to section IF 1 (6). These modifications are contained in sections OD 5 and OD 5A. The existence of these modifications has prompted a number of taxpayers to ask whether a company that claims to carry forward pre-1993 net losses must satisfy the requirements of section IF 1 (6) if the requirements in section IF 1 (1) are met.

The shareholder continuity test in section IF 1 (6) does not override the test in section IF 1 (1). A company claiming to carry forward and offset pre-1993 net losses may apply the shareholder continuity requirements in either section IF 1 (1) or (6). If a company satisfies section IF 1 (1), there is no need for the company to also satisfy the shareholder continuity requirements in section IF 1 (6).

Section IF 1 (1) applies to companies seeking to carry forward net losses incurred in "any income year." This is in contrast to section IF 1 (6) which only applies to companies seeking to carry forward net losses incurred in the 1991-92 and earlier income years. Under section IF 1 (6), section IF 1 (1) "shall not preclude" a claim to carry forward a net loss when the shareholder continuity requirements in section IF 1 (6) are satisfied. The words "shall not preclude" mean that section IF 1 (1) will not prevent a loss being carried forward and offset if the requirements of section IF 1(6) are satisfied. The effect of this is that a company claiming to carry forward and offset pre-1993 losses may apply the shareholder continuity requirements in either section IF 1 (1) or (6). If a company satisfies section IF 1 (1), there is no need for the company to also satisfy the shareholder continuity requirements in section IF 1 (6).

Application of "continuity period" in section IF 1 (1) to net losses incurred before 1 April 1992

Sections IF 1 (1) and (6) replaced sections 188(7) and 188(13) of the Income Tax Act 1976. These provisions were introduced into the Income Tax Act 1976 by the Income Tax Amendment Act (No. 2) 1992, effective from the start of the 1992-93 income year.

The shareholder continuity requirements set out in section IF 1 (1) are measured over the "continuity period", which runs from the beginning of the year the loss was incurred to the end of the year of the carry forward. We have been asked whether section IF 1 (1) can be applied to net losses incurred before the start of the 1992-93 income year, given that the "continuity period" will begin before the date from which the legislation applies.

Under section IF 1 (1), the "continuity period" is measured from the start of the year the net loss was incurred. Net losses may still be carried forward if the "continuity period" begins before the date from when the legislation applies. This is because sections IE 1 (2) and IF 1 (1) operate for the year the company claims the carry forward and offset of the net loss, not for the year

continued on page 18

from page 17

the net loss was incurred. Therefore, even though section IF 1 (1) measures the shareholder continuity of a company over a period that begins before the legislation applies, the provision only operates to allow a net loss to be carried forward and offset from the start of the 1992-93 income year.

Conclusions

The legislation applies as follows:

Interaction of sections IF 1 (1) and (6)

- Section IF 1 (1) contains the primary shareholder continuity test that a company must satisfy when carrying forward company net losses incurred in any income year.
- A company claiming to carry forward and offset pre-1993 net losses may apply the shareholder continuity requirements in either section IF 1 (1) or (6). If a company satisfies section IF 1 (1), there is no need for the company to also satisfy the shareholder continuity requirements in section IF 1 (6).
- If a company cannot satisfy the shareholder continuity requirements in section IF 1 (1), the company may carry forward pre-1993 net losses if the shareholder continuity requirements in section IF 1 (6) are met.

Application of sections IE 1 and 1F 1 to pre-1993 losses

- Section IE 1 (2) provides the mechanism for net losses to be carried forward and offset against net income.
- Because sections IE 1 and IF 1 have effect from the start of the 1992-93 income year, a claim made under these provisions to carry forward and offset a pre-1993 net loss may be made in relation to a taxpayer's net income for the 1992-93 or later income years.
- Sections IE 1 and IF 1 apply in the year the company claims to carry forward and offset the net loss and not in the year the net loss was incurred. This means that net losses incurred before the start of the 1992-93 income year can be carried forward and offset.
- Under section IF 1 (1), the "continuity period" is measured from the start of the year the net loss was incurred. Net losses may still be carried forward if the "continuity period" begins before the date from when the legislation applies.

GST and repossessions in the motor vehicle industry

This article covers the GST treatment of repossessions by motor vehicle dealers of vehicles that were subject to a hire purchase agreement. It appears that motor vehicle dealers may be accounting for GST incorrectly on these transactions by claiming a GST input tax deduction on payments made to the finance company when the dealer is guarantor for the hire purchase.

The transaction

The transaction between the motor vehicle dealer and the customer is the normal sale and purchase agreement. However, to finance the deal the customer enters into a hire purchase agreement. As part of the financial agreement the dealer is required to be guarantor between the purchaser and the finance company.

If the purchaser defaults on the contract the finance company is paid any amount outstanding by the guarantor (dealer). After paying the outstanding debt the dealer takes ownership of the vehicle from the finance company. It is then up to the dealer to decide how to recover their debt, which is normally done by repossessing and selling the vehicle.

The transaction between the dealer and the finance company is a financial service under section 3(1) of the GST Act and is therefore exempt from GST. The GST implications of the dealer actually repossessing and selling the vehicle are determined by section 5(2) of the GST Act.

Example

Motor vehicle dealer purchases a vehicle, and then sells it. The sale is financed by way of a hire purchase agreement between the purchaser and a finance company, with the dealer being guarantor.

The purchaser defaults on the repayments and the finance company calls on the guarantor to make good the outstanding debt. After paying the outstanding debt to the finance company as per the dealer agreement, the dealer obtains ownership of the vehicle. The dealer then repossesses and sells the vehicle to recover the debt created by the payment to the finance company.

The GST treatment of these transactions is as follows:

1. The dealer claims an input/deemed input tax deduction on the purchase of the vehicle.
2. The dealer returns output tax on the sale of the vehicle at the time the hire purchase agreement is signed.
3. Payment by the dealer to the finance company to pay the outstanding debt created by the purchaser is not subject to GST as it is a financial service under section 3(1) of the GST Act, and therefore exempt under section 14 of the same Act. Therefore, the dealer is unable to claim an input tax deduction in relation to this payment.
4. The sale of the repossessed vehicle by the dealer is to be treated for GST under section 5(2) of the GST

Act. This generally means the sale of the repossessed vehicle will be subject to GST if the sale by the purchaser would have been part of a taxable activity. However, the sale of the repossessed vehicle would not be subject to GST in either of these situations:

- If the purchaser gives the dealer written advice stating that a sale by the purchaser would not have been a sale as part of a taxable activity, or
- If the dealer can reasonably determine from information held that a sale by the purchaser would not have been a sale as part of a taxable activity.

If the original purchaser of the vehicle wasn't GST-registered, the dealer must not issue a tax invoice when selling the repossessed vehicle, nor charge GST on the sale.

Although this article is specifically aimed at the motor vehicle industry, it is equally applicable to any situation where the goods purchased are subject to a hire purchase agreement and the guarantor is registered for GST and the vendor of the goods.

Questions we've been asked

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

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

Income Tax Act 1994

Losses released on discharge from bankruptcy – inability to carry forward

Section IE 1 (4) – Limitation on ability to carry forward losses: A taxpayer who was sole proprietor of a family restaurant was adjudged bankrupt in December 1994. At that time she had incurred a total debt of $625,000 in managing the restaurant. The debt arose because the taxpayer spent a great deal of money on redecorating the premises, and earned insufficient income from the restaurant to pay for it. No part of the $625,000 debt was a deemed dividend governed by section CF 2, nor was any part of the debt subject to the qualified accrual rules contained in the Income Tax Act 1994.

In February 1996 the taxpayer was discharged from bankruptcy and released from the obligation to pay the $625,000 debt by the operation of the Insolvency Act 1967.

She now wishes to offset the $625,000 debt she was released from at the time of her discharge from bankruptcy, against post-bankruptcy income earned from her highly successful garden centre.

Section IE 1 (1) states:

Subject always to the express provisions of this section and section IF 1, **this section and section** IF 1 are intended-

(a) **To permit taxpayers to carry forward net losses** that arise in one income year **for offset against net income of the taxpayer in a later income year** … (emphasis added)

Section IE 1 (4) states:

Where and to the extent that -

(a) **A taxpayer has incurred any expenditure or loss** which has been **allowed as a deduction in an income year for which the taxpayer had a net loss; and**

(b) The taxpayer did not during that income year make payment on account of the expenditure or loss but rather **a debt remained** outstanding; and

(c) **The taxpayer is, in any subsequent income year,-**

(i) Discharged from liability in respect of that debt without fully adequate consideration in money or money's worth; or

(ii) **Released from liability in respect of that debt by the operation of the Insolvency Act 1967** or the Companies Act 1955 or the Companies Act 1993 or the laws of any country or territory other than New Zealand,-

or the debt has, in any subsequent income year, become irrevocable or unenforceable by action through lapse of time ***; and***

(d) **That** discharge**, release**, irrecoverability, or unenforceability **is neither**-

(i) **Required to be taken into account by the taxpayer under the qualified accruals rules; nor**

(ii) **A dividend derived by the taxpayer within the meaning of section CF 2 (1)(b) or** (being a dividend which, if the transaction giving rise to the dividend had been effected with a shareholder of the relevant company, would have been a dividend within the meaning of section CF 2 (1)(b)) **within the meaning of section CF 2 (1)(k); and**

(e) **The allowance as a deduction of the expenditure or loss in calculating the net loss has given rise or would, but for this subsection, give rise to the relief afforded by this section,-**

the relief afforded by this section shall be reduced by the amount discharged, **released**, or become irrevocable or unenforceable, **and**-

(f) For the purposes of giving effect to this subsection, **the Commissioner may at any time alter any assessment notwithstanding the time bar; and**

(g) **Where and to the extent to which the relief afforded by this subsection has been reduced and the taxpayer pays an amount in respect of the debt previously discharged, released, or become irrecoverable or unenforceable, the amount paid shall, to the extent that it does not exceed the reduction in relief, be allowed as a deduction to the taxpayer in the income year in which payment is made**. (emphasis added)

Section 114 of the Insolvency Act 1967 states:

A discharge shall release the bankrupt from all debts **provable in the bankruptcy** except the following:-

(a) Any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party:

(b) Any debt or liability whereof he has obtained forbearance by any fraud to which he was a party:

(c) Any judgment debt or any amount payable under any order for which he is liable under section 45 or section 110 of this Act:

(d) Any amount payable under a maintenance order under the Family Proceedings Act 1980:

(e) Any amount payable under the Child Support Act 1991. (emphasis added)

The definition of “debt provable in bankruptcy” and “provable debt” in section 2 of the Insolvency Act 1967 is:

Includes any debt, demand, or liability by this Act made provable in bankruptcy.

The taxpayer has incurred expenditure or loss of $625,000 that has been allowed as a deduction in an income year for which she had a net loss. The taxpayer did not pay the $625,000 debt and was discharged from liability to pay it by operation of the Insolvency Act 1967, because the debt was a debt provable in bankruptcy as defined in section 2 of the Insolvency Act 1967. The taxpayer cannot offset the $625,000 against her post discharge income from the garden centre. However, if the taxpayer subsequently pays an amount relating to the released $625,000 debt, the amount paid, to the extent that it does not exceed the reduction in relief, will be allowed as a deduction to her in the income year in which the payment is made.

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.

Stolen funds – whether assessable income

Case: "A Taxpayer" v CIR

Decision Date: 28 August 1997

Act: Income Tax Act 1976 – sections 65(1), (2)(a), (b), (e) and 38(2).

Keyword: *Stolen funds, income, futures exchange*

Summary: The Court of Appeal held the funds the appellant stole from his employer to use on the futures market were not assessable income as defined in the Act.

Facts: The Appellant, an accountant in an insurance company, stole approximately $2.2 million from his employer and invested the money in the futures market. He diverted the money by writing cheques into his own account.

Although the Appellant made profits, some of which he paid back, he also made substantial losses.

When the stock market crashed, the Appellant incurred losses of over $1 million. Some funds were recovered from him, but approximately $800,000 was left unpaid.

Result: The issue facing the Court was whether the unpaid balance of the stolen money was assessable income.

The Taxation Review Authority held that the stolen funds were not income in the hands of the appellant. This is because according to the authority, stealing did not produce income according to ordinary concepts, but was just a transfer of capital.

The other substantial issue before the Authority was whether the appellant's activities came within either section 65(2)(a), business income, or section 65(2)(e), profit making schemes of the Income Tax Act 1994.

The Authority found that the appellant was carrying on a business and that all the profits or gains derived therefrom were assessable pursuant to section 65(2)(a). The Authority also held that any losses were deductible under section 104.

On appeal by the Commissioner of the first issue only (i.e., whether the unpaid balance of the stolen money was assessable income), the High Court held that the unpaid balance was income. Justice Morris held that the question to be asked was whether the taxpayer had acquired a sum of money over which he had control so as to derive economic value from it. Justice Morris found in the affirmative. The appellant had received a benefit of money and so must pay tax on it, whether the money is rightfully his or not.

The remaining question for the High Court, therefore, was within which paragraph of section 65(2) the unrepaid money came.

Justice Morris rejected the argument for the Commissioner that the unpaid money came within section 65(2)(a), (b) or (e). As to (a), the embezzlement did not constitute the carrying on or carrying out of a business of stealing cheques as contended for by the Commissioner: unrepaid money was acquired independently of the business and then put to use for trading. It was derived prior to the business rather than from the business operations. The unrepaid money was not "monetary remuneration" within para (b). The existence of the employment relationship was no more that a background fact to the making of the payment. The unrepaid money was not a gain derived from a scheme under para (e). The unrepaid funds were injected into the venture, they were not derived from it. That left para (1) and, in view of his earlier finding that the unrepaid stolen money constituted income, the money had to come within (1).

The Court of Appeal rejected Justice Morris' approach. The Court held instead that the determining factors as to whether the unpaid money was assessable income are the legal rights and obligations that arose from the transaction in question.

There could be no gain to the appellant unless the money was received by him beneficially and here it was not because at all times he was legally obliged to return it to the true owner.

The Court held that the embezzled sums were not income derived by the taxpayer within the meaning of section 38(2) and the definition of assessable income in section 2, or within any of the provisions of section 65(2).

Computer programs and software – whether intellectual property or goods

Case: TRA 95/37

Decision Date: 11 August 1997

Act: Goods and Services Act 1985 – sections 2(1)(a), (c)

Keywords: *intellectual property*

Summary: The Authority held that computer programs and software are regarded as intellectual property in the form of “know how”. As such the transfer of “know how” cannot be regarded as goods.

Facts: Two experienced businessmen involved in agricultural fertilisers applied their collective knowledge to formulate a business package for the franchising of prescriptive fertilisers for farmland. To facilitate this, they incorporated some companies; one of which was the Objector and under an Agreement for Sale and Purchase (“Agreement”) sold the business package to the Objector. The Agreement referred to intellectual property which included a patent, trademark and computer programmes and software.

Decision: The issue facing the Authority was whether the sale of a business “know how” package was the sale of goods or services, and if it was goods, whether it was secondhand.

The provisional patent and registered trademark referred to in the Agreement were “choses in action” and are thereby excluded from the definition of goods in the Act. Goods for the purposes of the Act must be capable of being “choses in possession”, that is, physical things as opposed to intellectual things.

continued on page 24

from page 23

The computer programs and software referred to in the Agreement are not goods because they are intellectual property in the form of know how or information. Know how is defined as all "undivulged technical information". The transfer of this information is incapable of being goods, as a computer program is regarded as intellectual property.

To the extent that payment was made for technical knowledge, that payment must be construed as payment for services. A registered person cannot claim an input tax credit for services provided by a non-registered person.

Even if it were possible to regard the business package as goods, it was not secondhand, as such goods had never been previously utilised or exploited in any commercial way.

Assets retained – whether taxable activity still exists

Case: TRA 96 / 116

Decision Date: 4 September 1997

Act: Goods and Services Act 1985 – sections 2, 6(1)(a), 20(3)(a)

Keywords: *Input tax credit*

Summary: The Authority held that as long as the taxpayer continues to employ its assets in some activity, or has the intention to do so, then for the purposes of the GST Act it is continuing to carry on a taxable activity.

Facts: The Objector is registered for the taxable activity of restaurant services. It formerly carried on a restaurant business, but this was sold in November 1993.

In June 1995 the purchaser of the business issued proceedings against the Objector for damages for misrepresentation. The Objector incurred legal and accounting costs in defending the claim. In its returns for the taxable periods ending 30 April 1995 to 31 October 1995, the Objector claimed input tax credits in respect of such costs. Inland Revenue disallowed these claims and the Objector objected.

Decision: The issue before the Authority was whether or not at all material times the taxpayer was carrying on a taxable activity and was therefore entitled to a refund of inputs claimed by it in respect of legal and accounting fees paid.

Judge Willy found as a fact that the objector did not cease trading when it sold its restaurant business. On the contrary, it continued to look actively to employ the capital from the sale of the business in some other income-producing activity, and was only stopped from doing so by the intervention of Court proceedings and in particular the failure of negotiations to settle those proceedings.

His Honour stated that as long as the taxpayer continues to employ its assets in some activity, or has the intention to do so, and given that it is registered for GST (or deemed to be so registered) then the fact that its efforts for the time being do not result in the derivation of any income from the attempts to employ those assets does not matter, because for the purposes of the GST legislation it is continuing to carry on a taxable activity.

As an alternative, in case His Honour was wrong in finding that the taxable activity still continued, he found that the legal and accounting expenses were incurred within the provisions of section 6(2) as being something done in connection with the termination of a taxable activity.

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 (%)	Determ-ination number	Appears in TIB
Aquariums	4	40	30	DEP22	9.2:1
Bin (wool storage, live bottom)	15.5	12	8	DEP11	7.3:20
Bulkheads (insulated, removable)	4	40	30	DEP13	7.10:26
CCH Electronic NZ Essential Tax Package, designed for a specific tax year	1	100	100	PROV4	7.3:19
CCH Electronic NZ Master Tax Guide, designed for a specific tax year	1	100	100	PROV4	7.3:19
Combing machines (wool)	15.5	12	8	DEP11	7.3:20
Containers (insulated, below 8m^3)	5	33	24	DEP13	7.10:26
Containers (shipping)	20	9.5	6.5	DEP13	7.10:26
Crown Health Enterprise assets *(half a page of various assets - see TIB article)*					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
Machine centre, CNC (timber/joinery industry)	8	22	15	DEP28	9.9:1
Marquees *(half a page of various assets – see TIB article)*				DEP18	8.6:8
Medical and medical laboratory equipment *(3 pages of various assets – see TIB article)*			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

continued on page 26

Psychological testing sets	10	18	12.5	PROV2	6.10:6
Rifles, Air (Leisure industry category)	10	18	12.5	DEP20	8.10:1
Rifles (less than 10,000 rounds per year)	6.66	26	18	DEP20	8.10:1
Rifles (more than 10,000 rounds per year)	2	63.5	63.5	DEP20	8.10:1
Scaffolding (aluminium)	8	22	15.5	DEP19	8.8:3
Scaffolding (other than aluminium)	15.5	12	8	DEP19	8.8:3
Scientific and laboratory equipment (not medical laboratory equipment) *(2 pages of various assets – see TIB article)*				DEP8	6.7:17
Shotguns (less than 50,000 rounds per year)	6.66	26	18	DEP20	8.10:1
Shotguns (more than 50,000 rounds per year)	2	63.5	63.5	DEP20	8.10:1
Speed humps (metal)	5	33	24	PROV3	6.13:13
Static delimbers (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
Tooling machine, CNC (timber/joinery industry)	8	22	15	DEP28	9.9:1
Undersea maintenance equipment *(1 page of various assets – see TIB article)*				DEP17	8.2:9
Wintering pads (rubber)	6.66	26	18	PROV5	8.2:7
Yachts (international ocean-going)	6	15	10	DEP12	7.10:25
Yachts (other than international ocean-going)	15.5	12	8	DEP12	7.10:25

Booklets available from Inland Revenue

This list shows all of Inland Revenue's information booklets as at the date of this Tax Information Bulletin. There is also a brief explanation of what each booklet is about.

Some booklets could fall into more than one category, so you may wish to skim through the entire list and pick out the booklets that you need. To order any of these booklets, call the forms and stationery number listed under "Inland Revenue" in the blue pages at the front of your phone book. This is an automated service, and you'll need to have your IRD number handy when you call.

The TIB is always printed in a multiple of four pages. We will include an update of this list at the back of the TIB whenever we have enough free pages.

General information

Binding rulings (IR 115G) - May 1995: *Explains binding rulings, which commit Inland Revenue to a particular interpretation of the tax law once given.*

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

Disputing a notice of proposed adjustment (IR 210K) - Oct 1996: *If we send you a notice to tell you we're going to adjust your tax liability, you can dispute the notice. This booklet explains the process you need to follow.*

Disputing an assessment (IR 210J) - Oct 1996: *Explains the process to follow if you want to dispute our assessment of your tax liability, or some other determination.*

How to tell if you need a special tax code (IR 23G): *Information about getting a special "flat rate" of tax deducted from your income, if the regular deduction rates don't suit your particular circumstances.*

If you disagree with us (IR 210Z) - Sep 1996: *This leaflet summarises the steps involved in disputing an assessment.*

Income from a Maori Authority (IR 286A) - Feb 1996: *For people who receive income from a Maori authority. Explains which tax return the individual owners or beneficiaries fill in and how to show the income.*

Independent Family Tax Credit (FS 3) - Sep 1996: *Introducing extra help for families, applying from 1 July 1996.*

Inland Revenue audits (IR 297) - May 1995: *For business people and investors. It explains what is involved if you are audited by Inland Revenue; who is likely to be audited; your rights during and after the audit, and what happens once an audit is completed.*

Koha (IR 278) - Aug 1991: *A guide to payments in the Maori community - income tax and GST consequences.*

Maori Community Officer Service (IR 286) - Apr 1996: *An introduction to Inland Revenue's Maori Community Officers and the services they provide.*

New Zealand tax residence (IR 292) - Jun 1997: *An explanation of who is a New Zealand resident for tax purposes.*

Overseas private pensions (IR 258A) - 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) - Jun 1997: *Explains how to account for income tax in New Zealand if you receive a social security pension from overseas.*

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

Provisional tax (IR 289) - Jun 1997: *People whose end-of-year tax bill is $2,500 or more must generally pay provisional tax for the following year. This booklet explains what provisional tax is, and how and when it must be paid.*

Putting your tax affairs right (IR 282) - Jun 1997: *Explains the advantages of telling Inland Revenue if your tax affairs are not in order, before we find out in some other way. This book also sets out what will happen if someone knowingly evades tax, and gets caught.*

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

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

Self-employed or an employee? (IR 186) - Jun 1997: *Sets out Inland Revenue's tests for determining whether a person is a self-employed contractor or an employee. This determines what expenses the person can claim, and whether s/he must pay ACC premiums.*

Stamp duty and gift duty (IR 665) - Feb 1995: *Explains what duty is payable on transfers of real estate and some other transactions, and on gifts. Written for individual people rather than solicitors and legal firms.*

Student Loans - how to get one and how to pay one back (SL 5) - 1997: *We've published this booklet jointly with the Ministry of Education, to tell students everything they need to know about getting a loan and paying it back.*

Superannuitants and surcharge (IR 259) - Jun 1997: *A guide to the surcharge for national superannuitants who also have other income.*

Tax facts for income-tested beneficiaries (IR 40C) - Aug 1997: *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) - Aug 1997: *An explanation of the tax treatment of these types of payments.*

Smart Business (IR 120) - Jul 1996: *An introductory guide to tax obligations and record keeping, for businesses and non-profit organisations.*

continued on page 28

Surcharge deduction tables (IR 184NS) - 1998: *PAYE deduction tables for employers whose employees are having NZ Super surcharge deducted from their wages.*

Taxes and the taxi industry (IR 272) - Feb 1996: *An explanation of how income tax and GST apply to taxi owners, drivers, and owner-operators.*

Resident withholding tax and NRWT

Approved issuer levy (IR 291A) - May 1995: *For taxpayers who pay interest to overseas lenders. Explains how you can pay interest to overseas lenders without having to deduct NRWT.*

Non-resident withholding tax guide (IR 291) - Mar 1995: *A guide for people or institutions who pay interest, dividends or royalties to people who are not resident in New Zealand.*

Resident withholding tax on dividends (IR 284) - Oct 1993: *A guide for companies, telling them how to deduct RWT from the dividends that they pay to their shareholders.*

Resident withholding tax on interest (IR 283) - Jul 1996: *A guide to RWT for people and institutions which pay interest.*

Resident withholding tax on investments (IR 279) - Jun 1996: *An explanation of RWT for people who receive interest or dividends.*

Non-profit bodies

Charitable organisations (IR 255) - May 1993: *Explains what tax exemptions are available to approved charities and donee organisations, and the criteria which an organisation must meet to get an exemption.*

Clubs and societies (IR 254) - Jun 1993: *Explains the tax obligations which a club, society or other non-profit group must meet.*

Education centres (IR 253) - Jun 1994: *Explains the tax obligations of schools and other education centres. Covers everything from kindergartens and kohanga reo to universities and polytechnics.*

Gaming machine duty (IR 680A) - Jun 1997: *An explanation of the duty which must be paid by groups which operate gaming machines.*

Grants and subsidies (IR 249) - Jun 1994: *An guide to the tax obligations of groups which receive a subsidy, either to help pay staff wages, or for some other purpose.*

Company and international issues

Company amalgamations (IR 4AP) - Feb 1995: *Brief guidelines for companies considering amalgamation. Contains an IR 4AM amalgamation declaration form.*

Consolidation (IR 4E) - Mar 1993: *An explanation of the consolidation regime, which allows a group of companies to be treated as a single entity for tax purposes.*

Controlled foreign companies (IR 275) - Nov 1994: *Information for NZ residents with interests in overseas companies. (More for larger investors, rather than those with minimal overseas investments)*

Foreign dividend withholding payments (IR 274A) - Mar 1995: *Information for NZ companies that receive dividends from overseas companies. This booklet also deals with the attributed repatriation and underlying foreign tax credit rules.*

Foreign investment funds (IR 275B) - Oct 1994: *Information for taxpayers who have overseas investments, but who don't have a controlling interest in the overseas entity.*

Imputation (IR 274) - Feb 1990: *A guide to dividend imputation for New Zealand companies.*

Qualifying companies (IR 4PB) Oct 1992: *An explanation of the qualifying company regime, under which a small company with few shareholders can have special tax treatment of dividends, losses and capital gains.*

Child Support booklets

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

Child support - a custodian's guide (CS 71B) - Nov 1995: *Information for parents who take care of children for whom Child Support is payable.*

Child support - a guide for bankers (CS 66) - Aug 1992: *An explanation of the obligations that banks may have to deal with for Child Support.*

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

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

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

Child support - does it affect you? (CS 50): *A brief introduction to Child Support in Maori, Cook Island Maori, Samoan, Tongan and Chinese.*

Child support - estimating your income (CS 107G) - Jul 1996: *Explains how to estimate your income so your Child Support liability reflects your current circumstances.*

Child support - how the formula works (CS 68) - Dec 1996: *Explains the components of the formula and gives up-to-date rates.*

Problems with our child support service? (CS 287) - Jul 1997: *Explains how our Problem Resolution Service can help if our normal services haven't resolved your Child Support problems.*

Due dates reminder

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.

November 1997

5 Large employers: PAYE deductions and deduction schedules for period ended 31 October 1997 due.

7 Provisional tax and/or Student Loan interim repayments: first 1998 instalment due for taxpayers with July balance dates.

Second 1998 instalment due for taxpayers with March balance dates.

Third 1998 instalment due for taxpayers with November balance dates.

Annual income tax returns due to be filed for all non-IR 5 taxpayers with July balance dates.

1997 end of year payments due (income tax, Student Loans, ACC premiums) for taxpayers with December balance dates.

QCET payment due for companies with December balance dates, if election is to be effective from the 1998 year.

20 Large employers: PAYE deductions and deduction schedules for period ended 15 November 1997 due.

Small employers: PAYE deductions and deduction schedules for period ended 31 October 1997 due.

Gaming machine duty return and payment for month ended 31 October 1997 due.

RWT on interest deducted during October 1997 due for monthly payers.

RWT on dividends deducted during October 1997 due.

Non-resident withholding tax (or approved issuer levy) deducted during October 1997 due.

28 GST return and payment for period ended 31 October 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 ______________________________

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✓ *Public binding rulings*	*Comment Deadline*
☐ **3280**: Rent deemed to be payable - deductibility	31 October 1997

✓ *Interpretation statements*	*Comment Deadline*
☐ **3970**: "Forestry": whether or not it is included in the section CD 1 (7) definition of "farming or agricultural business"	31 October 1997
☐ **3788**: Shearers' quarters: eligibility for exemption from conveyance duty on residential property or from lease duty on residential land – sections 24 and 35, Stamp and Cheque Duties Act 1971	31 October 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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IR 596

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