

TAX INFORMATION BULLETIN

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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.

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

Depreciation Determination DEP29

In TIB Volume Nine, No.8 (August 1997) at page 3, we published a draft general depreciation determination for heavy truck trailers (Class TD, as included in First Schedule to the Miscellaneous Transport Regulations, - over 10 tonnes) rented out for short periods. These trailers are usually rented to front line major transport and distribution companies to cover emergencies and excess workload requirements. The period of rental is short-term. Generally, for only 1-2 weeks at a time.

We received only one submission in relation to this draft, which concerned the residual value of the trailers. That issue has now been resolved and the Commissioner has now issued the determination. It is reproduced below and may be cited as “Determination DEP29: Tax Depreciation Rates Determination General Determination No. 29”. The determination is based on an estimated useful life (EUL) of 10 years and a residual value of 13.5%.

General Depreciation Determination DEP29

This determination may be cited as “Determination DEP29: Tax Depreciation Rates General Determination Number 29”.

1. Application

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

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

2. Determination

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

- Inserting into the “Hire Equipment (Where on short-term hire of 1 month or less only)” industry category the general asset class, estimated useful life, and diminishing value and straight-line depreciation rate listed below:

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

3. Interpretation

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

This determination is signed by me on the 16th day of October 1997.

Jeff Tyler
Assistant General Manager (Adjudication & Rulings)

Schedule of items omitted from Depreciation Schedule

Depreciation Determination DEP30

In TIB Volume Nine, No. 9 (September 1997) at page 2, we published a draft general depreciation determination for items that were omitted from the original Depreciation Schedule, or where there were inconsistencies in that Schedule (as published as an appendix to Tax Information Bulletin Volume Four, No. 9 (May 1993) and as subsequently amended).

No submissions were received on this draft. The Commissioner has now issued the determination with one minor alteration – the asset class “Skidoo” was inadvertently

included in the “Hotels, Motels, Restaurants, Cafes, Taverns and Takeaway Bars” industry category, as well as the “Leisure” industry category. The asset class should only have been included in the “Leisure” industry category.

The determination is reproduced below and may be cited as “Determination DEP30: Tax Depreciation Rates Determination General Determination Number 30”. The determination is based on the estimated useful lives set out in the determination and a residual value of 13.5%.

General Depreciation Determination DEP30

This determination may be cited as “Determination DEP30: Tax Depreciation Rates General Determination Number 30”.

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:

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

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

	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Bakeries			
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:

	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Engineering (including automotive)			
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” 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
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 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 (kitchen)	5	33	24

- 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 classes, estimated useful lives, 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

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- Inserting into the “Medical and Medical Laboratory Equipment” asset category the general asset classes, estimated useful lives, 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.

This determination is signed by me on the 10th day of November 1997.

Jeff Tyler

Assistant General Manager (Adjudication & Rulings)

Wind Turbine Generators

Draft General Depreciation Determination

We have been asked to review the basic economic depreciation rate applying to “Windmills” under the “Power Generation and Electrical Reticulation Systems” industry category.

The Commissioner proposes to issue a general depreciation determination which will insert a new asset class “Wind Turbine Generators” into the “Power Generation

and Electrical Reticulation Systems” industry category. Both “Wind Turbine Generators” and “Windmills” will have a depreciation rate of 18% DV (12.5% SL), based on an estimated useful life of 10 years.

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

General Depreciation Determination DEP[X]

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

1. Application

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

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

2. Determination

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

- Inserting into the “Power Generation and Electrical Reticulation Systems” industry category the general asset classes, estimated useful lives, and diminishing value and straight-line depreciation rates listed below:

Power Generation and Electrical Reticulation Systems	Estimated useful life (years)	DV banded dep’n rate (%)	SL equivalent banded dep’n rate (%)
Wind Turbine Generators	10	18	12.5
Windmills	10	18	12.5

- Deleting from the “Power Generation and Electrical Reticulation Systems” industry category the general asset class, estimated useful life and diminishing value and straight-line depreciation rate listed below:

Power Generation and Electrical Reticulation Systems	Estimated useful life (years)	DV banded dep’n rate (%)	SL equivalent banded dep’n rate (%)
Windmills	12.5	15	10

3. Interpretation

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

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

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

We need to receive your submission by 30 January 1998 if we are to take it into account in finalising the determination.

Copyright in sound recordings

Draft General Depreciation Determination

Copyright in a sound recording differs from most other assets in that it is generally not discarded and/or replaced when its income earning capacity is reduced. Rather, copies of the sound recording are produced as required from a master disc. Copies can be made from that master for as long as there is a demand for the recording. A depreciation rate already exists for the master under the "Audio and Video Recording Studios and Professional Photography" industry code. However, that rate applies only to the master and not to the copyright in the sound recording. In practice, as demand for a recording reduces, the likelihood of further copies being made also reduces. In turn, the value of the copyright is also reduced. Generally, most of the sales, (to retailers) of the sound recording occur within 12 months of the recording first being released for sale to the public.

Recognising this, the Taxation (Remedial Provisions) Act 1997, ("the Act") has added the copyright in certain sound recordings to schedule 17 of the Income Tax Act 1994, which lists intangible property that can be depreciated. The Act also amends the definition of "estimated useful life" in section OB 1 of the Income Tax Act 1994

to provide for the copyright in a sound recording. The estimated useful life of the copyright in a sound recording is:

the period from the time such a copyright might reasonably be expected to be first useful in deriving gross income until the end of the income year in which it might reasonably be expected that 90% of all the gross income that will be derived from such a copyright has been derived.

We have established that the period in which the first 90% of sales occur is 12 months. As a result, the Commissioner proposes to issue a general depreciation determination. It will apply to all copyright in sound recordings in the following circumstances:

- The copyright must have been produced, or purchased by the taxpayer from an unrelated party, on or after 1 July 1997; and
- Copies of the sound recording must have been sold or offered for sale to the public.

The determination is reproduced below, and will insert a new category into the "Audio and Video Recording Studios and Professional Photography" industry category. The determination will set a depreciation rate of 100% DV and is based on a residual value of 13.5%.

General Depreciation Determination DEP[X]

This determination may be cited as "Determination DEP[X]: Tax Depreciation Rates General Determination Number [X]"

1. Application

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

This determination applies to "depreciable property" other than "excluded depreciable property" produced or purchased on or after 1 July 1997.

2. Determination

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

- Inserting into the "Audio and Video Recording Studios and Professional Photography" industry category the general asset class, estimated useful life, and diminishing value and straight-line depreciation rates listed below:

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Audio and Video Recording Studios and Professional Photography	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Copyright in sound recordings, produced or purchased on or after 1 July 1997	1	100	100

3. Interpretation

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

If you wish to make a submission on this new depreciation rate, please write to:

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

We need to receive your submission by 16 January 1998 if we are to take it into account in finalising the determination.

Interpretation guidelines

The items in this section of the TIB discuss the Commissioner's approach to the interpretation of a general area of law.

Interpretation guidelines are intended to clarify general points of interpretation that are causing, or may cause, difficulty for practitioners, taxpayers, and Inland Revenue. An interpretation guideline is Inland Revenue's opinion as to the better view of the law. That view is developed from an appreciation and assessment of the law on a particular topic, as gathered from leading cases.

"Sham" – meaning of the term

Introduction

The first critical step in working out the tax treatment of a transaction is to correctly understand the transaction. At times this can be a difficult and complicated activity. It is not uncommon for a court to remind us of the process of transactional analysis. For example, the courts talk about the difference between the "form" and the "substance" of a transaction, or that it is the actual transaction entered into that is important, not the descriptive name or label used by the parties.

In New Zealand taxation issues are decided on the basis of the legal and equitable rights and obligations deriving from the transaction the taxpayer is a party to, or the circumstances in which the taxpayer is involved. A significant departure from this approach is when the essential genuineness of a transaction is challenged. This guideline on the meaning of "Sham", examines and explains this situation.

On occasions, some confusion has apparently existed as to the proper application of the term "sham". The following statement sets out what "sham" means, at law, to provide guidance for those involved in tax practice and administration.

As a preliminary point, when analysing a transaction it is common for the terms "form" and "substance" to be used interchangeably in different contexts. To minimise the confusion flowing from the different meanings that the terms have in different contexts, this guideline adopts the following definitions:

- "Form" means the true legal character of a transaction.
- "Substance" means the economic consequences of a transaction.

Generally, a "sham" means acts done or documents executed by parties to the sham with the common intention of creating, for third parties, the appearance or illusion of particular rights and obligations different from the actual rights and obligations (if any) which the parties intend.

A sham may sometimes be confused with the situation where, by deceitful means, one party knowingly enters into a transaction to gain some fraudulent advantage over another. In this situation, statutes and rules of law

exist to counter the advantage sought by those who knowingly enter into these transactions. While the law does discourage such transactions, this discouragement does not render them shams.

Essential features of a sham

The concept of "sham" has been defined and analysed in numerous decisions both in New Zealand and elsewhere. From these decisions it is possible to set out the essence and operation of the doctrine.

1. A common intention must exist between parties (to the sham) that the acts done or documents executed do not create the legal rights or obligations which they appear to create: (*Snook v London and West Riding Investment Ltd* [1967] 1 All ER 518.)
2. A sham is the act done or document executed that is intended to mislead. It is where the parties resort to a form of action or document which does not fit the real facts in order to deceive a third person: (*Bateman Television v Coleridge Finance Co Ltd*. [1969] NZLR 794). A sham is not the underlying motive or intention of the parties.
3. A sham does not apply to transactions that are intended to take effect, and do take effect, between the parties according to their tenor, even though those transactions may have the effect of fraudulently preferring, for example, one creditor to others, and notwithstanding that they are deliberately planned with this in view: (*Paintin and Nottingham Ltd v Miller Gale and Winter* [1971] NZLR 164). In this type of situation the transaction cannot be construed as giving a false or misleading impression to a third party. The appearance created by the act done or documentation is precisely the reality.
4. A sham may exist at the outset or emerge over time: (*Marac Finance Ltd v Virtue* [1981] 1 NZLR 586). For example, a document may be bona fide at inception, but the parties may depart from their initial agreement yet allow its shadow to mask the new arrangement.
5. Where a portion of a transaction is a sham, its effect is limited to that portion. It is incorrect to flavour the rest of the transaction a sham: (Case W49 [1989])

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ATC 460, applying by analogy the approach in *Re Mill's Declaration of Trust; Midland Bank Executor & Trustee Co. Ltd. v Mill and Ors* (1950) 1 ALL ER 789)

6. There is no half-way house between a sham and an effective transaction. This means there is no legal principle supporting a concept where, even though the documents record the intention of parties, nevertheless the substance of the transaction can be interpreted so as to produce some different legal result: (*Re Securitibank Ltd (No 2)* 1978 2 NZLR 136). In ascertaining the true nature of the transaction one must consider the legal character of the agreement which embodies the transaction. It is only if a challenge can be mounted on the basis of the genuineness of the agreement, [as evidenced by the documents,] that it is necessary to consider whether the meaning of the transaction as represented by the documents is not the true meaning of the transaction and the documents themselves are a cloak to conceal its true nature.
7. It may also be observed that the modern trend is for the courts to try to give business efficacy to commercial transactions. For example, if a court is satisfied that the real intention of the parties was to enter into a binding agreement, then the court will do its best to give effect to that intention: (*Attorney-General v Barker Bros Ltd.* [1976] 2 NZLR 495; unreported decision of Thorp J. in *A.G.C. v Broadlands Ltd and General Motors Acceptance Corporation (NZ) Ltd v A.G.C. and Broadlands Finance Ltd* (High Court Auckland A256/80)). This modern trend may be contrasted with an earlier judicial approach, when a finding of sham inevitably enabled a Court to infer the true nature of the arrangement in an "in substance" manner. For example, in *Polsky v SA Services* [1951] 1 ALL ER 185, Lord Goddard had no difficulty inferring from the fact that there had not been payment of a deposit, as set out in a hire purchase agreement used in a refinancing situation, that he was dealing with a clear case of sham. As Thorp J. said in the *A.G.C.* case, "That precedent can no longer safely be followed". In a similar vein, North P. in the *Bateman Television* case said, "...carelessness in the preparation of conditional purchase agreements provides no evidence that they were not genuine documents."

Application

When examining the tax treatment of a transaction, the first step is to ascertain the transaction's true nature: (*Buckley & Young v CIR* (1978) 3 NZTC 61,271). This is to be done in a systematic and objective way, so that there is no pre-judgment or, "...sinister desire to impute to transactions something which they do not contain": (*Re George Inglefield Ltd* [1933] Ch 1; *Old Discount Co Ltd v John Playfair Ltd* [1938] 3 All ER 275). As was said in *Re Securitibank (No. 2)*, the true nature of a

transaction can only be ascertained by careful consideration of the legal arrangements actually entered into and carried out.

Accordingly, before any issue of sham arises, it is important that a systematic and objective approach is undertaken to ascertain the **true nature** of the transaction. The following points, as set out by Richardson J. in *Re Securitibank (No.2)*, provide guidance in this context:

- The true nature can only be found by careful consideration of the legal arrangements actually entered into and carried out.
- It is the legal character of the transaction which is decisive, not the overall economic consequences to the party.
- The legal character is not determined conclusively by the nomenclature used by the parties. It is the inevitable effect of the contract that matters, not the form or language in which the parties chose to express it.
- Consideration must be given to the whole of the contract to determine the true nature of the relationship.
- Where the transaction is embodied in several interrelated arrangements, all the arrangements must be considered together and one may be read to explain the others.
- When considering the essence of, for example, the bargain disclosed by the document, the circumstances surrounding the entering into the transactions may be taken into account. However, this does not mean that evidence is admissible to vary or contradict the written agreement; only that before you construe the agreement you are entitled to understand the setting in which it was made and that it should be construed against that background.
- Documents themselves may be brushed aside only if and to the extent that the parties had a common intention that they were not to create the legal rights or obligations which they gave the appearance of creating and in that sense were shams.
- Finally, the concern is with the legal arrangements actually carried out. It is what the parties eventually did that counts, not what they may have initially agreed to do. In some cases the parties may have departed from the initial agreement, in which event questions of a new agreement or variation of the original agreement, or estoppel, or sham in operation may arise.

If the issue of sham does arise, relevant evidence will be sought, looking primarily at extraneous factors outside the agreement or document under scrutiny. As a sham is an attempt to disguise the real legal position between parties, the examination focuses on testing the reality of the purported position.

Whether a sham exists depends on the circumstances and it is not possible to highlight factors that apply in every

situation. Most cases are concerned with whether the parties intend to create the entitlements that appear on the face of the document. Areas that may be examined include the conduct or actions of the parties, the existence and relevance of related documentation (including financial records, correspondence, company minutes), actual cash flows, and property transfers etc. The purpose of any examination is to determine whether the reality of the parties' relationship reflects what appears on the face of the document.

Effect of a sham

A document may be disregarded to the extent that the documentation amounts to a sham and the true arrangement between the parties to the sham is given effect: (*Buckley & Young Ltd v CIR*). This approach, of looking to the true arrangement between the parties, may be contrasted with an earlier approach adopted by the courts where a finding of sham inevitably enabled the courts to infer the true nature of the transaction. For example, in a string of finance cases dealing with the refinancing of existing liabilities, a finding of sham inevitably lead the courts to infer the true nature of the transaction was one of loan. This "in substance" approach is no longer used. Today courts focus the enquiry on objectively discovering what is the true nature of a transaction. They look to the real legal rights and duties created by the transaction by ignoring the facade created by the sham. Therefore, a finding of sham means for third parties that the facade created by the sham disappears and the actual rights and obligations (if any) that the parties to the sham intended to make are given effect.

Note that a sham will not occur simply because a taxpayer adopts one legally available form over another. This point was made clear by the Court of Appeal in *Bateman Television v Coleridge Finance Co Ltd* [1969] NZLR 794, 813, where Turner J said:

I think the occasions on which Courts have set aside the form of a transaction as a 'sham' are confined to cases in which, really doing one thing, the parties have resorted to a form which does not fit the facts in order to deceive some third person, ..., into the belief that they were doing something else. ... but I cannot agree that the term is applicable to the form of a transaction into which the parties are legally at liberty to enter, and into which they do in fact enter, if what they do is simply to prefer this form of transaction to some other into which they might have entered, but did not.

Further where Courts have set aside the "form" of a transaction as a sham, it is the literal form of the documents that is brushed aside in favour of the true legal character of the transaction. The Courts will not allow the true legal character to be disregarded in favour of the economic substance.

Cases involving sham transactions

A finding of sham is clearly fact dependent. In the New Zealand context there have been very few reported tax cases holding that a sham exists. However, there are a

number of Australian cases where courts have found a sham.

For example, in *Cranstoun v FC of T* [1984] ATC 4876, the Supreme Court of Queensland found, on the facts, that the pre-payment of interest under a tax avoidance scheme was void on the basis that the underlying loan transaction was a sham. After considering the dicta of Diplock L.J. in *Snook v London West Riding Investments Ltd.*, the Court in *Cranstoun* said:

If two persons sign a document which on its face purports to be loan agreement evidencing a loan from one to the other for \$180,000 but it is agreed either expressly or impliedly that the document is intended to give the appearance only of a loan transaction then it is, in my view, a sham: it something devised to delude, it is a trick or a hoax, an imposture, it is something that is intended to be mistaken for something else, it is not really what it purports to be, it is a spurious imitation or a counterfeit ...

The Court continued:

However one defines it, it is in law nothing, nor, in my view, can it be elevated to be something which the law will recognise and enforce merely because documents which are drawn in legal language appear, a series of bookkeeping entries is made and extensive use of the banking system involving debits and credits of the order of hundreds of thousands of dollars. No amount of professional ingenuity will make the agreement into what in fact it is not if the parties do not so intend.

In a similar vein, the majority of the Full Federal Court in *Faucilles Pty. Ltd. v FC of Taxation* [1990] ATC 4,003 upheld the finding of sham by the Administrative Appeals Tribunal in *Case W48* [1989] ATC 460. In this case the income of two family trusts purportedly distributed to various overseas beneficiaries was never remitted to them. Instead, there was a "round robin" of book entry payments between the trusts, trustees, and beneficiaries to whom the trust funds' income was purportedly distributed.

The Tribunal found, on the evidence, that it was never intended that there be any real distribution to anyone other than one beneficiary - namely the taxpayer (and possibly his children). The taxpayer meant to use the discretionary distribution provisions of the trust deed and the default distribution provisions, if they ever took effect, to cloak the real transactions which he intended to undertake. The tribunal found that it was never intended that the default distribution provisions should create legal or equitable obligations and therefore they were a sham.

Example

The following example illustrates the practical operation of the sham doctrine.

M works for P and is paid wages subject to, amongst other things, PAYE. M and P consider there may be advantages to both of them by opting out of their PAYE obligations, as P could stop deducting PAYE and M could take deductions not available to employees. Accordingly, M and P draw up a new

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contract which states that the nature of the employment relationship is one “for service” rather than “of service”. The contract specifically sets out that M is a self-employed independent contractor of P. Under its terms, P is not responsible for holiday pay or sick leave, and it is M’s responsibility to supply all equipment, plant etc., for the contract work.

Following the signing of the new agreement, the only noticeable difference in the employment relationship is the contract. Everything else stays the same. M and P do not factually implement the clauses of the new contract nor do they intend to do so. The employment relationship maintains the same entitlements and obligations as before. While the new contract states that M is not entitled to holiday pay or sick leave, M continues to take paid holidays and sick leave. P continues to provide all the assets and make all the decisions as to what is to be done and how. In short, M and P continue to operate in a “master/servant” relationship. However, in terms of their tax obligations, P ceases to deduct PAYE.

When queried on this, P produces the new agreement as evidence of the new relationship.

The new employment relationship is clearly a sham. M and P intend the Commissioner to believe that an independent contractual arrangement exists when clearly there is no change in the relationship. On a finding of sham, the alleged new arrangement is ignored and effect is given to the real employment status. It is likely that M’s failure to deduct PAYE would be subject to the new penalty regime.

If, in this example, M and P genuinely began to operate in accordance with the express terms in the new agreement then, of course, no sham would exist.

Alternatively, if M and P entered into the new contract, did not implement its terms in practice, but continued to meet their legal and taxation obligations on the basis that an employment relationship still existed, there would not be a sham. For a sham to exist, the parties’ common intention must be to mislead someone else (such as the Commissioner) as to the true legal or factual position.

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.

Importers and GST input tax deductions

Public Ruling – BR Pub 97/10

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

Taxation Law

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

This Ruling applies in respect of section 20(3) and the definitions of "invoice" and "document" in section 2.

The Arrangement to which this Ruling applies

The Arrangement is the importing of goods into New Zealand by registered persons for the purposes of making taxable supplies, the levying of GST on those goods by the New Zealand Customs Service under the Customs and Excise Act 1996, and the subsequent claiming of input tax deductions on that GST.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

A registered person who accounts for GST on an invoice basis may support a claim for a GST input tax deduction under section 20(3) for GST levied by the New Zealand Customs Service on goods imported into New Zealand with:

- The New Zealand Customs Service Electronic Entry document; or
- A Customs import Entry Form; or
- A Deferred Payment of Duty Statement.

The period for which this Ruling applies

This Ruling will apply to claims for input tax deductions on GST levied by the New Zealand Customs Service on goods imported into New Zealand between 1 April 1997 and 31 March 2000.

This Ruling is signed by me on the 22nd day of October 1997

Martin Smith
General Manager (Adjudication & Rulings)

Commentary on Public Ruling BR Pub 97/10

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 97/10 (“the Ruling”).

The subject matter of the Ruling was previously considered in Public Binding Ruling 95/9 published in TIB Volume Seven, No. 7 (January 1996) at page 15 under the heading “GST: importers and input tax deductions”. The Ruling replaces that earlier ruling.

Background

In December 1995, following the Court of Appeal decision *Shell New Zealand Holding Co. Ltd. v CIR* (1994) 16 NZTC 11,163, Public Binding Ruling 95/9 was issued and published in TIB Volume Seven, No. 7 (January 1996). It provided that:

A registered person may use either a Customs Import Entry Form or a Deferred Payment of Duty Statement to support a claim for a GST input tax deduction under section 20 of the Goods and Services Tax Act 1985 for GST levied by New Zealand Customs on goods imported into New Zealand.

When that ruling was made the Customs Act 1966 was in force. On 1 October 1996 the Customs and Excise Act 1996 came into effect, repealing and replacing the Customs Act 1966.

For some time the New Zealand Customs Service has operated an Electronic Direct Import (“EDI”) system whereby it retains no papers for approximately 97% of import entries. When goods are entered by a customs agent or broker, in most cases the New Zealand Customs Service no longer issues a piece of paper that is the Customs Import Entry Form. Instead, the entry is made electronically by the agent or broker and sent, electronically, to the New Zealand Customs Service, where the entry is confirmed and cleared and delivery given. Once the import entry is cleared, an electronic message is sent back to the customs agent or broker, along with a delivery order. The customs agent or broker can then print out the electronic documents for the importer.

The Customs and Excise Act 1996 specifically provides for this new electronic system. We are withdrawing the previous ruling which related solely to the manual procedure under the Customs Act 1966. The new Ruling incorporates both the old manual procedure and the new electronic procedure.

Legislation

Section 2 of the Goods and Services Tax Act 1985 defines “invoice” as meaning:

A document notifying an obligation to make payment:

Section 2 also defines “document” as including:

Any electronic data, computer programmes, computer tapes, and computer discs.

Section 12 imposes GST on the importation of goods into New Zealand. It states:

- (1) Notwithstanding anything in this Act, a tax to be known as good and services tax shall be levied, collected, and paid in accordance with the provisions of this section at the rate of 12.5 percent on the importation of goods (not being fine metal) into New Zealand, being goods that are -
 - (a) Entered therein, or delivered, for home consumption under the Customs and Excise Act 1996; or
 - (aa) Entered for delivery to a manufacturing area licensed under section 12 of the Customs and Excise Act 1996; or
 - (b) Before their entry, or delivery, for home consumption or, as the case may be, entry for delivery to a manufacturing area licensed under section 12 of the Customs and Excise Act 1996, dealt with in breach of any provision of the Customs and Excise Act 1996, -
by reference to the value of the goods as determined under subsection (2) of this section....
- (3) Subject to this section, tax levied under subsection (1) of this section shall be collected and paid in accordance with the Customs and Excise Act 1996.

Section 20(3) states:

Subject to this section, in calculating the amount of tax payable in respect of each taxable period, there shall be deducted from the amount of output tax of a registered person attributable to the taxable period-

- (a) In the case of a registered person who is required to account for tax payable on an invoice basis pursuant to section 19 of this Act, the amount of input tax -
...
- (ii) Invoiced or paid, whichever is the earlier, pursuant to section 12 of this Act during that taxable period.
...

Under section 39 of the Customs and Excise Act 1996, goods to be imported must be entered in a prescribed form (including by electronic means):

Entry of imported goods -

- (1) Subject to any regulations made under section 40 of this Act, goods that are imported or that are to be imported must be entered by the importer -
 - (a) In such form and manner (including by electronic means into a computer or other device) as may be prescribed; and
 - (b) Within such time as may be prescribed or such further time as the Chief Executive may allow....

Section 86(1) of the Customs and Excise Act 1996 states:

Duty on imported goods a Crown debt -

- (1) The duty on all goods imported constitutes, immediately on importation of the goods, a debt due to the Crown.
- (2) Such duty is owed by the importer of the goods, and, if more than one (whether at or at any time after the time of importation) then jointly and severally by all of them.
- (3) Subject to this Act, such debt becomes due and payable when -
 - (a) Goods have been entered in accordance with section 39 of this Act and the entry has been passed for home consumption; or
 - (b) Goods have been entered in accordance with section 39 of this Act for removal to a manufacturing area; or
 - (c) Goods have been wrongfully landed or otherwise wrongfully dealt with without having been entered pursuant to section 39 of this Act; or
 - (d) An offence has been committed against this Act in respect of the goods.
- (4) Such debt is recoverable by action at the suit of the Chief Executive on behalf of the Crown.

...

Under section 88 of the Customs and Excise Act 1996, an entry for goods is deemed to be an assessment for the purposes of that Act:

Assessment of duty -

- (1) An entry for goods made under this Act is deemed to be an assessment by the importer or licensee, as the case may be, as to the duty payable in respect of those goods.
- (2) If the Chief Executive has reasonable cause to suspect that duty is payable on goods by a person who has not made an entry in respect of the goods, the Chief Executive may assess the duty at such amount as the Chief Executive thinks proper.
- (3) The person liable for the payment of the duty shall be advised of the assessment by notice in writing.

...

Application of the Legislation

The New Zealand Customs Service levies GST on goods imported into New Zealand under section 12 of the Act. Under section 20(3)(a)(ii), registered persons who account on an invoice basis are permitted to claim input tax at the earlier of invoicing or payment (registered persons who account on a payments basis are not affected by the subject matter of the Ruling). Unlike other claims for input tax deductions, section 20(3)(a)(ii) only requires the importers to hold invoices to support their claims rather than tax invoices. This is because the New Zealand Customs Service does not make any supplies when it is levying GST on goods imported into New Zealand, and so is not required to issue tax invoices under section 24 of the Act. Given the new EDI procedure, the question arises as to what documentation

issued by the New Zealand Customs Service is acceptable as an "invoice" for the purposes of the Act.

The Court of Appeal in *Shell New Zealand Holding Co. Ltd v CIR* considered the issue of when an importer could claim an input tax deduction for GST levied on goods imported into New Zealand. The Court of Appeal noted that an "invoice" is defined in section 2 of the Goods and Services Tax Act as "a document notifying an obligation to make payment". The Court held that when the goods are entered, this constitutes the duty as a debt due to the Crown. At that point the Customs Import Entry Form provides notice of the obligation to make payment. Therefore, the Customs Import Entry Form, which stated the total duty, total GST and the total payable, fell within the GST definition of "invoice". BR Pub 95/9 confirmed that an importer could use a Customs Import Entry Form to support a claim for a GST input tax deduction.

The Customs Import Entry Form is now only issued for about 3% of import entries. It is principally used by private individual importers who do not have the necessary computer technology and so still use the manual forms. For such importers, the old form remains an acceptable form of documentation to support a GST input tax deduction claim, as confirmed in *Shell New Zealand Holding Co. Ltd v CIR*.

The electronic entry document now used for approximately 97% of import entries also constitutes an invoice sufficient to support a claim for input tax deductions. The information received on the electronic version of an import entry has not changed materially from that of the manual entry. The electronic entry document shows the total duty, total GST, and total payable. It identifies the supplier and the recipient of the goods and services, describes the goods supplied with a detailed coding system, and quantifies the consideration for the supply. Therefore, the electronic entry document contains the information thought necessary by the Court of Appeal in *Shell New Zealand Holding Co. Ltd v CIR* to establish and identify the customs duty and GST owed by the importer to the Crown.

Under the previous system, the Court of Appeal in *Shell New Zealand Holding Co. Ltd v CIR* stated that at the point that the Customs Import Entry Form was signed by the Customs Officer, the document was notice to the importer of the obligation to make payment. Under the present system, the electronic entry is cleared by the New Zealand Customs Service when "Lodgement" and "Delivery" numbers are issued. The debt due to the Crown is created when the entry is confirmed in this way. The clearing of the entry can be considered equivalent to the previous procedure for the signing and stamping of a manual import entry. When the broker receives the electronic entry document back on his or her system with no amendments and receives the delivery order, the importer is notified of the total duty and GST owing on each entry.

Thus, the EDI procedure triggers importation and comprises both an obligation to make payment and

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notification of that obligation. The electronic entry document constitutes an “invoice” for GST purposes so as to trigger the time of supply and the resulting input tax entitlement for GST invoice-based importers under section 20(3).

The New Zealand Customs Service also operates an optional deferred payment scheme for importers, under which it issues a Deferred Payment of Duty Statement for the duty owed by importers on all the goods they import during a particular month. The Deferred Payment Scheme has four billing cycles within a one-month period. Payment is deferred for 21 working days from the end of an importer’s allocated billing cycle. The Deferred Payment of Duty Statement is created from the information contained in the electronic entry document and so is also acceptable documentation to support a GST input tax deduction claim.

Example

A taxpayer imports and sells European cars. She is registered for GST, accounts for tax payable on an invoice basis, and files GST returns on a two-monthly basis. The taxpayer imports cars worth \$300,000 on 28 September. Her customs broker enters the details of the cars she has imported and their values into the correct electronic entry form and sends it electronically to the New Zealand Customs Service. Within a few minutes the New Zealand Customs accepts the import entry as correct, issues lodgement and delivery numbers, and electronically sends the cleared entry and a delivery order back to the taxpayer’s broker stating the total

duty, total GST, and total amount payable on the importation of those cars. The taxpayer’s broker prints out copies of the electronic entry document and delivery order and gives them to the taxpayer. The taxpayer retains these for evidentiary purposes.

The taxpayer is on the Deferred Payment Scheme operated by the New Zealand Customs Service, and receives a Deferred Payment of Duty Statement on 23 October. The payment is deferred for 21 working days. The statement lists all the goods she has imported for the period 23 September to 23 October, and states the total amount of duty and GST payable.

The taxpayer’s taxable period ends on 30 September. She is required to furnish her GST return for the months of August and September, stating the amount of GST she has to return for those two months. The taxpayer will include in her GST return for that taxable period an input tax deduction claim for the GST levied on the cars imported on 28 September.

The taxpayer only needs an invoice to substantiate her claim for an input tax deduction for the GST that the New Zealand Customs Service has levied on the imported cars. The taxpayer may claim the input deduction in the taxable period ending 30 September, because the electronic entry document contains all the necessary details to constitute an invoice for the purposes of the Goods and Services Tax Act 1985. She does not need to delay the claim until the period in which she receives the Deferred Payment of Duty Statement.

Rural rental property owners – liability to register for GST

Public Ruling – BR Pub 97/11

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

Taxation Law

All legislative references are to the Goods and Services Tax Act 1985 unless otherwise stated.

This Ruling applies in respect of sections 2(1) (definition of “person”), 6(1), 51(1), and 57(1).

The Arrangement to which this Ruling applies

The Arrangement is the leasing of land owned by a family group (the co-owners), which may or may not include a family trust, to a family farming partnership. The co-owners are merely tenants in common and do not otherwise have any terms or conditions regulating their relationship.

The partnership carries on a farming business on the land.

The partnership pays a market value rental in excess of the GST registration threshold (currently \$30,000) to the co-owners.

How the Taxation Law apply to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- The co-owners are not an “unincorporated body” in terms of section 57(1). Neither are they a partnership, a joint venture, or trustees of a trust.
- Therefore, the co-owners are not required, as a “group”, to register for GST in terms of section 51(1).

The period for which this Ruling applies

This Ruling applies for the period from 31 October 1997 to 31 March 2000.

This Ruling is signed by me on the 31st day of October 1997.

Martin Smith

General Manager (Adjudication and Rulings)

Commentary on Public Binding Ruling BR Pub 97/11

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Binding Ruling BR Pub 97/11 (“the Ruling”).

Background

An item in TIB Volume Five, No.11 (April 1994) on pages 1–3 entitled, “GST: claims for secondhand goods input tax credits on property transactions between associated persons” set out Inland Revenue’s policy in relation to these transactions. Example 1, on page 3, concluded that the land owning group in the example was an “unincorporated body” for the purposes of section 51 of the GST Act 1985 and was required to register and pay output tax on the transaction.

The example outlined an arrangement where a family group leased land to an associated farming partnership for an annual rental that exceeded the threshold requiring GST registration.

Although Example 1 did not specifically mention details of land ownership, recent Taxation Review Authority decisions have prompted Inland Revenue to revisit the issue. This Ruling now confirms that the mere co-ownership of land will not necessarily result in the co-owners being treated as an “unincorporated body of persons” for GST purposes as indicated in the above-mentioned example. The Ruling clarifies when co-owners will not be treated as a “body” for GST purposes and supersedes the conclusion reached in the example.

Legislation

Section 51(1) requires persons to register, and states:

Subject to this Act, every person who, on or after the 1st day of October 1986, carries on any taxable activity and is not registered, becomes liable to be registered -

- (a) At the end of any month where the total value of supplies made in New Zealand in that month and in the 11 months immediately preceding that month in the course of carrying

on all taxable activities has exceeded \$30,000 (or such larger amount as the Governor-General may, from time to time, by Order in Council declare):

...

- (b) At the commencement of any month where there are reasonable grounds for believing that the total value of supplies to be made in New Zealand in that month and the 11 months immediately following that month will exceed the amount specified in paragraph (a) of this section:

Definitions relevant to the Ruling are:

Section 2 - “Person” includes a company, an unincorporated body of persons, a public authority, and a local authority:

57(1) [Definitions] For the purposes of this section –

“**Body**” means an unincorporated body of persons; and includes –

- (a) A partnership;
(b) A joint venture;
(c) The trustees of a trust:

“**Member**” means a partner, a joint venture, a trustee, or a member of any body:

“**Partnership**” and “**partner**” have the same meaning as in the Partnership Act 1908.

Section 6

6(1) For the purposes of this Act, the term “taxable activity” means –

- (a) Any activity which is carried on continuously or regularly by any person, whether or not for a pecuniary profit, and involves or is intended to involve, in whole or in part, the supply of goods and services to any other person for a consideration; and includes any such activity carried on in the form of a business, trade, manufacture, profession, vocation, association, or club;

(b) ...

- 6(3)** Notwithstanding anything in subsection (1) and (2) of this section, for the purposes of this Act the term “taxable activity” shall not include, in relation to any person, -

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- (d) Any activity to the extent to which the activity involves the making of exempt supplies.

Supplies that are “**exempt supplies**” for GST purposes are set out in section 14. None of the items listed in the section exempts the supply of land by way of rental that is not rental of a dwelling.

Application of the Legislation

Is there a taxable activity?

To be liable to register under section 51(1) there must be a “taxable activity”. Taxable activity is defined in section 6(1)(a). There are three requirements in the definition that must be met:

- There must be an activity;
- which is carried on continuously or regularly;
- which involves or is intended to involve supplies made to another person for a consideration.

Is there an activity?

“Activity” is not defined in the Act, but is given a wide interpretation by the courts. In *Newman v C of IR* (1994) 16 NZTC 11,229 at page 11,233 Fraser J said:

[Activity] is a word of considerable breadth. The new Shorter Oxford English Dictionary 1993 ascribes a number of varying meanings or shades of meanings, none of which is exactly apposite to the word in s 6. The nearest thing, I think, is ‘an occupation, a pursuit’ and (in plural) ‘things that a person animal or group chooses to do’.

The leasing of land is an “activity” for the purposes of the GST Act.

Is the activity carried on “continuously or regularly”?

The courts have considered the phrase “continuously or regularly” in a number of cases. In *Case N27* (1991) 13 NZTC 3,229 at page 3,238 Bathgate DJ stated that:

“Continuously” means that the activity has not ceased in the permanent sense or has not been interrupted in a significant way.... The object and purposes of any physical break in the activity, whether it be for rest, recreation, health and such like may be of importance in determining whether the activity is being carried on continuously....

“Regularly” embodies a steadiness or uniform action, or occurrence of action, so that it recurs or is repeated at fairly fixed times, or at generally uniform intervals, to be of a habitual nature and character.

In *Allen Yacht Charters Limited v C of IR* (1994) 16 NZTC 11,270 Tompkins J said:

The activity must be carried on “continuously or regularly”. This indicates that the activity must either be carried on all the time, i.e., continuously, or it must be carried on at reasonably short intervals, i.e., regularly. An activity that is intermittent or occasional does not qualify.

That the supply of lease of land from the joint owners to the partnership is a taxable activity is supported by some recent cases. In *TRA Case S72* (1996) 17 NZTC 7,446 at 7,449 Barber DJ stated:

The owners of the farm freehold had granted a contractual licence to the relevant partnership to occupy the farmland and farm it. I agree with Mr Lang that the granting of that right was an ongoing and continuous process. It was positive in nature because it required the objectors to allow the relevant partnership to have the continuing access to the farmland to the exclusion of the objector owners over a substantial period of time. In my view, that placement is the carrying on of an activity for the purposes of s 6 (1).

The supply of a lease of land to the partnership is an activity that is carried on “continuously or regularly”.

Is there a consideration involved in the activity?

In this case there is payment by the partnership to the land owners by way of an annual rental.

It is clear that the supply of the land, by way of lease, to the farming partnership is a taxable activity for the purposes of the Act.

Is the taxable activity carried on by a “person”?

Section 51(1) further requires that the taxable activity has to be carried on by a “person”. “Person” is defined in section 2, and includes a company, an unincorporated body of persons, a public authority, and a local authority.

The co-owners in this case are clearly not a company nor a public or local authority.

A “body” is defined, in section 57, as an “unincorporated body” and includes a partnership, a joint venture, and the trustees of a trust. It is clear that the courts will not accept that the co-ownership of land can be construed as an unincorporated body, a partnership, or a joint venture.

In *Case S57* (1996) 17 NZTC 7,368, Barber J approved the approach taken in *Case P70* (1992) 14 NZTC 4,469 that co-ownership does not create an unincorporated body, a partnership, or a joint venture.

In relation to each category of “body”, the following comments are relevant from the decisions of recent TRA cases.

Unincorporated body of persons

Willy DJ in *Case P70* at page 4,476:

...this argument is untenable for much the same reason as the joint venture argument failed because it is based on the proposition that co-ownership of land is sufficient to constitute the co-owners an unincorporated association.

Willy DJ also quotes the following passage from the judgement of Bisson J in *Taunton Syndicate v C of IR* (1982) 5 NZTC 61,106, who said:

When persons associate together for a common purpose it is essential that they should agree on certain basic terms and conditions to regulate their association, otherwise they are but a collection of individuals and not an association. In this sense, their association in an organisation which they have formed to effect their purpose in the manner agreed upon ... A random number of individuals is not an association until they have

formed themselves into an association and this formation does not occur until they have agreed upon an organisation whereby their relationship one with the other is determined and organised.

Although *Taunton Syndicate* discussed the term “unincorporated association” in the context of the Income Tax Act, Bisson J commented on matters that needed to be resolved between co-owners before there could be said to be an unincorporated association:

One co-owner cannot by merely leaving the management of the property to the other impose upon the other an obligation of a fiduciary character. One co-owner cannot compel the others to contribute towards the cost of repairs, nor can he recover from them a portion of the money which he has voluntarily spent upon improvements. One co-owner who has failed to exercise his right of possession is not entitled to claim rent from another co-owner even though that other occupies the whole of the land... These are all matters which one might expect to be resolved if co-owners formed an unincorporated association....

The courts have determined that there must be some degree of formalisation or regulation governing the relationship between co-owners before there can be an unincorporated association.

Partnerships

In *Case S57* at page 7,376, Barber J said:

They ... simply co-owned the land together but as separate co-owners of an equal undivided half share as tenants in common of each section ... I would not have regarded the joint ownership of land by the trusts as **a partnership**. (emphasis added).

This decision is consistent with section 5 of the Partnership Act 1908 which states:

In determining whether or not a partnership does or does not exist regard shall be had to the following rules:

- (a) Joint tenancy, tenancy in common, joint property, or part ownership does not in itself create a partnership as to anything so held or owned, whether the tenants or owners do or not do share any profits made by the use thereof;
- (b) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which returns are derived.

...

If land is held as tenants in common, each co-owner can mortgage or charge his or her interest in the property without binding the other co-owners. This is inconsistent

with general partnership principles (see section 8 of the Partnership Act 1908), where each partner of a firm can bind the other partners.

Joint ventures

“Joint venture” is not defined in the Act. However, the meaning of joint venture has been considered by the courts in both an income tax and GST context.

In *Case P70* it was held that the objectors had proved to a satisfactory standard that there was no joint venture. In this case the Commissioner sought to rely on the grounds that the property co-owned by the two family trusts was owned or operated as a joint venture. At page 4,475 Willy DJ held that:

At best there was joint ownership of a farm without any of the other indicia discussed in the foregoing cases. [*United Dominions Corporation Ltd v Brian Pty Ltd* (1985) 60 ALR at 746-747 and *Commerce Commission v Fletcher Challenge Limited* (1989) NZLR 554]. It was not, for example, an association for the purpose of a particular trading. There was no contractual arrangement between the parties as to how the particular business would be carried on. This was not a contractual association of persons for the purposes of a particular trading commercial undertaking with a view to mutual profit. Each trust received its own share of income and dealt with it as it saw fit.

...mere joint ownership is not of itself sufficient to constitute a joint venture although of course it may together with other relevant facts be conducive to that conclusion.

It is clear from the above that a mere co-ownership, as tenants in common in equal shares, will not constitute a “person” under the expanded definition of that word. The courts have maintained that a mere co-ownership, as tenants in common, will not constitute an unincorporated body, a partnership, or a joint venture.

Are the co-owners, as individuals, required to register for GST?

It has been determined that the co-owners are not a “body” for the purposes of section 57, and, therefore, are not required to register as a “body” for GST purposes.

It therefore remains to establish whether or not the co-owners as individuals (“persons”) are required to register. The registration threshold in section 51 is \$30,000 per annum. Provided that the respective share of the rents by each co-owner (in addition to any supplies from any other taxable activity of that individual) is less than the threshold, the individuals are not required to register. This will be a question of fact in each case.

Colonial Mutual Life Assurance Society Limited's shares and options for policyholders

Product Ruling – BR Prd 97/76

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 HH 3, HH 6, and the definitions of “beneficiary income”, “taxable distribution” and “corpus” in section OB 1.

The Arrangement to which this Ruling applies

The Arrangement is the demutualisation of the Colonial Mutual Life Assurance Society Ltd (“Colonial”) whereby policyholders of Colonial received shares and options in Colonial Limited.

Policyholders voted on a proposal under which Colonial was to demutualise. Once demutualisation was approved, policyholders received shares and options in Colonial Limited in exchange for relinquishment of their membership rights in Colonial. The Directors of Colonial fixed an “implementation date” at which time shares and options were issued by Colonial Limited to policyholders of Colonial.

However, Colonial does not know the whereabouts of all the policyholders entitled to receive shares and options. Accordingly, the Colonial Foundation Trust has been established to hold these shares and options in a fund called the transitional fund, for the benefit of these policyholders, referred to as “unconfirmed members”. In addition to this fund, the trustee is required to establish a separate fund into which 3.5 million shares and options will be placed. This fund is established for charitable purposes only.

With regards to the shares and options issued to the Colonial Foundation Trust for the benefit of unconfirmed members, the trustee will continue to search for these members. Subject to the unconfirmed member satisfying the trustee as to his or her identity, the shares and options (or proceeds from the sale of the options) and any accretions attributable to that member will be distributed to that member. Only one distribution to such an unconfirmed member will be made. No part of the trust property will be deferred for later distribution.

Specific details of the operation of the Trust are contained in the draft Trust Deed dated September 1996.

Assumptions made by the Commissioner

This Ruling is based on the assumptions that:

- This Ruling only applies to distributions made from the Transitional Fund to a policyholder who was a New Zealand resident as at the date the Transitional Fund was established and who is a New Zealand resident at the time of distribution.
- The trusts in respect of each New Zealand resident unconfirmed member will remain “foreign trusts” as that term is defined in section OB 1.

How the Taxation Laws apply to the Arrangement

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

- In respect of each New Zealand resident unconfirmed member, the shares and options (or proceeds from the sale of such securities) and any income attributable to that property are held on separate trusts for the benefit of each New Zealand resident unconfirmed member. Accordingly, section HH 6 will apply to each of these trusts separately in characterising the distribution made to an unconfirmed member.
- The corpus of each trust relating to a New Zealand resident unconfirmed member will be equal to the market value, as at the date of settlement, of the shares and options settled on each trust in accordance with the definition of “corpus” in section OB 1.
- Distributions made to a New Zealand resident unconfirmed member must be included in the gross income of that member under section HH 3 to the extent the distribution is “beneficiary income” and “taxable distribution” as those terms are defined in section OB 1. Neither “beneficiary income” nor any “taxable distribution” will include:
 - The corpus (being an amount equal to the market value of the shares and options as at the date of settlement); and
 - Any capital gains or capital profits from the realisation by the trustee of the shares and/or options settled on each trust in respect of each New Zealand resident unconfirmed member.

The period for which this Ruling applies

This Ruling will apply for the period 3 October 1997 to 3 October 2002.

This Ruling is signed by me on the 3rd day of October 1997.

Martin Smith
General Manager (Adjudication & Rulings)

Depreciation determinations issued since last update of IR 260 Depreciation booklet

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

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

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

Asset	Estimated useful life (years)	DV banded depreciation rate (%)	SL equivalent banded dep'n rate (%)	Determination number	Appears in TIB
Aquariums	4	40	30	DEP22	9.2:1
Automotive tools (<i>various – see TIB article</i>)				DEP30	9.11:2
Bakery utensils (incl. pots and pans)	3	50	40	DEP30	9.11:2
Bedding (Hotels, Motels, etc, and medical/lab)	3	50	40	DEP30	9.11:3,4
Bin (wool storage, live bottom)	15.5	12	8	DEP11	7.3:20
Bulkheads (insulated, removable)	4	40	30	DEP13	7.10:26
CCH Electronic NZ Essential Tax Package, designed for a specific tax year	1	100	100	PROV4	7.3:19
CCH Electronic NZ Master Tax Guide, designed for a specific tax year	1	100	100	PROV4	7.3:19
Combing machines (wool)	15.5	12	8	DEP11	7.3:20
Containers (insulated, below 8m ³)	5	33	24	DEP13	7.10:26
Containers (shipping)	20	9.5	6.5	DEP13	7.10:26
Crown Health Enterprise assets (<i>half a page of various assets - see TIB article</i>)					6.5:3
Dance floor	20	9.5	6.5	DEP30	9.11:3
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
Engineering tools (<i>various – see TIB article</i>)				DEP30	9.11:2
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 (<i>half a page of various assets – see TIB article</i>)				DEP18	8.6:8
Medical and medical laboratory equipment (<i>3 pages of various assets – see TIB article</i>)				DEP8	6.7:17
Mulchers (commercial)	4	40	30	DEP25	9.6:6

Paintball firearms	2	63.5	63.5	DEP20	8.10:1
Pallet covers (insulated)	2	63.5	63.5	DEP13	7.10:26
Paper towel dispensers	2	63.5	63.5	DEP7	6.7:16
Pistols, Air (Leisure industry category)	10	18	12.5	DEP20	8.10:1
Plant trolleys	5	33	24	DEP23	9.3:2
Psychological testing sets	10	18	12.5	PROV2	6.10:6
Rams (hydraulic or pneumatic)	3	33	24	DEP30	9.11:3
Residential rental property chattels (<i>various – see TIB article</i>)				DEP30	9.11:3
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) (<i>2 pages of various assets – see TIB article</i>)				DEP8	6.7:17
Shop utensils (incl pots and pans)	3	50	40	DEP30	9.11:3
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
Skidoo	5	33	24	DEP30	9.11:3
Speed humps (metal)	5	33	24	PROV3	6.13:13
Stage	20	9.5	6.5	DEP30	9.11:3
Static delimiters (timber industry)	5	33	24	DEP9	6.11:16
Tags (security)	3	50	40	DEP21	9.1:1
Toilet roll dispensers	2	63.5	63.5	DEP7	6.7:16
Tomato graders	8	22	15.5	DEP14	7.13:23
Tooling machine, CNC (timber/joinery industry)	8	22	15	DEP28	9.9:1
Trailers (class TD – over 10 tonnes) – when rented for periods of one month or less	10	18	12.5	DEP29	9.11:1
Undersea maintenance equipment (<i>1 page of various assets – see TIB article</i>)				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.***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 payer's 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 1997:** *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) - Aug 1997:** *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

December 1997

- 5 Large employers: PAYE deductions and deduction schedules for period ended 30 November 1997 due.
- 7 Provisional tax and/or Student Loan interim repayments: first 1998 instalment due for taxpayers with August balance dates.
- Second 1998 instalment due for taxpayers with April balance dates.
- Third 1998 instalment due for taxpayers with December balance dates.
- Annual income tax returns due to be filed for all non-IR 5 taxpayers with August balance dates.
- 1997 end of year payments due (income tax, Student Loans, ACC premiums) for taxpayers with January balance dates.
- QCET payment due for companies with January balance dates, if election is to be effective from the 1998 year.
- 20 Large employers: PAYE deductions and deduction schedules for period ended 15 December 1997 due.
- Small employers: PAYE deductions and deduction schedules for period ended 30 November 1997 due.
- Gaming machine duty return and payment for month ended 30 November 1997 due.
- RWT on interest deducted during November 1997 due for monthly payers.
- RWT on dividends deducted during November 1997 due.
- Non-resident withholding tax (or approved issuer levy) deducted during November 1997 due.
- 31 Third instalment of 1998 Student Loan non-resident assessment due.

January 1998

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

Public binding rulings and interpretation statements: your chance to comment before we finalise them

This page shows the draft public binding rulings and interpretation statements that we now have available for your review. You can get a copy and give us your comments in three ways:

By post: Tick the drafts you want below, fill in your name and address, and return this page to the address below. We'll send you the drafts by return post. Please send any comments *in writing, to the address below*. We don't have facilities to deal with your comments by phone or at our local offices.

From our main offices: Pick up a copy from the counter at our office in Takapuna, Manukau, Hamilton, Wellington, Christchurch or Dunedin. You'll need to post your comments back to the address below; we don't have facilities to deal with them by phone or at our local offices.

On the Internet: Visit our web site at <http://www.ird.govt.nz/rulings/> Under the "Adjudication & Rulings" heading, click on "Draft Rulings", then under the "Consultation Process" heading, click on the drafts that interest you. You can return your comments via the Internet.

Name _____
Address _____

Public binding rulings

Comment Deadline

0020: Payments under the Human Rights Act 1993 for humiliation, loss of dignity, and injury to feelings – assessability

31 January 1998

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



No envelope needed - simply fold, tape shut, stamp and post.

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Adjudication & Rulings
National Office
Inland Revenue Department
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