TAX INFORMATION BULLETIN

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Inland Revenue
Te Tari Taake

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TIB on the Internet – new online service available

The Tax Information Bulletin is also available on the Internet – usually about ten days before we can get the paper copy to you, because of the time needed to print and mail it. We supply it in two formats:

Online TIB (HTML format)

This is a new service introduced to meet customer demand. All TIBs from January 1997 (Volume Nine, No.1) are available in HTML, which makes them easier to read on-screen. The articles are in single-column format, and where one refers to other material that's available on our Website, a link will take you directly to the second article.

On the website we've included a survey about the online TIB – if you use this format then please let us know if you have any comments.

Individual TIB articles will print satisfactorily from the online TIB, but it's not the best format if you want to print out the whole TIB.

Printable TIB (PDF format)

All TIBs from July 1989 (the start of the TIB) are available in Adobe's Portable Document Format (PDF). Use this version if you want to print out the whole TIB to use as a paper copy. The result you get will look essentially the same as the hard copy TIB that we mail out. However, the double-column layout means this version is not easy to read on-screen.

Where to find us

Our website is at:

www.ird.govt.nz

It also includes other Inland Revenue information which you may find useful, including any draft binding rulings and interpretation statements that are available.

If you find that you prefer the TIB from our website and no longer need a paper copy, please let us know so we can take you off our mailing list.

Legislation and determinations

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

Accrual determinations G9B and G14A

The new determinations *Determination G9B* and *Determination G14A* provide an alternative method of spreading gross income or expenditure from some financial arrangements that are otherwise within the scope of *Determination G9A* and *Determination G14*. Under this method, you are required to spread the expected component of the gross income or expenditure from a financial arrangement. The unexpected component of the gross income or expenditure is recognised only when it is realised.

You may elect to use the new determinations by returning your income or expenditure on the basis of these determinations, provided that if you choose to use either of the new determinations, you must not use *Determination G9A* or *Determination G14* for any financial arrangement that is within the scope of the new determinations. By the same token, you can continue to use *Determination G9A* or *Determination G14* to calculate gross income or expenditure of any financial arrangement that is within the scope of the new determinations only if you do not use the new determinations.

See the appendix to this TIB for the full text of the determinations.

1998 international tax disclosure exemption ITR9

Introduction

Section 61 of the Tax Administration Act 1994 (TAA) requires people to disclose interests they hold in foreign entities.

Under section 61(1) of the TAA, a person who has a control or income interest in a foreign company or an interest in a foreign investment fund (FIF) at any time during the income year must disclose the interest held. However, section 61(2) allows the Commissioner of Inland Revenue to exempt any person or class of persons from this requirement if disclosure is not necessary for the administration of the international tax rules (as defined by section OZ 1) contained in the Income Tax Act 1994 (ITA).

Under section 61(2), the Commissioner has issued an international tax disclosure exemption which applies for the income year ended 31 March 1998. This exemption may be cited as "International Tax Disclosure Exemption ITR9", and the full text appears at the end of this item.

Scope of exemption

The scope of the 1998 disclosure exemption has been expanded from the 1997 exemption to include interests held by non-residents in foreign companies and FIFs.

Interests held by residents

Disclosure is required by residents for these interests:

- an interest held in a FIF
- an "income interest of 10% or greater" held in a foreign company. The disclosure obligation applies to all foreign companies regardless of the country of residence.

An "income interest of 10% or greater" is defined in section OB 1 of the ITA. For the purposes of determining exemption from disclosure it includes these interests:

1. an income interest held directly in a foreign company
2. an income interest held indirectly through any interposed foreign company
3. an income interest held by an associated person (which is not a controlled foreign company) as defined by section OD 8(3) of the ITA.

Example

If a husband and wife each hold an income interest of 5% in a Cayman Islands company, the interests would not be exempt from disclosure because the husband and wife are associated persons under section OD 8(3)(d). Under the associated persons test they are each deemed to hold the other's interests, so they each hold an "income interest of 10% or greater" which must be disclosed.

They are not required to account for attributed foreign income or loss under the controlled foreign company rules. However, they would have to account for FIF income or loss under the FIF rules.

In this example the husband and wife must disclose their interests as interests in a foreign company and as interests in a FIF. However, only the FIF interests should be disclosed on an IR 4H series form (see "Overlap of interests" below).

Foreign company interests

A resident who holds a control or income interest in a foreign company must disclose that interest, regardless

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of the company's country of residence. The 1998 international tax disclosure exemption also makes no distinction about residence, and any interest in a foreign company which is an "income interest of 10% or greater" must be disclosed. Disclosure is to be made on form IR 4G "Interest in a Foreign Company Disclosure Schedule".

The disclosure exemption makes no distinction on the residence of a foreign company for these reasons:

- attributed (non-dividend) repatriation rules apply to an "income interest of 10% or greater" in a controlled foreign company (CFC) regardless of the CFC's country of residence.
- to identify tax preferences applied by the taxpayer (whether or not specified in Schedule 3, Part B of the ITA) in respect of an interest held in a foreign company which is resident in a Schedule 3, Part A of the ITA jurisdiction (i.e., Australia, Canada, Federal Republic of Germany, Japan, Norway, United Kingdom and the United States of America).
- the requirement for a CFC which is resident in a country not listed in Schedule 3, Part A of the ITA to attribute foreign income or loss from 1 April 1993.

Foreign investment fund interests

An interest in a foreign entity must be disclosed if it constitutes an "interest in a foreign investment fund" specified within section CG 15(1) of the ITA. These types of interest must be disclosed:

- rights in a foreign company or anything deemed to be a company for the purposes of the ITA (e.g., a unit trust)
- an entitlement to benefit from a foreign superannuation scheme
- an entitlement to benefit from a foreign life insurance policy
- an interest in an entity specified in Schedule 4, Part A of the ITA (no entities were listed when this TIB went to press).

However, any interest that does not fall within the above types or which is specifically excluded as an interest in a FIF under section CG 15(2) does not have to be disclosed. The following are listed in section CG 15(2) as exemptions from what constitutes an interest in a FIF:

- an "income interest of 10% or greater" in a CFC
- an interest in a foreign company that is resident and liable to income tax in a country or territory specified in Schedule 3, Part A of the ITA (i.e., Australia, Canada, Federal Republic of Germany, Japan, Norway, United Kingdom and the United States of America)
- an interest in an employment-related foreign superannuation scheme
- a qualifying foreign private annuity, unless an election has been made to remain within the FIF regime, by the due date for filing the person's 1998 tax return. See Inland Revenue's booklet *Overseas Private Pensions (IR 258A)* for more information.
- interests in foreign entities held by a natural person, if the aggregate cost or expenditure incurred in acquiring the interests remains under $20,000 at all times during the income year
- an interest held by a natural person in a foreign entity located in a country where exchange controls prevent the person deriving any profit or gain or disposing of the interest for New Zealand currency or consideration readily convertible to New Zealand currency
- an interest in a foreign life insurance policy or foreign superannuation scheme acquired by a natural person before he or she became a New Zealand resident for the first time, for a period of up to four years.

There is more information on exemptions from the FIF rules in Inland Revenue's booklet *Foreign Investment Funds (IR 275B).*

A resident who holds an interest in a FIF at any time during the 1998 income year must disclose the interest and calculate FIF income or loss on the form "Interest in Foreign Investment Fund Disclosure Schedule and Worksheet" (IR 4H). The FIF rules allow a person four options to calculate FIF income or loss (accounting profits method, branch equivalent method, comparative value method and deemed rate of return method), so the Commissioner has prescribed five forms under the IR 4H series to disclose and calculate FIF income or loss from an interest in a FIF using one of the methods.

Overlap of interests

A situation may arise where a person is required to furnish a disclosure for an interest in a foreign company which is also an interest in a FIF. For example, a person with an "income interest of 10% or greater" in a foreign company which is not a CFC is strictly required to disclose both an interest held in a foreign company and an interest held in a FIF.

However, to meet the disclosure obligations only one disclosure return (either form IR 4G or the appropriate IR 4H series form) is required for each interest a person holds in a foreign entity.

Here are the general rules for determining which disclosure return to file:

1. Use the appropriate IR 4H series form to disclose all FIF interests, and in particular:
    - an interest in a foreign company which is not resident in a Schedule 3, Part A country and is not a CFC (regardless of the level of interest held)
    - an income interest of less than 10% in a CFC which is not resident in a Schedule 3, Part A country
    - an interest in a foreign life insurance policy or foreign superannuation scheme, regardless of the

country or territory in which the entity was resident.

2. Use the IR 4G or IR 4GS form to disclose an "income interest of 10% or greater" in a foreign company (regardless of the country of residence) that is not being disclosed on the appropriate IR 4H series form.

Disclosure is not required on either forms IR 4G or IR 4H for an income interest of less than 10% in a foreign company (whether a CFC or not) which is also not a FIF interest. An example is an interest which is excluded under the Schedule 3, Part A exemption of the FIF rules.

Interests held by non-residents

The 1998 disclosure exemption excludes the need for interests held by non-residents in foreign companies and FIFs to be disclosed.

This would apply for example to an overseas company operating in New Zealand (through a branch) in respect of its interests in foreign companies and FIFs.

The purpose of the international tax rules is to make sure that New Zealand residents are taxed on their share of the income of any overseas interests they hold. However, under the international tax rules non-residents are not required to calculate or attribute income under the CFC regime (section CG 6(1) of the ITA 1994). In addition, under section CG 16(4) of the ITA 1994 a non-resident is not to be treated as deriving or incurring any FIF income or loss. The disclosure of non-residents holdings in foreign companies or FIFs is not necessary for the administration of the international tax rules.

Summary

The 1998 international tax disclosure exemption removes the requirement of a resident to disclose an interest held in a foreign company (if the interest is not also an interest in a FIF) that does not constitute an "income interest of 10% or greater" (i.e., it is less than 10%). The disclosure exemption is not affected by the foreign company's country of residence. Further, an interest in a FIF must be disclosed.

The 1998 disclosure exemption also removes the requirement for a non-resident to disclose interests held in foreign companies and FIFs.

Persons not required to comply with section 61 of the Tax Administration Act 1994

This exemption may be cited as "International Tax Disclosure Exemption ITR9"

1. Reference

This exemption is made pursuant to section 61(2) of the Tax Administration Act 1994. It details interests in foreign companies in relation to which any person is not required to comply with the requirement in section 61 of the Tax Administration Act 1994 to make disclosure of their interests, for the income year ending 31 March 1998. This exemption does not apply to interests in foreign companies which are interests in foreign investment funds, except where that interest is held by a non-resident of New Zealand.

2. Interpretation

In this exemption, unless the context otherwise requires, expressions used have the same meaning as in section OB 1 of the Income Tax Act 1994 or the international tax rules (as defined by section OZ 1 of the Income Tax Act 1994).

3. Exemption

i. Any person who has an income interest or a control interest in a foreign company (not being an interest in a foreign investment fund), in the income year ending 31 March 1998, shall not be required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year, except where:
   - the interest held by that person during any accounting period of the foreign company (the last day of which falls within that income year of the person), would constitute an "income interest of 10% or greater", as defined by section OB 1 of the Income Tax Act 1994, as if the foreign company was a controlled foreign company.

ii. Any non-resident person who has an income interest or a control interest in a foreign company or an interest in a foreign investment fund in the income year ending 31 March 1998, shall not be required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year, where:
   - no attributed foreign income or loss arises in respect of that interest in that foreign company by virtue of section CG 6(1) of the Income Tax Act 1994, and/or
   - no foreign investment fund income or loss arises in respect of that interest in that foreign investment fund by virtue of section CG 16(4) of the Income Tax Act 1994.

This exemption is made by me acting under delegated authority from the Commissioner of Inland Revenue pursuant to section 7 of the Tax Administration Act 1994.

This exemption is signed on the 9th day of April 1998.

Max Carr
National Manager, Corporates

Credit card transaction duty repealed

Part VIA of the Stamp and Cheque Duties Act 1971, which imposed credit card transaction duty, has been repealed with effect from 1 April this year.

The repeal was the subject of a Supplementary Order Paper to the Taxation (Remedial Provisions) No.2 Bill, which was passed in March. The legislation also confirms that EFTPOS and certain ATM transactions were never subject to the duty.

Background to the repeal

In a statement announcing the introduction of legislation repealing the duty, Treasurer Winston Peters and Revenue Minister Bill Birch said the 5 percent levy on credit card transactions was "an inefficient means of raising revenue that penalises business relying on large numbers of credit card transactions."

"The sixteen years since credit card transaction duty was introduced have seen rapid changes in the types of services offered by financial institutions," they said.

"As a result, the precise scope of the duty is becoming increasingly difficult to define, leading to uncertainty for taxpayers and Government alike. This can make it complicated to administer and can result in expensive litigation."

"Revenue can be raised more efficiently, and with fewer distortionary effects, through broadly based taxes such as income tax and GST."

"The repeal of credit card transaction duty is part of the trend to phase out stamp duties, which distort financial and property market decisions to a degree that cannot be justified by the amount of revenue raised."

Credit card transaction duty contributed about $3 million to the total tax take of $32 billion a year, the Ministers said.

New trading stock rules may affect provisional tax estimates

Press release from Inland Revenue

Manufacturers, retailers and others with trading stock should be aware that pending reforms will affect tax payments in the present (1998-99) income year.

Inland Revenue is alerting business people making estimates of the value of their trading stock for provisional tax purposes to take account of the new trading stock rules.

If a taxpayer's income from trading stock will be higher under the new rules, taxpayers will have to pay more provisional tax to reduce their exposure to use of money interest.

The new rules were introduced into Parliament in the Taxation (Tax Credits, Trading Stock and Other Remedial Matters) Bill. The proposed application date for the reforms is the 1998-99 income year.

The Bill is currently before the Finance and Expenditure Select Committee. Copies of the Bill and Commentary to the Bill are available at Bennetts Government Bookshops nationwide. The Commentary is also available at Inland Revenue's website: http://www.ird.govt.nz

The main changes contained in that Bill, and those most likely to affect provisional tax estimates, are:

Special provisions for valuing obsolete and slow moving stock will be repealed. Transitional measures will be introduced to spread any income arising from repeal of the obsolescence provisions over a three-year period. The market selling value will take obsolescence into account.

Shares and other excepted financial arrangements held as trading stock will be valued at cost only. This is important for share traders who hold shares that have a value less than cost if they have valued the shares down to market value in previous years.

Cost will be determined using "generally accepted accounting principles". The requirements of the financial reporting standard for inventories (FRS-4) will apply, which may result in increased cost absorption for some taxpayers.

There will be simplified rules aimed at reducing compliance costs for taxpayers with turnover of less than $3 million. Small taxpayers that have valued stock under the obsolescence provision or that are share traders may be affected by the changes.

The first provisional payment for the present income year falls due on 7 July 1998 for a standard 31 March balance date.

Early balance date taxpayers who have under-paid their provisional tax payments may make additional tax payments at any time.

Budget information in next month's TIB

The Government's 1998 budget was introduced into Parliament just after this TIB went to print, so we were unable to include any information on it in this issue. We will cover the tax-related parts of the budget in the June TIB (Volume Ten, No.6), and will include this material in the TIB section of our website as soon as possible – even before the full June TIB is available.

Standard practice statements

These statements describe how the Commissioner will, in practice, exercise a statutory discretion or deal with practical issues arising out of the administration of the Inland Revenue Acts.

Temporary shortfall – permanent reversal

Standard Practice Statement INV-230

Summary

This Standard Practice Statement sets out the Commissioner's position on permanent reversal as it applies to a temporary shortfall.

The Commissioner will accept that a tax shortfall has been permanently reversed if:

- It appears from the taxpayer's actions that steps taken will remedy the tax shortfall, or
- Through operation of law or circumstances, the matter will reverse itself.

This statement does not apply to corrections, as the Commissioner cannot be satisfied that they will be corrected in the next period.

Application date

This Standard Practice Statement applies to assessments of shortfall penalties issued on or after 1 May 1998.

If you have been assessed with a shortfall penalty between 1 May 1998 and the date of this statement, please contact the Inland Revenue officer concerned and, if applicable, your assessment will be adjusted to reflect the 75% reduction to the shortfall penalty.

Background

Inland Revenue's practice has been to restrict the temporary shortfall reduction to instances where Inland Revenue has received the return containing the correction or reversal before the taxpayer has been notified of a pending audit or investigation.

An issue has arisen concerning the timing of GST input credits. Many of the resulting refunds claimed can be quite substantial and could be subject to GST checks before the release of the refunds. GST refund checks are undertaken very quickly after the returns are received which means that the taxpayers may not have had an opportunity to furnish the following return which would permanently reverse the overclaim made in the previous period.

The tax shortfall is actually a timing shortfall but Inland Revenue's practice, prior to 1 May 1998, was not to allow the temporary shortfall reduction unless the return containing the reversal had been furnished prior to notification of audit or investigation.

This situation could also arise in other tax types, for example, income tax, FBT or PAYE.

Legislation

A temporary shortfall is defined in section 141I of the Tax Administration Act 1994. If a taxpayer is considered liable for a shortfall penalty and the tax shortfall is a temporary shortfall, the penalty warranted will be reduced by 75%.

Subsection (3) defines a temporary shortfall as follows:

A tax shortfall is a temporary tax shortfall for a return period if the Commissioner is satisfied that–

(a) The tax shortfall has been permanently reversed or corrected in an earlier or later return period, so that (disregarding penalties or interest) the taxpayer pays the correct amount of tax or calculates and returns the correct tax liability in respect of the item or matter that gave rise to the tax shortfall; and

(b) No tax shortfall will arise in a later return period in respect of a similar item or matter; and

(c) No arrangement exists in any return period which has the purpose or effect of creating a further related tax deferral or advantage; and

(d) The tax shortfall was permanently reversed or corrected before the taxpayer is first notified of a pending tax audit or investigation.

Practice applicable from 1 May 1998

The Commissioner's new interpretation of a temporary shortfall

The Commissioner considers that a tax shortfall has been permanently reversed or corrected if:

- it appears from the taxpayer's actions that steps taken will remedy the tax shortfall, or
- through operation of law or circumstances, the matter will reverse itself.

To reverse a situation does not necessarily mean to achieve a complete remedy – it only means to take steps that will lead to the remedy in due course. For example, when a ship goes off course, one remedies it by turning it back towards the right heading. The mistake has been remedied when the turn is made but getting the ship back to the position it should be in takes some time to take effect.

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Using this rationale, when the taxpayer claims the entire GST input claim in the first GST return, the taxpayer has made the reversal because no claim for an input credit relating to the same property purchase will be made in the following return. This means the reversal will be treated as made when the full input claim is made in the earlier return. The same would apply to income tax or any other revenue.

In these scenarios, the taxpayer would be entitled to a 75% reduction for a temporary shortfall. This is because the taxpayer has made the claim in the earlier return period so they cannot make the claim again in the later period.

The case may not be so clear when gross income is not returned in a correct return period. For example, an auditor ascertains that a taxpayer should have returned a sale in the return being audited.

In order to qualify for the temporary shortfall reduction, Inland Revenue would have to be satisfied that the sale would have been returned in the next return period. This will involve making enquiries of the taxpayer and checking the internal systems, bank statements, etc. If the sale is recorded in the system that the taxpayer normally prepares the tax return from, Inland Revenue could safely assume that the sale would have been returned in the next return period. In this case, Inland Revenue would allow the temporary shortfall reduction of any shortfall penalty warranted.

Arguably, a 5% penalty for a full year's deferral of income tax is much lower than a 5% penalty for deferral of GST for one, two or six months. Inland Revenue considers that the reason for shortfall penalties should not be confused; shortfall penalties address culpability. Interest will be charged to taxpayers for paying tax late. When the adjustment is made to the return, interest will be charged from the time that the taxpayer should have paid the correct amount of tax.

In summary, a taxpayer is not required to have furnished the return containing the reversal prior to notification of audit, but Inland Revenue must be satisfied that, had the following return been received, the reversal would have been made.

The extended interpretation of temporary shortfall will be available for all tax types including income tax. This interpretation of the word "reversed" applies only to the definition of temporary shortfall.

Tony Bouzaid
National Manager, Operations Policy

Examples

GST Input tax claim

A property developer enters into an unconditional sale and purchase agreement for the purchase of real property. The full purchase price of the property is $750,000 and the property developer pays a deposit of $75,000 on 5 April 1998. The balance of the purchase price is payable on 5 May 1998.

The vendor of the property is not registered for GST, so the property developer is purchasing a secondhand good and is entitled to claim a GST input credit only on the amount actually paid. The property developer is registered for GST on an invoice basis and files GST returns every two months.

In the GST return for the period ended 30 April 1998, the property developer claims an input credit of $83,333 which is 1/9 of the total purchase price of the property. The correct claim in that period is $8,333, so there is a tax shortfall of $75,000.

As the matter relates to an issue of interpretation and is over the specified threshold, the developer must have an acceptable interpretation for the tax position taken. As the standard has been breached, they are liable to a shortfall penalty of 20% of the tax shortfall.

The taxpayer is entitled to claim 1/9 of the payment that will be made on 5 May 1998 in the GST return for the period ended 30 June 1998. The taxpayer has already made the claim in the previous GST return, and was not intending to make the claim in the June GST return. Therefore, at the time of making the full claim in the April return, the taxpayer had permanently reversed the tax shortfall, as they never intended to make a double claim, even though, due to the speed of the audit, the May/June return had not been received.

In this case, the 75% reduction for a temporary shortfall is available.

GST output tax not returned

As part of his taxable activity, a taxpayer entered into an unconditional agreement to sell real property.

The GST return for the period ended 31 May 1998 was audited and it was noted that output tax with respect to the deposit only had been returned.

The taxpayer is queried and advises that he is going to return the balance of the sale in the next return as that is when he will receive the monies outstanding for the property.

As the time of supply was triggered upon receipt of the deposit, a tax shortfall is ascertained for the balance of the property sale that was not returned.

The taxpayer advises that he wasn't sure whether he should return the entire sale and had intended making an inquiry but just didn't get around to it. It is considered that a reasonable person in the taxpayer's category of taxpayer, when unsure, would have obtained advice prior to preparing his GST return. Accordingly, the taxpayer is liable to a shortfall penalty for not taking reasonable care.

The taxpayer prepares his returns from his bank statements; therefore, the internal system will pick up the receipt of the balance of the sale of the property. It is clear that the output would have been returned in the next period. Therefore, the tax shortfall has been reversed even though the following return has not been received because of the speed of the audit.

In this case, the 75% reduction to the shortfall penalty would be warranted.

Correction

A taxpayer prepares the GST return and claims a GST input credit for some overseas travel and personal expenses. An audit is undertaken and a tax shortfall is ascertained for the above mentioned claims.

There is no guarantee that the incorrect input claims will be corrected in the following GST return. Therefore, if culpability were established, no reduction for a temporary shortfall is available.

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.

Domestic air travel – zero-rating for GST purposes

Public Ruling BR Pub 98/3

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 ("the GST Act") unless otherwise indicated.

This Ruling applies in respect of section 11(2)(aa).

The Arrangement to which this Ruling applies

The Arrangement is the supply of air travel in the following circumstances:

- The travel involves the transport of passengers by aircraft (any other mode of transport will not qualify, e.g. transport by road, sea, or rail); and
- The transport is a direct flight from a place in New Zealand to another place in New Zealand (referred to in this Ruling as "domestic air travel"); and
- The domestic air travel is part of a wider agreement or contract for air carriage in respect of which **all** the parties to the wider agreement or contract (and in particular the party providing the domestic air travel services) contemplate that either:
  - The place of departure is within the territory of one country and the place of destination is within the territory of another country, not being travel where New Zealand is the place of:
    - Departure, and the Cook Islands, or Niue, or the Tokelau Islands is the place of destination; or
    - Destination, and the Cook Islands, or Niue, or the Tokelau Islands is the place of departure; or
  - The place of departure and the place of destination are both within the territory of a single country, but there is an agreed stopping place in another country. The term "agreed stopping place" refers to any place that the aircraft intends to land in accordance with the travel contract, not being travel that has a place of departure and destination both located in the Cook Islands, Niue, or the Tokelau Islands unless there is an agreed stopping place in a country other than New Zealand, Cook Islands, Niue, or the Tokelau Islands.
- **All** the parties to the wider agreement or contract for air carriage (i.e. all the carriers and the passenger or other party to the contract or agreement), and in particular the supplier of the domestic air travel, regard the domestic air travel to be supplied as part of the wider agreement or contract for air carriage and as a single operation of international carriage.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- The supply of the domestic air travel by any supplier will constitute "international carriage" for the purposes of the Carriage By Air Act 1967 ("the CBA Act") and so will be zero-rated under section 11(2)(aa). This Ruling is based on the state of the Carriage By Air Act 1967 (and the treaties to which that Act gives effect) as at the date this Ruling is made.

The period for which this Ruling applies

This Ruling will apply to the supply of domestic air travel to the extent that that supply occurs during the period from 1 July 1998 to 30 June 2001.

For the purposes of determining the period for which this Ruling applies, the time of supply of air travel is the earlier of the time an invoice is issued or payment is received by the supplier in respect of that supply.

This Ruling is signed by me on the 8th day of May 1998.

Martin Smith
General Manager (Adjudication & Rulings)

Commentary on Public Ruling BR Pub 98/3

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 98/3 ("the Ruling").

In this commentary:

- references to the "GST Act" are to the Goods and Services Tax Act 1985;
- references to the "CBA Act" are to the Carriage By Air Act 1967;
- references to the "Warsaw Convention" are to the "Convention for the Unification of Certain Rules Relating to International Carriage By Air" opened for signature at Warsaw on 12 October 1929 – for a list of states that are party to the Warsaw Convention, see page 16; and
- references to the "Hague Protocol" are to the Warsaw Convention as amended by the Hague Protocol of 1955 and supplemented by the Guadalajara Convention of 1961 – for a list of states that are party to the Hague Protocol, see page 17.

Background

Domestic air travel within New Zealand will often be part of an international travel package which involves travel to, or from, New Zealand. Generally, domestic air travel within New Zealand is standard rated for GST purposes because the travel is considered to be a service which is supplied in New Zealand. However, the GST Act provides for domestic air travel to be zero-rated in certain circumstances when international travel is involved, and the domestic air travel constitutes "international carriage" for the purposes of the CBA Act.

According to the Ruling, it applies to the supply of air travel in the following circumstances:

- The travel involves the transport of passengers by aircraft (any other mode of transport will not qualify, e.g. transport by road, sea, or rail); and
- The transport is a direct flight from a place in New Zealand to another place in New Zealand (referred to in this Ruling as "domestic air travel"); and
- The domestic air travel is part of a wider agreement or contract for air carriage in respect of which **all** the parties to the wider agreement or contract (and in particular the party providing the domestic air travel services) contemplate that either:
    - The place of departure is within the territory of one country and the place of destination is within the territory of another country, not being travel where New Zealand is the place of:
        - Departure, and the Cook Islands, or Niue, or the Tokelau Islands is the place of destination; or
        - Destination, and the Cook Islands, or Niue, or the Tokelau Islands is the place of departure; or
    - The place of departure and the place of destination are both within the territory of a single country, but there is an agreed stopping place in another country. The term "agreed stopping place" refers to any place that the aircraft intends to land in accordance with the travel contract, not being travel that has a place of departure and

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destination both located in the Cook Islands, Niue, or the Tokelau Islands unless there is an agreed stopping place in a country other than New Zealand, Cook Islands, Niue, or the Tokelau Islands.

- **All** the parties to the wider agreement or contract for air carriage (i.e. all the carriers and the passenger or other party to the contract or agreement), and in particular the supplier of the domestic air travel, regard the domestic air travel to be supplied as part of the wider agreement or contract for air carriage and as a single operation of international carriage.

As long as these requirements are fulfilled, the Ruling will apply irrespective of whether:

- The wider air carriage agreement is in the form of one contract or a series of contracts; or
- The carriage is all with one carrier or with a series of carriers; or
- Any of the air carriage contracts which form part of the wider air carriage agreement or contract consist purely of domestic travel; or
- There are breaks between each flight; or
- The domestic air travel is a connecting flight which takes a person out of New Zealand or to another place in New Zealand.

The Ruling will be of primary interest and application to the airlines that supply domestic air travel services in New Zealand. If the Ruling applies, and the air travel services supplied to the passenger constitute "international carriage" for the purposes of the CBA Act, the airline must zero-rate the domestic air travel services.

Authority to make the Ruling

One purpose of binding rulings is to give taxpayers certainty about how the Commissioner will apply the taxation laws. To achieve this aim, sections 91A, 91D, and 91E of the Tax Administration Act 1994 allow the Commissioner to issue binding rulings that set out how a taxation law will apply to any person and to any arrangement.

Section 91C(1)(c) permits the Commissioner to make a binding ruling on any provision of the GST Act (except sections 12 and 13 of that Act). Section 11(2)(aa) is a provision of the GST Act. The Commissioner is authorised to make a binding ruling on how this section will apply to any person and any arrangement.

To determine whether section 11(2)(aa) applies to any person and any arrangement, the Commissioner must be satisfied that the services supplied comprise the transport of passengers within New Zealand by aircraft and that the transport constitutes "international carriage" for the purposes of the CBA Act.

It will be impossible for the Commissioner to administer and apply section 11(2)(aa) unless he first determines whether the supply constitutes "international carriage" under the CBA Act. To determine whether a supply constitutes international carriage under the CBA Act, the Commissioner must be able to determine the meaning of that term for the purposes of that Act. The Commissioner considers that he can issue a ruling which involves interpreting the meaning of a term contained in a non-Revenue Act if the application of a provision of a Revenue Act depends on the meaning of that term.

Legislation

Goods and Services Tax 1985

Under section 11(2)(aa) of the GST Act, if a supply of services would otherwise be charged with GST under section 8 of that Act, that supply shall be charged at the rate of zero percent if:

(aa) The services comprise the transport of passengers from a place in New Zealand to another place in New Zealand to the extent that the transport is by aircraft and constitutes "international carriage" for the purposes of the Carriage By Air Act 1967 ...

Carriage By Air Act 1967

Section 11(2)(aa) of the GST Act applies to air carriage which constitutes "international carriage" for the purposes of the CBA Act. There are three possible ways that air carriage can constitute "international carriage" for the purposes of the CBA Act. Firstly, under the Hague Protocol; secondly, under the Warsaw Convention; and thirdly, under section 18 of the CBA Act.

The Hague Protocol

Part I of the CBA Act gives effect to the provisions of the Warsaw Convention of 1929 as amended by the Hague Protocol of 1955, and supplemented by the Guadalajara Convention of 1961. The Convention is a multi-lateral treaty, intended to unify international law as it relates to carriers' rights, obligations and liabilities and to override member nations' differing domestic laws. In this Commentary, the amended and supplemented Convention is referred to as "the Hague Protocol".

Section 7 of the CBA Act states that the Hague Protocol has the force of law in New Zealand. The Hague Protocol is set out in the Schedule to the Act. Parties to the Hague Protocol are referred to in it as "High Contracting Parties".

"International carriage" is defined in Article 1(2) of the Hague Protocol (as set out in the Schedule to the CBA Act) as follows:

For the purposes of this Convention, the expression *international carriage* means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a trans-shipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State: even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

Sub-Article 1(3) states:

Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

The Warsaw Convention

A number of countries, including the United States, are signatories to the Warsaw Convention, but not to the Hague Protocol. The Hague Protocol does not apply to one way carriage between a Hague Protocol High Contracting Party (such as New Zealand) and a country which is not a signatory to the Hague Protocol. This is because that other country will not be a "High Contracting Party" to the Hague Protocol.

If the travel is between New Zealand and a country which is a party to the Warsaw Convention only, the Warsaw Convention will apply to the carriage. This is because section 15 of the CBA Act keeps alive the provisions of the old Carriage By Air Act 1940, which gave the Warsaw Convention the force of law in New Zealand.

In some cases a country may be a High Contracting Party to the Hague Protocol, but not to the original Warsaw Convention. Articles XXI and XXIII of the Hague Protocol provide that if a country adheres to the Hague Protocol, but is not a signatory to the original Warsaw Convention, that country automatically becomes an adherent of the Warsaw Convention. Thus, if travel is between a country that is a signatory to the Hague Protocol only and a country that is a signatory to the Warsaw Convention only, the Warsaw Convention will apply because the Hague Protocol country is automatically an adherent to the Warsaw Convention.

If the Warsaw Convention applies, the definition of "international carriage" in Article 1(2) of that Convention applies. The definition of "international carriage" in the Warsaw Convention is very similar to the definition of "international carriage" in the Hague Protocol.

Section 18 of the CBA Act

Part II of the CBA Act provides rules for carriage by air that is *not* international carriage (international carriage is dealt with in Part I and by the Conventions, as discussed above). Section 18 of the CBA Act defines "international carriage", for the purposes of Part II of the CBA Act (i.e. for the purposes of working out what is **not** international carriage), as:

"International carriage", in relation to carriage by air, means carriage in which, according to the contract between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are within the territories of two countries or within the territory of a single country if there is an agreed stopping place within the territory of another country:

Section 19 of the CBA Act provides for the application of Part II of the Act and states:

(1) This Part of the Act applies to any carriage by air (not being international carriage) performed by a carrier as part of an air transport service in which, according to the contract between the parties, the place of departure and the place of destination are both situated in New Zealand and there is no agreed stopping place outside New Zealand; notwithstanding that the aircraft in which the carriage takes place is at the same time engaged in international carriage and notwithstanding that the contract for the carriage of any passenger is made without consideration.

(2) For the purposes of determining whether or not any carriage is international carriage, every island in the Cook Islands, Niue, and every island in Tokelau shall be deemed part of New Zealand and any carriage between such islands or between New Zealand (as defined in section 4 of the Acts Interpretation Act 1924) and any such island shall be deemed to be carriage within New Zealand and shall not (unless there is an agreed stopping place outside any such place) be international carriage for the purposes of this Part of the Act.

Application of the Legislation

Section 11(2)(aa) of the GST Act allows zero-rating of services when the services comprise the transport of passengers by aircraft from one place in New Zealand to another place in New Zealand to the extent that the transport constitutes "international carriage" for the purposes of the CBA Act 1967.

It can be seen from the above CBA Act extracts that the term "international carriage" has the following meanings in the CBA Act:

- The definition contained in Article 1(2) of the Hague Protocol (which is given the force of law in New Zealand by section 7 of the CBA Act), as modified by Article 1(3) of the Hague Protocol (which relates to undivided carriage by successive carriers).
- The definition contained in Article 1(2) of the original Warsaw Convention, as modified by Article 1(3) of that Convention (these sub-articles are substantially the same as Article 1(2) and (3) of the Hague Protocol), as kept alive by section 15(2) of the CBA Act.
- The definition contained in section 18 of the CBA Act which applies only to Part II of the CBA Act and defines the type of carriage to which Part II does not apply.

Each of the meanings of "international carriage" in the CBA Act have some of the same components, but they are not identical. The main differences are:

1. "International carriage" under the Hague Protocol must involve places of departure and destination that are within countries which are both High Contracting Parties to the Hague Protocol. Similarly, "international carriage" under the Warsaw Convention must

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involve places of departure and destination that are within countries which are both High Contracting Parties (or deemed High Contracting Parties) to that Convention. The section 18 definition is not limited to travel between particular countries, and potentially applies to carriage involving places of departure or destination in any country.

2. The Warsaw Convention and the Hague Protocol contain Article 1(3), which deems carriage performed by successive carriers to be one undivided carriage if that carriage has been regarded by the parties to it as a single operation. There is no equivalent of this provision in section 18.

3. Article 1(2) in the Hague Protocol speaks of "the agreement between the parties". By contrast, section 18 refers to "the contract between the parties".

4. For the purposes of applying Part II of the CBA Act, section 19(2) states that "international carriage" does not include any travel between New Zealand and the Cook Islands, Niue, or the Tokelau Islands unless there is an agreed stopping place in another country. This is because these islands are deemed to be part of New Zealand for the purposes of Part II of the CBA Act. These islands are not deemed to be part of New Zealand for the purposes of Part I of the CBA Act or the conventions.

In many cases, the question of whether a domestic flight within New Zealand comprises "international carriage" for the purposes of the CBA Act can be answered by reference to the definitions in the Conventions, since most carriage involving two or more countries will be convention carriage under either the Hague Protocol or the Warsaw Convention.

In some cases, however, the carriage may involve a place of departure or destination in a country that is not a Convention country. The Commissioner's view is that the words *'constitutes "international carriage" for the purposes of the Carriage By Air Act 1967'* in section 11(2)(aa) of the GST Act mean: constitutes "international carriage" for **any** of the purposes of the Carriage By Air Act 1967. Thus, if the travel involves a place of departure or destination which is not a Convention country, the Commissioner considers that the question of whether a domestic flight within New Zealand comprises part of a contract of "international carriage" for the purposes of the CBA Act can be decided by reference to the section 18 definition.

The requirements of "international carriage" under the Conventions and under section 18 are discussed below. Whether or not carriage constitutes "international carriage" for the purposes of the Warsaw Convention or the Hague Protocol or section 18 will depend fundamentally on whether, according to the agreement or contract between the parties, the parties agree that the places of departure and destination are in two different countries or are in a single country if there is an agreed stopping place in another country. It is therefore necessary to ascertain who the "parties" to the agreement are, what the "agreement" between them is, and where the places of departure, destination, and any agreed stopping place are.

The parties to the agreement

In applying section 11(2)(aa) of the GST Act and determining whether domestic air travel constitutes "international carriage" for the purposes of the CBA Act, the Commissioner considers that the parties to the agreement or contract for carriage for the purposes of section 18 of the CBA Act and for the purposes of Article 1(2) of each Convention, are:

- The passenger, if that passenger (or his or her agent) has arranged the carriage
- **All** the carriers that are to provide carriage under the agreement or contract
- If applicable, a person or organisation (not being the passenger or an agent of the passenger) will be a party to the agreement or contract for international carriage if that person or organisation enters into contractual relationships concerning the international carriage of the passenger. An example is an employer of a passenger if the employer has arranged the carriage. Such a carriage will not be prevented from being "international carriage" simply because the passenger is not a party to the contract: *Ross v Pan American Airways* 85 NE 2d 880 (1949); *Block v Compagnie Nationale Air France* 386 F 2d 323 (1967); *Bafana & Anor v Commercial Airways (Pty) Limited* (1990)(1)(SA)368.

The agreement between the parties

When determining whether carriage is "international carriage", it appears that the important factor is what was the contemplation of all the parties who made the agreement or contract for carriage at the time the agreement or contract was made. Layovers and stops, even for extended periods of time, are unimportant if what was originally contemplated by the parties meets the descriptions in Article 1(2) or section 18 – i.e. if the parties originally contemplated that the places of departure and destination would be in different countries or if they originally contemplated that the places of departure and destination would be in the same country but with an agreed stopping place in another country. Carriage which may, from the passenger's perspective, be part of his or her journey, but which is arranged subsequently will not have been the contemplation of all the parties at the time the original agreement was made, and so does not form part of the original agreement or contract for "international carriage". (However, depending on whether the subsequent carriage meets the criteria of Article 1(2) or section 18, that subsequent carriage may constitute a new and separate agreement or contract for international carriage.)

Multiple airlines

There is no requirement in section 11(2)(aa) of the GST Act that the air carriage services must be supplied by one supplier. For the purposes of that section, as long as the services supplied constitute "international carriage" for the purposes of the CBA Act, those services are entitled to be zero-rated.

Article 1(3) of the Warsaw Convention and the Hague Protocol specifically provides for carriage with successive carriers to be treated as international carriage for the purposes of the convention **if the parties have regarded the carriages as one undivided operation.** Further, this sub-article provides that the fact that one carrier performs carriage totally within one country does not mean that the wider carriage loses its international character.

There is no deeming provision which is similar to Article 1(3) for the purposes of the definition of "international carriage" in section 18. However, in determining whether section 11(2)(aa) applies to domestic air travel, the Commissioner considers that the same treatment will apply to carriage with successive carriers for the purposes of section 18 of the CBA Act as applies for the purposes of Article 1(3). In other words, for the purposes of applying section 11(2)(aa) of the GST Act and determining whether domestic air carriage is "international carriage" for the purposes of the CBA Act, carriage which is performed by successive carriers will be regarded as one undivided carriage if it is regarded by all the parties, and in particular the supplier of the domestic air travel services, as part of a single operation for international carriage.

In order for successive carriage to be regarded as one undivided carriage, **all** the carriers must have regarded the flights as a single operation at the time the agreement or contract was made. It is clear from the authorities that if a series of flights was contemplated by one party, but not another, at the time the agreement or contract for carriage was made, the flights with successive carriers could not be viewed as a "single operation": *Karfunkel v Compagnie Nationale Air France* 427 F Supp. 971 (1977); *Lemley v TWA Inc* 807 F 2d 26 (1986).

In particular, if a second carrier is organised by the main carrier, or any other person, and the second carrier does not know that its services are part of a larger operation of carriage, its services may not be part of an "undivided carriage": *Stratton v Trans Canada Airlines* (1962) 32 DLR 2d. 736. If the second carrier is operating a domestic flight in New Zealand, and does not know any details of the wider air travel arrangements, so that it cannot be said to regard the domestic flight services that it is providing as being part of a "single operation" with the wider arrangements, the domestic flight services will not be part of the "international carriage".

Re-ticketing

Re-ticketing can amount either to a variation to the original contract, or to the formation of a new contract.

If the re-ticketing merely changes the time or date of the original flight, or the airline with which the passenger is flying, the re-ticketing is likely to be a variation of the original contract. However, when a passenger alters a destination or adds a side-trip, the re-ticketing will amount to a new contract.

For example, in *Stratton v Trans Canada Airlines* (1962) 32 DLR 2d. 736 the passenger booked flights from Seattle to Calgary, via Victoria and Vancouver. The passenger later decided to take a more direct route to Calgary, and booked a direct flight from Seattle to Vancouver (he intended to buy a ticket to Calgary when he arrived in Vancouver). This re-ticketing was a new contract that was not in the parties' original contemplation at the time that the original arrangements were made.

If the re-ticketing amounts to a new contract, rather than a mere variation of the original contract, the new contract will not be part of a "single operation" that the parties contemplated at the start of the agreement.

The new contract will need to be examined to determine whether travel pursuant to it constitutes "international carriage" for the purposes of the CBA Act. If this is the case, the domestic flights which form part of the new contract will be able to be zero-rated under section 11(2)(aa). Otherwise, the domestic flights under the new contract should be standard rated.

If a side-trip which is not part of the original contract is wholly domestic, it will be a separate contract from the original and will not be "international carriage" for the purposes of the CBA Act. The side-trip should be standard rated.

Place of departure and place of destination

Both the conventions and section 18 require the places of departure and destination to be within the territories of two different countries, or within a single country as long as there is an agreed stopping place outside that country. In *Grein v Imperial Airways Ltd* [1936] 2 All ER 1258, Greene LJ discussed the nature of the places of departure and destination. At page 1280 he said:

> ... every contract of carriage has one place of departure and one place of destination. An intermediate place at which the carriage may be broken is not regarded as a "place of destination".
>
> ... If the contract is for a circular voyage, starting at Berlin, visiting various European capitals, and ending at Berlin, the contractual carriage begins at Berlin and ends at Berlin.

And at page 1282 he said:

> ... the contract by reference to which the place of departure and the place of destination are to be ascertained may be any contract of carriage whether for a single journey, for a circular journey, or for a return journey; that the place of departure the place of destination means the places at which under the particular contract in question the contractual carriage begins and ends.

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If more than one carrier is involved, the "place of destination" is not the destination of each successive carrier, but is the place where the carriage finally ends according to the intention of the parties.

As a final point, it should be noted that travel solely between New Zealand and the Cook Islands, Niue, or the Tokelau Islands is considered to be "domestic travel" within New Zealand for the purposes of Part II of the CBA Act 1967. Accordingly, such travel cannot be considered to be "international carriage" under section 18 of that Act. As a result, any air travel within New Zealand that is associated with travel to or from the Cook Islands, Niue, or the Tokelau Islands cannot be zero-rated under section 11(2)(aa) of the GST Act by virtue of section 18 of the CBA Act.

In addition, these Islands are not signatories in their own right to the Conventions. Accordingly, **one way travel** between New Zealand and these Islands is not "international carriage" for the purposes of the Conventions because the places of departure and destination are not both within the territories of parties to Conventions. As a result, any air travel within New Zealand that is associated with one way travel to or from the Cook Islands, Niue, or the Tokelau Islands cannot be zero-rated under section 11(2)(aa) of the GST Act. As an example, a flight from Wellington to Auckland cannot be zero-rated even where there is a single contract of carriage which involves taking the passenger to one of the Islands.

The exception to this is if there is an agreed stopping place located in a country other than New Zealand, Cook Islands, Niue, and the Tokelau Islands. In this case, although this is non-Convention carriage, section 18 of the CBA Act can be applied. Under this section travel from New Zealand to the Islands is considered to be travel within New Zealand. However, if there is an agreed stopping place other than in New Zealand or the Islands, e.g. Australia, this will satisfy the definition of "international carriage" for the purposes of Part II of the CBA Act.

However, in the case of **circular flights**, it is necessary to determine where the places of departure and destination are located. If a circular flight involving travel to the Islands starts and ends in New Zealand, any domestic flight included in the contract of carriage will be "international carriage" for the purposes of the Conventions. This is because New Zealand is a party to the Conventions and the travel is from New Zealand to New Zealand with agreed stopping places outside New Zealand. In this case it does not matter that the agreed stopping place is located in a country that is not a party to the Conventions.

If, on the other hand, the circular flight starts and ends in one of the Islands, any domestic flight cannot be considered for zero-rating under section 11(2)(aa) as such travel will not be "international carriage" for any of the purposes of the CBA Act. However, the exception will be if a flight starts from one of the Islands and returns to that Island but there is an agreed stopping place in a country other than New Zealand, Cook Islands, Niue and the Tokelau Islands. In this situation the travel can be "international carriage" under section 18 for the purposes of Part II of the CBA Act. This will satisfy the zero-rating requirements under section 11(2)(aa).

The above comments are applicable only to air travel involving the Islands mentioned. If section 19 of the CBA Act had not deemed these Islands to be part of New Zealand, travel that cannot be zero-rated as described above could have been considered to be "international carriage" for the purposes of the CBA Act under section 18 of that Act. This is the only reason why the Commissioner considers that travel involving these countries is treated differently from travel involving other non-Convention countries.

Section 19 of the CBA Act deems travel to these Islands to be travel within New Zealand "for the purposes of Part II of that Act" only. These Islands are not part of New Zealand for the purposes of the definitions contained in the Conventions, nor are these Islands part of New Zealand for the purposes of any other provision in the GST Act. This also means that the actual flight to these Islands can be zero-rated under section 11(2)(a). This is irrespective of the treatment applicable to the domestic flights associated with such travel. The treatment of the domestic flights is linked to the CBA Act and must be considered separately from the actual flight to these Islands.

However, this Ruling is concerned with the application of section 11(2)(aa) (not section 11(2)(a)) which involves the zero-rating flight services between two points in New Zealand and whether the "domestic flights" can be considered to be "international carriage" for the purposes of the CBA Act.

Comments on technical submissions received

The principal submissions received on the first exposure draft focused on travel involving the Cook Islands, Niue, and the Tokelau Islands. However, as discussed in the above commentary, the unique GST treatment arises as a result of provisions contained in the CBA Act.

Examples

The following examples are for illustrative purposes only and are not intended to cater for all circumstances that may arise.

Example 1

Passenger A intends travelling to Australia to attend a wedding. The travel agent arranges air travel from Wellington to Auckland to Sydney. No return flights have been arranged. The tickets are provided to Passenger A in a single book of tickets. Passenger A pays for them in advance. The tickets show that the flights are from Wellington to Auckland to Sydney. Only one airline carrier will undertake to carry

Passenger A to Sydney. The airline acknowledges that the flight is an international flight with a connection in Auckland.

With respect to the Arrangement contained in the Ruling, it can be determined that:

- The travel is by air;
- It does involve travel from one place in New Zealand to another place in New Zealand, i.e. from Wellington to Auckland;
- The places of departure and destination are within the territories of two countries, i.e. New Zealand and Australia respectively;
- The factors that indicate that the two flights may be part of a single operation to transport Passenger A from Wellington to Sydney include:
  - The fact that the flights are arranged together by the travel agent;
  - The flights are ticketed together and provided in a book of tickets;
  - The passenger contemplates going to Sydney and not to Auckland.

  However, all factors surrounding the circumstances of particular passengers must be taken into consideration in forming a view as to what was contemplated by the parties to the contract or agreement. For the purposes of this example, it is assumed that all parties contemplate that the travel is to be performed as a single operation.

The domestic leg of the journey can be zero-rated under section 11(2)(aa). Both New Zealand and Australia are parties to the Warsaw Convention and the Hague Protocol and the journey can be regarded as Convention carriage. In addition, this travel would also satisfy the definition of "international carriage" in section 18 of the CBA Act. Accordingly, the domestic leg of the travel to Australia is "international carriage" for the purposes of the CBA Act and, therefore, the requirements of section 11(2)(aa) are satisfied.

Example 2

Passenger B arranges air travel from Christchurch to Auckland to attend a conference. This is arranged through a travel agent one week before the conference. The ticket is booked and paid for. One day before this travel, Passenger B contacts the travel agent again to arrange an additional flight from Auckland to India with a stopover in Singapore. Passenger B believes that the additional flight may as well be taken advantage of as Passenger B will be in Auckland. The second flight is booked by the travel agent and a separate ticket is provided to Passenger B for this flight.

The circumstances of Passenger B would suggest that **not all the parties** have contemplated all the flights to be performed as a single operation. Consequently, these facts do not fall within the Arrangement to which the Ruling applies. There are, prima facie, two separate contracts or agreements that are to be performed independently of each other. Given that all the requirements of the Arrangement contained in the Ruling are not satisfied, the flight from Christchurch to Auckland cannot be zero-rated under section 11(2)(aa).

Example 3

Passenger C wishes to arrange a holiday tour package involving a return journey from Tokyo, Japan. The tour is to include various New Zealand destinations. Passenger C contacts a local travel agent in Tokyo to arrange the tour package. The Japanese travel agent contacts a New Zealand travel agent to arrange the New Zealand portion of the tour. The tour involves the following:

- Flight from Tokyo to Christchurch;
- Hotel accommodation in Christchurch for two nights and a sightseeing bus tour around Christchurch;
- Flight from Christchurch to Wellington;
- Sightseeing tour around Wellington;
- Same day flight from Wellington to Hamilton;
- Four days of accommodation and sightseeing around the Waikato arranged;
- A bus trip to Auckland from Hamilton and a five day stopover there;
- Flight from Auckland to Tokyo.

All this is arranged as a single package for Passenger C. Several different books of tickets and information are provided to Passenger C, and the flights also involve several airlines. Some airline tickets are issued on domestic ticket stock while others are issued on international stock. However, the domestic tickets are noted that they are issued in conjunction with the international tickets.

In respect of the Arrangement contained in the Ruling, the following can be determined from the above:

- The package involves more than just airline travel. The bus travel, accommodation and sightseeing services must be ignored when considering zero-rating under section 11(2)(aa). Only the air travel is relevant.
- The package does contain domestic air travel, i.e. from Christchurch to Wellington to Hamilton.
- The place of departure and destination can be said to be Tokyo. The carriage commences and ends in Japan.
- The package is arranged as a return journey. It is assumed that all the parties, being all the carriers and Passenger C, regard all the air travel as a single operation. The whole operation is arranged as a package and the domestic tickets note that

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they are issued in conjunction with the international tickets. It is assumed that the international carriers are aware of these domestic flights and consider these flights to be part of the international carriage. These factors are indicative of all the flights being performed as a single operation. However, it is also necessary to be satisfied that **all** the carriers regard the flights as part of a wider contract or agreement involving international travel, especially given that more than one carrier is involved. For the purposes of this example, it is assumed that this is the case.

The domestic flights can be zero-rated under section 11(2)(aa). Japan, like New Zealand, is a signatory to both the Warsaw Convention and the Hague Protocol. In addition, section 18 could also be applied to treat the carriage as "international carriage". Accordingly, the domestic leg of the overall travel is "international carriage" for the purposes of the CBA Act and, therefore, the requirements of section 11(2)(aa) are satisfied.

Example 4

While in Auckland, Passenger C, in Example 3 above, decides to add a trip from Auckland to Queenstown return before returning to Japan. The travel agent arranges this additional trip and adds it to the tour package. The domestic ticket is noted as being issued in conjunction with the international tickets.

This additional trip was not contemplated by all the parties at the time the original package was put together. This additional trip is a separate contract or agreement from the international carriage contract or agreement. Consequently, these facts do not fall within the Arrangement to which the Ruling applies. As this additional trip is purely domestic, it cannot be zero-rated under section 11(2)(aa).

Schedule: States that are party to the Warsaw Convention

Afghanistan
Algeria
Argentina
Australia
Austria
Bahamas
Bangladesh
Barbados
Belarus
Belgium
Benin
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Cameroon
Canada
Chile
Colombia
Comoros
Congo
Costa Rica
Cote d'Ivoire
Croatia
Cuba
Cyprus
Democratic People's Republic of Korea
Denmark
Dominican Republic
Ecuador
Egypt
Equatorial Guinea
Ethiopia
Federal Republic of Yugoslavia (Serbia and Montenegro)
Fiji
Finland
France
Gabon
Germany
Greece
Guinea
Hungary
Iceland
India
Indonesia
Iran, Islamic Republic of
Iraq
Ireland
Israel
Italy
Japan
Jordan
Kenya
Kuwait
Lao People's Democratic Republic
Lebanon
Lesotho
Libyan Arab Jamahirrya
Liechtenstein
Luxembourg
Madagascar
Malaysia
Mali
Maita
Mauritania
Mauritius
Mexico
Mongolia
Morocco
Myanmar
Nauru
Nepal
Netherlands, Kingdom of the
New Zealand
Niger
Nigeria
Norway
Oman
Pakistan
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Rwanda
Samoa
Saudi Arabia
Senegal
Seychelles
Sierra Leone
Singapore
Solomon Islands
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Syrian Arab Republic
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Uganda
Ukraine
United Arab Emirates
United Kingdom
United Republic of Tanzania
United States
Uruguay
Vanuatu
Venezuela
Viet Nam
Yemen
Yugoslavia
Zaire
Zambia
Zimbabwe

Schedule: States that are party to the Hague Protocol

Afghanistan
Algeria
Argentina
Australia
Austria
Bahamas
Bangladesh
Belarus
Belgium
Benin
Brazil
Bulgaria
Cameroon
Canada
Chile
Colombia
Congo
Costa Rica
Cote d'Ivoire
Croatia
Cuba
Cyprus
Democratic People's Republic of Korea
Denmark
Dominican Republic
Ecuador
Egypt
El Salvador
Federal Republic of Yugoslavia (Serbia and Montenegro)
Fiji
Finland
France
Gabon
Germany
Greece
Grenada
Guatemala
Guinea
Hungary
Iceland
India
Iran, Islamic Republic of
Iraq
Ireland
Israel
Italy
Japan
Jordan
Kuwait
Lao People's Democratic Republic
Lebanon
Lesotho
Libyan Arab Jamahirrya
Liechtenstein
Luxembourg
Madagascar
Malawi
Malaysia
Mali
Mauritius
Mexico
Monaco
Morocco
Nauru
Nepal
Netherlands, Kingdom of the
New Zealand
Niger
Nigeria
Norway
Oman
Pakistan
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Republic of Korea
Romania
Russian Federation
Rwanda
Samoa
Saudi Arabia
Senegal
Seychelles
Singapore
Solomon Islands
South Africa
Spain
Sudan
Swaziland
Sweden
Switzerland
Syrian Arab Republic
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Ukraine
United Arab Emirates
United Kingdom
Vanuatu
Venezuela
Viet Nam
Yemen
Yugoslavia
Zambia
Zimbabwe

AMP Society's demutualisation – issue of shares does not constitute a claim

Product Ruling BR Prd 97/78

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 the definition of "claim" in section OB 1 and the life insurance rules as defined in section OZ (1).

The Arrangement to which this Ruling applies

The Arrangement is the demutualisation of the AMP Society whereby the rights of members of the AMP Society are extinguished in exchange for shares in AMP Limited.

Background

On 11 December 1996 the board of the AMP Society unanimously voted to recommend to members that the AMP Society demutualise.

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AMP Limited will be formed and will act as the ultimate holding company of the AMP Society and other operating subsidiaries.

A meeting of members of the AMP Society will be convened (anticipated to take place in November 1997) to consider approving the demutualisation. If the meeting gives the requisite approval, the AMP Society will apply to the Attorney-General of New South Wales for a Certificate of Conversion under the Australian Mutual Provident Society (Demutualisation & Reconstruction) Act 1997 (the Demutualisation Act).

The issue of the Certificate of Conversion will formally trigger the provisions of the Demutualisation Act and specify the Demutualisation Date (expected to be 1 January 1998). Demutualisation will have effect at the Conversion Time (proposed as 12 noon on 1 January 1998).

At the Shareholding Time (proposed as 11.30 am on 1 January 1998), AMP Insurance Limited (a newly incorporated wholly-owned subsidiary of AMP Limited) will have its rights as an existing policyholder converted to rights as a shareholder in the AMP Society (the Subscriber Shares) in accordance with the Demutualisation Act.

At the Conversion Time, the AMP Society will demutualise and all membership rights, but not the Subscriber Shares held by AMP Insurance Limited, will be extinguished.

Simultaneously, AMP Limited will issue shares to the members of the AMP Society.

Subsequent to the issue of shares, AMP Limited will seek to be listed on the Australian and New Zealand Stock Exchanges within the period prescribed by law.

Assumptions made by the Commissioner

This Ruling is based on the assumption that:

- AMP Limited will not be a “life insurer”, as defined in section OB 1, at the time of issuing the shares to the former members of the AMP Society.

How the Taxation Laws apply to the Arrangement

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

- The issue of shares in AMP Limited to those members of the AMP Society eligible to receive shares as a result of the demutualisation, does not constitute a “claim” as defined in section OB 1.

The period for which this Ruling applies

This Ruling will apply for the period from the date of the ruling to 31 December 2002.

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

Martin Smith
General Manager (Adjudication & Rulings)

AMP Society's demutualisation – extinguishment of former rights does not constitute a gift

Product Ruling BR Prd 97/84

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

Taxation Laws

All legislative references are to the Estate and Gift Duties Act 1968 unless otherwise stated.

This Ruling applies in respect of sections 61 and 63, and to the definitions of "disposition of property" and "gift" in section 2(2).

The Arrangement to which this Ruling applies

The Arrangement is the demutualisation of the AMP Society whereby the rights of members of the AMP Society are extinguished in exchange for shares in AMP Limited.

Background

On 11 December 1996 the board of the AMP Society unanimously voted to recommend to members that the AMP Society demutualise.

AMP Limited will be formed and will act as the ultimate holding company of the AMP Society and other operating subsidiaries.

A meeting of members of the AMP Society will be convened (anticipated to take place in November 1997) to consider approving the demutualisation. If the meeting gives the requisite approval, the AMP Society will apply to the Attorney-General of New South Wales for a Certificate of Conversion under the Australian Mutual Provident Society (Demutualisation & Reconstruction) Act 1997 (the Demutualisation Act).

The issue of the Certificate of Conversion will formally trigger the provisions of the Demutualisation Act and specify the Demutualisation Date (expected to be 1 January 1998). Demutualisation will have effect at the Conversion Time (proposed as 12 noon on 1 January 1998).

At the Shareholding Time (proposed as 11.30 am on 1 January 1998), AMP Insurance Limited (a newly incorporated wholly-owned subsidiary of AMP Limited) will have its rights as an existing policyholder converted to rights as a shareholder in the AMP Society (the Subscriber Shares) in accordance with the Demutualisation Act.

At the Conversion Time, the AMP Society will demutualise and all membership rights, but not the Subscriber Shares held by AMP Insurance Limited, will be extinguished.

Simultaneously, AMP Limited will issue shares to the members of the AMP Society.

Subsequent to the issue of shares, AMP Limited will seek to be listed on the Australian and New Zealand Stock Exchanges within the period prescribed by law.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- The voting by members of the AMP Society and the subsequent extinguishment of their members' rights, will not constitute a "disposition of property" as defined in section 2(2).

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- Therefore, the voting and subsequent extinguishment of members' rights will not be a "gift" as defined in section 2(2) and cannot be a dutiable gift by members to any person under section 63.

The period for which this Ruling applies

This Ruling will apply for the period from the date of the ruling to 31 December 2002.

This Ruling is signed by me on the 18th day of November 1997.

Martin Smith
General Manager (Adjudication & Rulings)

AMP Society's demutualisation – issue of shares does not constitute a dividend

Product Ruling BR Prd 97/85

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 to section CF 1, the definition of the term "dividend" in section CF 2(1) and the definition of the term "shareholder" in section OB 1.

The Arrangement to which this Ruling applies

The Arrangement is the demutualisation of the AMP Society whereby the rights of members of the AMP Society are extinguished in exchange for shares in AMP Limited.

Background

On 11 December 1996 the board of the AMP Society unanimously voted to recommend to members that the AMP Society demutualise.

AMP Limited will be formed and will act as the ultimate holding company of the AMP Society and other operating subsidiaries.

A meeting of members of the AMP Society will be convened (anticipated to take place in November 1997) to consider approving the demutualisation. If the meeting gives the requisite approval, the AMP Society will apply to the Attorney-General of New South Wales for a Certificate of Conversion under the Australian Mutual Provident Society (Demutualisation & Reconstruction) Act 1997 (the Demutualisation Act).

The issue of the Certificate of Conversion will formally trigger the provisions of the Demutualisation Act and specify the Demutualisation Date (expected to be 1 January 1998). Demutualisation will have effect at the Conversion Time (proposed as 12 noon on 1 January 1998).

At the Shareholding Time (proposed as 11.30 am on 1 January 1998), AMP Insurance Limited (a newly incorporated wholly-owned subsidiary of AMP Limited) will have its rights as an existing policyholder converted to rights as a shareholder in the AMP Society (the Subscriber Shares) in accordance with the Demutualisation Act.

At the Conversion Time, the AMP Society will demutualise and all membership rights, but not the Subscriber Shares held by AMP Insurance Limited, will be extinguished.

Simultaneously, AMP Limited will issue shares to the members of the AMP Society.

Subsequent to the issue of shares, AMP Limited will seek to be listed on the Australian and New Zealand Stock Exchanges within the period prescribed by law.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- The issue of shares by AMP Limited to members of AMP Society eligible to receive shares as a result of the demutualisation, will not be a dividend under section CF 1.

The period for which this Ruling applies

This Ruling will apply for the period from the date of the ruling to 31 December 2002.

This Ruling is signed by me on the 18th day of November 1997.

Martin Smith
General Manager (Adjudication & Rulings)

Non-binding tax statement to AMP policyholders

This non-binding statement is issued by the Commissioner in order to clarify how income arising from the demutualisation of the AMP Society may be assessable in the hands of policyholders. It is included with the preceding product rulings at the request of AMP.

There will be no tax consequences for most policyholders upon the receipt of shares on the demutualisation of AMP.

In particular, shares received as part of the demutualisation process and the proceeds of the first sale of those shares, or alternatively the receipt of the cash value of the share entitlement in respect of a policy, will not ordinarily generate assessable income in the hands of a policyholder if:

- the policy was taken out for personal or family reasons. This includes the assignee of such a policy where the assignee is a relative or family trust; or
- the policy was taken out over the life or well-being of an employee or business principal of the business (corporate or otherwise); or
- the policy was taken out to protect personal earnings or business income in the event of disablement or trauma of an individual; or
- the policy was taken out over the life or well-being of a member, or a group of members, of a New Zealand registered superannuation scheme by the trustees of the scheme. The on-distribution of shares by trustees to members will not give rise to taxable income in the members' hands; or
- the policy is an accident and disability or trauma policy taken out for the purposes of providing a lump sum, or non-earnings related payment in the event of the disablement or trauma of an individual.

However, there may be tax consequences for those policyholders whose business activities mean that they deal in insurance policies or are otherwise ordinarily taxable on such receipts, or any policyholders who demonstrate that they acquired shares for the purpose of sale or other disposal.

In addition, if a person acquires further shares with the purpose of resale, any profit on the sale of those shares will be taxable.

The views expressed in this non-binding statement represent the Commissioner's policy in relation to the demutualisation of AMP. Relevant policyholders should note that the treatment of the shares issued (or their cash equivalent) will not affect the tax status of the proceeds of any claim paid under a policy.

MJ Carr
National Manager, Corporates
January 1998

Notice of Product Ruling BR Prd 98/11

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

2. Product ruling 98/11 was issued on 29 April 1998. It relates to bloodstock leasing, and the application of various sections and definitions within the Income Tax Act 1994, and will be published in Inland Revenue's Tax Information Bulletin Volume Ten, No.5 of May 1998.

3. A copy of the ruling may be obtained by writing to the Assistant General Manager (Adjudication & Rulings), National Office, Inland Revenue, P.O. Box 2198, Wellington.

Martin Smith
General Manager (Adjudication & Rulings)

The above notice was published in the *New Zealand Gazette* of 7 May 1998. We have since been notified of the withdrawal of publication permission. However, copies of the ruling are available as per paragraph 3 of the notice.

Interpretation statements

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

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

GST and debt factoring

Notice of withdrawal of item in Public Information Bulletin 164

An item in PIB 164 of August 1987 (at page 27, paragraph 5), and another in Technical Rulings (at paragraph 104.9.4) conclude that where a registered person accounting for GST on the invoice basis sells a debt for less than its face value, that person can claim as a bad debt the difference between the amount of GST accounted for and the actual amount received in respect of the supply. The inference being that the difference is a bad debt for the purposes of the Goods and Services Tax Act 1985.

Case T27 (1997) 18 NZTC 8,188 (which is being appealed) reached a different conclusion. In particular, the Taxation Review Authority concluded that where a registered person factors a debt owing for less than its face value, the difference between the face value of the debt and the amount received from the factor is not a bad debt.

The Commissioner agrees with the decision in *Case T27*. The Commissioner advises that the items in PIB 164 and in Technical Rulings are inconsistent with current law principles. Accordingly, the items are withdrawn from 1 June 1998, and from that date should not be considered to be an expression of the Commissioner's view on the law.

A public ruling on the issue is now being drafted and will be released for external consultation in the near future.

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

Vehicle registration plates bought as an investment – income tax implications

Section CD 3, CD 4 – Items included in assessable income: A taxpayer wishes to know the income tax implications of the purchase and eventual sale of a vehicle registration plate that she has acquired as an investment. The registration plate purchased is an investment plate, not a personalised number plate.

Profits from the sale of the vehicle investment plate could be assessable in two situations, firstly, under section CD 3:

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

"Business" is defined in section OB 1 and includes:

any profession, trade, manufacture, or undertaking carried on for pecuniary profit.

If the taxpayer buys and sells vehicle investment plates as part of a business of trading in those items, any profit or gain is assessable income under this section.

If the taxpayer is in business under the above definitions, the plate will constitute trading stock. This means it must be brought in as stock on hand at the end of the year, and be valued at its cost price, its market selling value, or the price at which it can be replaced. The taxpayer has the option of which of these values to use.

Secondly, under section CD 4, income tax is payable on:

any amount derived from the sale or other disposition of any personal property or any interest in personal property (not being property or any interest in property which consists of land), if the business of the person comprises dealing in such property, or if the property was acquired for the purpose of selling or otherwise disposing of it, and any amount derived from the carrying on or carrying out of any undertaking or scheme entered into or devised for the purpose of making a profit.

Inland Revenue's view is that it would be difficult to see any other reason for acquiring an investment plate other than for eventual sale at a profit. As there is no other income stream associated with the purchase, the onus would be on the taxpayer to demonstrate that the "investment" is not purchased with the intention of resale.

If the taxpayer purchased the investment plate as an investment with the purpose of eventual resale, any profit on the sale of the plate will be assessable income. Correspondingly, any loss made on the sale of the investment plate would be deductible.

A deduction will be allowed under section BD 2 for any expenses incurred for the purchase (other than the purchase price) and holding of the plates, in the year the expense is incurred. The purchase price is allowed as a deduction in the year of sale.

Endowment policy taken out to repay a business loan

Section DJ 11 - Expenditure incurred in borrowing money or obtaining lease: A taxpayer is anxious to obtain a $500,000 loan for her business. A representative of a financial institution has advised her to take out an endowment policy that will mature after 15 years, yielding the amount of the loan. The period of the policy corresponds with the period of the loan. The representative claims the annual premiums of $20,000 are deductible under section DJ 11, and the taxpayer has sought confirmation of this.

Section DJ 11 allows a deduction:

> ... as the Commissioner thinks fit in respect of expenditure incurred by the taxpayer during the income year for the preparation, stamping, and registration of any lease of property used in the derivation of the taxpayer's gross income, or of any renewal of any such lease, or in the borrowing of money employed by the taxpayer as capital in the derivation of gross income.

Section DJ 11 allows a deduction for expenses incurred in borrowing money, not the repayment of the money itself. It applies to expenses that are generally one-off costs, such as loan application fees, brokerage, legal or accounting fees, etc. Such expenses are generally incurred before taking out the loan.

In Tax Information Bulletin Volume Six, No.9 (February 1995) it was agreed that "mortgage repayment insurance" taken out to obtain a loan would be deductible under this section. Mortgage repayment insurance is taken out as protection against certain misfortunes. For example, the policy may provide for the repayment of a mortgage if the taxpayer is injured and no longer able to work. Alternatively, it may provide for mortgage payments to be made by an insurance company while the taxpayer is ill and unable to make the payments, with the taxpayer resuming responsibility for payments once he or she has recovered and returned to work.

The scheme proposed in this case is that the taxpayer pays into an endowment policy over the period of the loan. During the period of the loan, the taxpayer will be meeting interest payments only. At the time the loan is due for repayment, the endowment policy will have attained a value sufficient to repay the amount of the loan. It is the Commissioner's view that the annual premiums are not expenses incurred in borrowing money. Rather, such an arrangement is intended to provide funds for the repayment of the money that has been borrowed.

Inland Revenue advised the taxpayer that a deduction for the annual premiums was not permitted under section DJ 11.

Stamp and Cheque Duties Act 1971

Approved Issuer Levy – Commissioner's policy on late payments

Section 86M – Beyond reasonable control: Approved issuer levy (AIL) is a levy paid for the right to issue interest bearing securities that are subject to a zero rate of non-resident withholding tax. One of the objectives of AIL is to attract foreign investment to New Zealand through a concessionary levy mechanism that benefits non-residents who are unable to claim credit for any NRWT paid on interest earned in New Zealand.

Inland Revenue may withdraw approved issuer status if the payer is guilty of serious default or neglect of their tax affairs – which may include late or non-payment of AIL.

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We have recently had several enquiries about the circumstances in which we would accept a late payment of AIL as being on time, as provided for by section 86M of the Stamp and Cheque Duties Act 1971. This section allows the Commissioner to fix or alter the due date for payment of AIL so that a payment made after the original due date can be accepted as being paid on time. This discretion is important because if the AIL is paid late, the interest may no longer be subject to the zero rate of non-resident withholding tax. The interest would become liable to the usual rate of non-resident withholding tax (10% or 15%).

In order for the Commissioner to alter the due date for payment, he must be satisfied that the payment is late for reasons "beyond the payer's control". Although the term "beyond the payer's control" is not statutorily defined, the usual legislative meaning of this term includes accident or illness. For the purposes of this section the payer cannot be separated from the errors or omissions of employees. A payer is expected to maintain a reasonable standard of business organisation standards and professional conduct throughout periods of change and pressure of work.

The following reasons do not meet the test of "beyond the payer's control":

- employee error
- employee oversight
- employee failure to follow instructions
- personnel changes as a result of usual staff turnover and or restructuring
- pay-in slips (IR 67A) not received.

Inland Revenue considers every instance of late payment of AIL carefully, because of the financial impact of the interest being liable to non-resident withholding tax at 10% or 15% rate. Only unanticipated, unplanned or unforeseen circumstances which prevent the timely payment of the levy meet the criteria of being beyond the payer's control and can therefore receive favourable consideration under section 86M.

Note: This policy is to be read separately to that existing for applications for remission of penalties on late payments of tax.

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.

Tax avoidance – trading company shares sold to holding company at inflated price

Case: TRA No. 90/207, 94/154, 93/59, 94/152, 93/58, 94/155, 93/62, 94/153: Decision No 7/98

Decision date: 16 April 1998

Act: Income Tax Act 1976

Keyword: *Tax avoidance*

Summary: Barber J found that the Commissioner had followed the 4-step practice statement and that "the facts of this case cry out the concept of tax avoidance".

Facts: This is a template case as detailed in *Case R25* and summarised in *Miller/McDougall v CIR*. The usual application of the template has shareholders in a trading company selling their shares in that company to JGR entities at an inflated price and then JGR entities paying for those shares using the profits earned by the company, less the fees to JGR entities. Effectively the profits of the trading company pass to loss owning JGR entities and, less JGR fees, are paid back to the shareholders as capital. The vendor shareholders continue to manage the business and usually have an option to put it back at a time for a nominal sum, when sometimes the whole process recommences.

Decision: Barber J was of the opinion that the case was similar to *Miller* and he considered that the arguments advanced by the taxpayers were simply a repackage of the arguments in *Miller*.

His Honour found that the Commissioner had followed his 4-step practice statement. His Honour considered it appropriate that prior knowledge of the Russell template could be used in making the 4-step analysis and that this was a proper use of that knowledge. He accepted that the assessments were not invalid for want of that analysis as it was done.

His Honour also considered that there was nothing sinister about the Commissioner deciding to assess the shareholders rather than the trading companies in the circumstances.

He found that the test of whether the assessments were intelligible was an objective one and it did not matter that the taxpayers or their advisors did not understand them, provided that the assessments were intelligible applying objective standards. The Commissioner, accordingly, had met the *Lowe* threshold.

His Honour considered that the reopening of the statute barred years was proper, as the income was not mentioned in the returns made and it made no difference if the Commissioner was aware of the scheme and its effect. The statutory test focused on the returns made and nothing else.

Planning and legal costs – whether capital or revenue

Case: Case 96/081: Decision No. 8/98

Decision date: 28 April 1998

Act: Income Tax Act 1976

Keyword: *Deductibility of planning and legal costs*

Summary: Barber J found that the costs claimed as a deduction were a capital cost and not deductible.

Facts: The Objector is a private company carrying on business as an importer of used farm machinery for resale.

The Objector incurred legal and planning costs to obtain the necessary resource consent to conduct its business from a chosen premise. It claimed these costs as a deduction in its 1994 tax return. The Commissioner assessed the Objector on the basis the costs were capital expenditure.

Decision: Barber J regarded the expenditure incurred to be for the re-establishment of a business structure (a capital cost) and not deductible under section 106(1)(a). His Honour stated that there could be circumstances where the costs of obtaining a resource consent could form part of a business's income earning process rather than its capital structure. However, the issue would always turn on the particular facts.

Power company: non-deductibility of laying underground cables, assessability of value of electricity supplied but not yet metered or invoiced

Case: Hawkes Bay Power Distribution Limited v CIR

Decision date: 30 April 1998

Act: Income Tax Act 1976

Keywords: *Assessable income; deductions for underground cables*

Summary: This is the first of the Electric Supply Authority cases concerning laying underground cables.

Facts: Hawkes Bay Power Distribution Ltd (formerly the Hawkes Bay Power Board) is an energy supply authority. Since 1969 Hawkes Bay Power Distribution Ltd's main policy objective was to replace the overhead wiring in its residential areas with underground cabling, which it did at a rate of 14 kilometres per year.

Two issues arose for consideration. First, whether the Objector was entitled to a deduction under the Income Tax Act 1976 ("the Act") for expenditure incurred in laying electricity cables underground. Second, whether the Objector was required to treat as assessable income under the Act an estimation of the value of electricity which, at the end of the income year, had been supplied but neither metered nor invoiced.

Decision: Goddard J held that money spent on replacing the overhead lines with underground cables was capital in nature. Her Honour found that the underground systems and overhead systems were different in character and that the replacement of the overhead cables involved the progressive replacement of one type of asset with another.

Her Honour also found that the electricity supplied by the Objector (but neither metered nor invoiced at balance date) constituted derived income and was therefore assessable. Goddard J stated that the income was assessable, as the earning process was complete when the electricity was supplied and consumed by consumers. It was at that point that a legally enforceable right to the income from the "sale" arose.

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
Automotive tools *(various – see TIB article)*				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
Bedding (medical and medical laboratories)	3	50	40	DEP30a	10.3:5
Bin (wool storage, live bottom)	15.5	12	8	DEP11	7.3:20
Books, published annually or more frequently	2	63.5	63.5	DEP32	10.3:3
Books, other	10	18	12.5	DEP32	10.3:3
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
Computer numerically-controlled drilling & routing machine (timber/joinery industry)	8	22	15	DEP33	10.4:40
Computer numerically-controlled tooling machine (timber/joinery industry)	8	22	15	DEP28	9.9:1
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)*					6.5:7
Dance floor	20	9.5	6.5	DEP30	9.11:3
Drilling & routing machine, computer numerically-controlled (timber/joinery industry)	8	22	15	DEP33	10.4:40
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 *(various – see TIB article)*				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

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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
Newspapers		expense	expense	DEP32	10.3:3
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 *(various – see TIB article)*				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) *(2 pages of various assets – see TIB article)*				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
Sound recordings (copyright in)	1	100	100	DEP31	10.3:2
Speed humps (metal)	5	33	24	PROV3	6.13:13
Stage	20	9.5	6.5	DEP30	9.11:3
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
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 *(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) - Mar 1998: *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.*

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.*

Payments and gifts in the Maori community (IR 278) - April 1998: *A guide to payments in the Maori community - income tax, PAYE and GST consequences.*

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) - 1998: *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.*

continued on page 32

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 (ACC 450) - Mar 1998: *This book provides the rates of employer premium for employers and self-employed. The rates apply to earnings for the year ended 31 March 1998.*

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) - Sep 1997: *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) - Feb 1998: *Explains the tax obligations of anyone who is employing staff, and explains how to meet these obligations. Anyone who registers as an employer with Inland Revenue will receive a copy of this booklet.*

Entertainment expenses (IR 268) - May 1995: *When businesses spend money on entertaining clients, they can generally only claim part of this expenditure as a tax deduction. This booklet fully explains the entertainment deduction rules.*

First-time employer's guide (IR 185) - April 1996: *Explains the tax obligations of being an employer. Written for people who are thinking of taking on staff for the first time.*

Fringe benefit tax guide (IR 409) - Jul 1997: *Explains fringe benefit tax obligations of anyone who is employing staff, or companies which have shareholder-employees. Anyone who registers as an employer with Inland Revenue will receive a copy of this booklet.*

GST - do you need to register? (GST 605) - May 1997: *A basic introduction to goods and services tax, which will also tell you if you have to register for GST.*

GST guide (GST 600) - Dec 1997: *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 1998: *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 - 1999
- 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 April 1998.

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.*

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) - Feb 1998: *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) - Feb 1998: *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) - Dec 1997: *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 guide for custodians (CS 71B) - Nov 1997: *Information for parents who take care of children for whom child support is payable.*

Child support - a guide for prisoners (CS 288) - Mar 1998: *Information for prison inmates who have to pay child support..*

Child support administrative reviews - how to apply (CS 69A) - Feb 1998: *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 1998: *Explains what steps people need to take if they want to go to the Family Court about their child support .*

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.*

Child support is working for children (CS 80) - Mar 1998: *Brief summary of how child support works, plus some statistics on number of child support customers and amount collected/paid.*

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

June 1998

5 Large employers: PAYE deductions and deduction schedules for period ended 31 May 1998 due.

7 Provisional tax and/or Student Loan interim repayments: first 1999 instalment due for taxpayers with February balance dates.

Second 1999 instalment due for taxpayers with October balance dates.

Third 1998 instalment due for taxpayers with June balance dates.

IR 5 tax returns due to be filed.

20 Large employers: PAYE deductions and deduction schedules for period ended 15 June 1998 due.

Small employers: PAYE deductions and deduction schedules for period ended 31 May 1998 due.

Gaming machine duty return and payment for month ended 31 May 1998 due.

RWT on interest deducted during May 1998 due for monthly payers.

RWT on dividends deducted during May 1998 due.

Non-resident withholding tax (or approved issuer levy) deducted during May 1998 due.

Imputation: Debit balances as at 31 March 1998 due to be paid.

FBT: Final day for "small" employers to elect to pay annually.

30 GST return and payment for period ended 31 May 1998 due.

Non-resident Student Loan repayments: first instalment of 1999 Student Loan non-resident assessment due.

July 1998

5 Large employers: PAYE deductions and deduction schedules for period ended 30 June 1998 due.

(We will accept payments received or posted on Monday 6 July as in time for 5 July.)

7 Provisional tax and/or Student Loan interim repayments: first 1999 instalment due for taxpayers with March balance dates.

Second 1999 instalment due for taxpayers with November balance dates.

Third 1998 instalment due for taxpayers with July balance dates.

1998 income tax returns due to be filed for all non-IR 5 taxpayers with balance dates from 1 October 1997 to 31 March 1998.

20 Large employers: PAYE deductions and deduction schedules for period ended 15 July 1998 due.

Small employers: PAYE deductions and deduction schedules for period ended 30 June 1998 due.

FBT return and payment for quarter ended 30 June 1998 due.

Gaming machine duty return and payment for month ended 30 June 1998 due.

RWT on interest deducted during June 1998 due for monthly payers.

RWT on dividends deducted during June 1998 due.

Non-resident withholding tax (or approved issuer levy) deducted during June 1998 due.

31 GST return and payment for period ended 30 June 1998 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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✓	*Interpretation guidelines*	*Comment Deadline*
☐	**0009**: Employee or independent contractor?	30 June 1998

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

Inland Revenue
Te Tari Taake

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

Affix
Stamp
Here

Team Leader (Systems)
Adjudication & Rulings
National Office
Inland Revenue Department
P O Box 2198
WELLINGTON

Inland Revenue
Te Tari Taake

Tax Information Bulletin mailing list update form

IR 596

☐ **I would like to be included on the TIB mailing list.**

Mr.Mrs.Miss.Ms

Initials

Last Name

Position

Company

Address

Number of copies required

Member of the Institute of Chartered Accountants of New Zealand? Yes ☐ No ☐

☐ **I am currently on the TIB mailing list. Change of name/address required.**

☐ **I no longer wish to receive the TIB Please remove my name from the mailing list.**

Attach mailing label from TIB here (preferable), or fill in previous details below.

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Last Name

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Company

Address

Return to: **TIB Mailing List**
P O Box 31 581
LOWER HUTT

Inland Revenue
Te Tari Taake

Conversion of overseas income to New Zealand currency

IR 270

1 April 1997 to 31 March 1998

98

Here's how to show any overseas investment income in your New Zealand tax return for the income year ended 31 March 1998.

– If the income was sent back to New Zealand, show the gross amount (before any overseas tax was deducted) received during the year in New Zealand currency.

– If all or some of the income was not sent back to New Zealand, convert the income using the telegraphic transfer buying rate at the time the income was paid or otherwise credited.

This table shows the mid-month telegraphic buying rates. You can use these conversion tables in all cases where the income was not sent back to New Zealand.

1997	**Australia**	**United Kingdom**	**USA**	**Canada**	**Hong Kong**	**Japan**
April	0.8855	0.4262	0.6910	0.9662	5.3518	87.3593
May	0.8956	0.4225	0.6961	0.9662	5.3822	81.4940
June	0.9162	0.4208	0.6883	0.9498	5.3258	78.9073
July	0.9018	0.3942	0.6657	0.9105	5.1553	75.8296
August	0.8630	0.4025	0.6402	0.8895	4.9580	75.4280
September	0.8781	0.3945	0.6341	0.8824	4.9084	76.6920
October	0.8748	0.3976	0.6449	0.8908	4.9873	78.4345
November	0.8971	0.3675	0.6249	0.8794	4.8271	78.7489
December	0.8980	0.3608	0.5960	0.8456	4.6142	77.5808
1998						
January	0.8877	0.3527	0.5753	0.8239	4.4526	75.3667
February	0.8659	0.3543	0.5818	0.8392	4.5003	72.8209
March	0.8638	0.3503	0.5875	0.8269	4.5373	74.9568

How to convert to New Zealand currency

For the countries shown in this table, divide the overseas income by the appropriate rate for the month.

Example
The New Zealand equivalent of a UK dividend of £85 paid in July 1997 is: £85 ÷ 0.3942 = $215.63.

Note
You do not have to use this table. You can use the actual applicable rate, available at any trading bank.