

T AX INFORMATION BULLETIN

Volume Ten, No.8

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

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Legislation and determinations

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

Comparators (consumer electronics comparative display units) Depreciation Determination DEP39

In Tax Information Bulletin Volume Ten, No.6 (June 1998) at page 8, we published a draft general depreciation determination for consumer electronics comparative display units, known in the electronics and retail industries as “comparators”. No submissions were received on the draft, and the Commissioner has now issued the determination.

The determination is reproduced below and may be cited as “Determination DEP39: Tax Depreciation Rates General Determination Number 39”. The determination is based on an estimated useful life of 3 years and a residual value of 13.5%.

General Depreciation Determination DEP39

This determination may be cited as “Determination DEP39: Tax Depreciation Rates General Determination Number 39”.

1. Application

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

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

2. Determination

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

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

Shops	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Comparators (Consumer Electronics Comparative Display Units)	3	50	40

3. Interpretation

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

This determination is signed by me on the 5th day of August 1998.

Martin Smith
General Manager (Adjudication & Rulings)

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.

Finalising agreements in tax investigations

Standard Practice Statement INV-350

Summary

This standard practice statement sets out the principles and parameters for finalising agreements in tax investigations.

Final agreements must be in accordance with the law. Agreements cannot be finalised based on “splitting the difference” on a global basis. All agreements must be on an issue by issue basis based on the law and the evidence available. Once signed, the agreement precludes the taxpayer from using the disputes process in relation to the issues finalised.

This standard practice statement does not cover relief in cases of serious hardship or financial hardship as provided for by sections 176 and 177 of the Tax Administration Act 1994.

This standard practice statement applies to all staff who complete tax investigations, e.g. Corporates, BusinessLink, BusinessDirect, Personal Customer Services, RADC, Duties.

Background

For a number of years the Commissioner of Inland Revenue has had a practice of resolving disputes arising from tax investigations through the process of reaching resolution.

It is essential for Inland Revenue, its staff and taxpayers that a code of good practice in relation to final agreements be defined. This standard practice statement ensures that taxpayers are uniformly treated when entering into discussions/negotiations with Inland Revenue.

These guidelines apply to finalising agreements for disputes in respect of all the Inland Revenue Acts. The principal focus is on the Income Tax Act 1994 and the Goods and Services Tax Act 1985. These comments, with the necessary modification, apply equally to the other Inland Revenue Acts.

Legal authority for finalising agreements in tax investigations

As already stated all agreements must be on a principled basis. Therefore assessments arising from final agreements are no different from tax assessments issued in other circumstances.

On many occasions the New Zealand Courts have stated that the Commissioner merely acts in the quantification of tax due, and it is the taxing Acts which charge tax. The Commissioner has a duty to assess the tax properly payable within the terms of the statutory framework, and in carrying out that duty the Commissioner must be completely impartial. All assessments arising from final agreements must conform to the relevant Inland Revenue Act.

Finalising an agreement

The final agreement with a taxpayer represents an agreement on the relevant facts and the application of the law to those facts. The process of finalising an agreement is one that will occur on an issue by issue basis. Finalising an agreement is not to be seen as a process of bargaining between the parties where issues are traded off against each other. The Commissioner will consider representations from the taxpayer, or adviser, on the relevant issues in the dispute and these will be resolved on their individual merit.

It must be remembered that not all disputes will result in a final agreement being reached. Where agreement is not reached the disputes resolution process will apply.

Fundamentals of the agreement

The process of reaching a final agreement through negotiation is one that should occur on an issue by issue basis.

It is important to recognise that the final agreement will need to be based on an assessment that conforms to the legislation. As the Commissioner is under a statutory obligation to assess and collect the correct amount of tax, it is inappropriate that the risks of litigation be factored into the final agreement. While litigation risk is an appropriate consideration in terms of commercial agreements, it is not appropriate in the context of finalising an agreement of taxation disputes. If the law is uncertain and there is only a 50/50 chance of the Courts taking one view or the other, it is not possible to simply give a taxpayer one-half of the advantage or disadvantage in recognition of the uncertainty. Agreements are based on the same statutory criteria as that for making other assessments. The process of final agreements should not be regarded as an opportunity for issuing an assessment that does not conform to the legislation.

There are circumstances or situations where Inland Revenue will not enter into negotiations. These are:

- not assessing an amount which is clearly assessable, or allowing a deduction, rebate or credit that is clearly not allowable.
- where Inland Revenue's view of the law on a particular issue is firm (e.g., as stated through the Courts, or Inland Revenue's legal opinion is in agreement with the treatment of the issue) and this view is supported by the evidence.
- penalties and/or prosecution action.
- where an adjustment can be made only on an "all or nothing basis", that is, either an adjustment would be made for the total amount in question (the quantum of which may or may not be capable of precise computation) or no adjustment is made at all. For example, the assessability of a transaction may depend solely on such concepts as whether the taxpayer is carrying on a business or there was a profit making purpose. Generally speaking, on the facts, the taxpayer either satisfies the criteria for assessability of income or the taxpayer is not liable for tax in respect of that transaction.

Circumstances or situations where Inland Revenue may enter into negotiations are:

- where the quantum of a disputed amount depends on the facts. For example, a claim at law may be subject to apportionment and there could be doubt as to the correct position to be allowed (e.g., how much is business (deductible) and how much is private (non-deductible)).
- when an adjustment may rely on a question of valuation for which there are competing bases. For example, in the determination of an arm's length transaction for GST purposes.
- when an item may not be subject to precise computation. For example in the estimation of living expenses in an asset accretion assessment.
- where an issue of quantum or valuation has been resolved for one period and is likely to apply to prior periods.

In these cases, where determination of the taxable income will depend on the facts, a factual position must be agreed between the taxpayer and Inland Revenue.

Penalties and tax in dispute

Penalties, if applicable, must be included in the final agreement. This includes penal tax, shortfall penalties and late payment penalties.

In the case of shortfall penalties agreement can be negotiated only to the level of penalty imposed. Shortfall penalties will not be used as leverage to achieve an agreement.

Failure to agree on penalties will not preclude an agreement on the substantive issues. Where this occurs the penalties will continue under the disputes resolution process.

Ability to pay

The ability of the taxpayer to pay the tax is not relevant in determining a taxpayer's tax liability, but may give rise to other administrative arrangements tailored to the taxpayer's circumstances. When the facts and law support issuing an assessment but the taxpayer will not be able to pay the tax, the assessment is still to be issued. The taxpayer should apply under the relevant sections of the Tax Administration Act 1994, i.e., sections 176 and 177, for consideration to have the tax remitted or obtain an instalment payment arrangement.

Timing of final agreements

Agreements should be finalised at the completion of an investigation.

Where the attempt to finalise an agreement is unsuccessful the disputes resolution process is to be followed.

In most cases an agreement should be finalised before an assessment is issued. The final assessment will take into account the issues agreed upon in the agreement.

When an investigation extends over several years or relates to a back year assessment, it may sometimes be possible for the investigator to progressively raise with the taxpayer matters which are the focus of potential adjustment. Due to the limitation of time for amendment of assessments contained in section 108 of the Tax Administration Act 1994, it may not be possible to conclude a final agreement for all years under consideration. In this situation Inland Revenue may negotiate on a year by year basis. Where this situation arises, any agreement reached will not be a precedent for the treatment of future years.

There may be circumstances where an agreement is finalised post assessment. This will occur only in rare circumstances, i.e., where there was no agreement in writing, or the time bar prevented resolution prior to the issue of the assessment.

Form of agreement

Where the agreement is of a straightforward nature it is considered that the form IR 210D, Agreed Adjustment, will be sufficient. However, in more complex cases a final agreement must contain the following information: (Refer to page XX for an example)

- name, address and IRD number of the taxpayer to whom the agreement relates
- a statement recording the terms of agreement, including who proposed the agreement
- a statement recording the adjustments covered by the agreement, including the tax type, section of the relevant act and period involved as well as any penal tax and shortfall penalties
- a statement that the taxpayer acknowledges that by signing the agreement they forfeit any further right to

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challenge the adjustments covered by the agreement, and that this right has been explained to them

- a statement acknowledging that the taxpayer has made a full and true disclosure of all known facts to the Commissioner
- a statement outlining the ramifications of making any false statements
- a statement as to the precedential effect of the agreement
- a statement as to the due date for payment of any deficient tax
- if applicable a statement as to any additional tax included in the agreement
- the agreement must be signed and dated by both parties.

Although the above details must be included in every agreement, additional information may be included if relevant. However, if including additional information it is best to seek legal advice to ensure that it does not detract from the main focus of the agreement.

Where there are a lot of issues in dispute it may not be possible to finalise an agreement in respect of them all. Where this situation arises the disputes resolution process would be limited to the unresolved issues.

Inland Revenue can make an assessment only when all issues for the periods/years have been finalised. Where issues remain unresolved, the assessment will not be made until such time as all the outstanding issues are finalised. This is because the Commissioner cannot make a partial assessment. In this situation the disputes resolution process is to be used to resolve the remaining issues. All issues are to be taken into account when the assessment is finally made.

Where a situation involves a number of taxpayers i.e., partners or shareholders, an agreement reached with one person may not necessarily form the basis of an agreement for all the other parties. This is because it is important to consider the factual background to each person's involvement and the tax position taken by that person.

Inland Revenue will adhere to the terms of the final agreement for the periods/years covered by the investigation. Re-examination of the taxpayer's affairs for the periods/years covered by the final agreement would be undertaken only where, for example, new evidence suggests that tax avoidance, evasion, fraud, manipulation

or transfer pricing has occurred. Any re-examination will also be subject to the time bar rules of section 108 and 108A of the TAA.

Inland Revenue will not be bound by any final agreement where there has been either a failure to disclose relevant facts and/or the making of a false statement.

Where a period/year has been adjusted without a full investigation of the taxpayer's affairs being carried out (e.g., an adjustment in respect of a single issue following a policy ruling) nothing in this standard practice statement prevents Inland Revenue later undertaking a full review of that period/year (other than in respect of the particular issue or issues that have been the subject of a final agreement).

Once a taxpayer has signed the final agreement or the IR 210D that taxpayer is precluded from using the disputes process relating to the negotiated issues.

Failure to negotiate a final agreement

Not all taxation disputes that are capable of negotiation will necessarily lead to a final agreement being reached. During the negotiation process, Inland Revenue will enter into correspondence and discussions on a totally "without prejudice" basis. Where a final agreement is not reached, Inland Revenue will not be bound by any factual or legal matters which may have been "agreed" on a without prejudice basis to facilitate the final agreement.

Authority to approve final agreements

The officer who has undertaken the investigation is not authorised to approve the final agreement. There must be objectivity in the approval of final agreements. It is therefore necessary for an independent officer to review the case.

All final agreements must be approved by the person who has authority to decide disputes for that investigator. Generally, this will be the team leader.

In cases where approval of an assessment is required at a certain level, such as sections BG 1 (tax avoidance) and GB 1 (general anti-avoidance) of the Income Tax Act 1994, approval of any final agreement is to be given at that level.

Tony Bouzaid
National Manager
Operations Policy

Documentary form of the final agreement Appendix to Standard Practice Statement INV-350

This document records the terms of agreement between [taxpayer] and the Commissioner of Inland Revenue, in relation to an adjustment [requested by taxpayer/ proposed by the Commissioner] on [date].

The following adjustments are covered by this agreement: [specific tax types and tax periods concerned along with details of the adjustments agreed upon including penal tax and shortfall penalties. Additional details of each adjustment may be added as necessary].

1. An adjustment of \$XXX.XX pursuant to section XXX of the Goods and Services Tax Act 1985 for the period ending xx/xx/xx.
2. An adjustment of \$XXX.XX pursuant to section XXX of the Income Tax Act 1994 for the period ending xx/xx/xx.
3. A shortfall penalty for [type of shortfall penalty being imposed] of \$XXX.XX pursuant to [relevant section] of the Tax Administration Act 1994 for the period ending xx/xx/xx.

[Name of the person signing this agreement on behalf of the taxpayer] acknowledges that by signing this agreement all rights to further challenge this adjustment are forfeited in accordance with section 89I of the Tax Administration Act 1994, and has had this explained to them.

[Person signing the agreement] acknowledges that [s/he] has made to the Commissioner, full and true disclosure of all known facts or facts of which [s/he] is aware, which are subject to this agreement.

The Commissioner gives notice that in reaching this agreement reliance has been placed on [taxpayer's name] disclosing all known facts.

The Commissioner also gives notice that the making of false statements to officers of the Inland Revenue Department (and various acts and omissions) can be subject to prosecution.

This agreement is confined to the adjustment(s) identified above and does not in any way negate your right to apply in writing for consideration of the remission of penalties imposed.

This agreement is not to be used as a precedent for the resolution of the same or any similar issues in respect of any other years, issues or taxpayers.

Payment of the deficient tax is due xx/xx/xx. [either the original due date, the new due date or details of any instalment arrangement].

This agreement also includes additional tax of: [amount of additional tax for each period and revenue. Paragraph deleted if no additional tax is being imposed].

[More detail may be added. However, legal advice should be sought to ensure that it does not detract from the main focus of the agreement.].

(IRD officer's name)
(Title)
Date XX/XX/XXXX

(Name)
on behalf of (taxpayer's name)
Date XX/XX/XXXX

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.

Navigator Select Investor Service

Product ruling - BR Prd 98/71

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

Taxation Laws

This Ruling applies in respect of the following sections of the Income Tax Act 1994 and the Goods and Services Tax Act 1985:

- Income Tax Act 1994, sections BD 1, BD 2, EH 1-EH 10, HH 1(8), HH 3 to HH 8 and the definitions of "unit trust", "beneficiary income", "trustee income", "core acquisition price", "financial arrangement" and "unit holders" in section OB 1.
- Goods and Services Tax Act 1985, sections 3, 14 and 55(7) and the definition of "insurance" in section 2(1).

The Arrangement to which this Ruling applies

The Arrangement is the establishment of Navigator Select Investor Service ("the Service") by Colonial Services (NZ) Limited ("CSNZL"). CSNZL is the agent of Investors in the Service and the Manager of the Service.

CSNZL intends to launch the Service during August 1998.

The Service provides access for Investors to a range of investment products and fund managers with all reporting consolidated.

The Administrator of the Service is Jacques Martin New Zealand Limited ("JMNZL"). This Ruling applies only to those activities of the Administrator that are carried on in relation to the Service and are described in this Arrangement.

The Custodian and bare trustee of the Service, and the Nominee of the Investors is the Public Trustee acting at all times through its nominee and wholly owned subsidiary, Navigator Nominees Limited ("NNL"), who may also act as the trustee of any superannuation scheme made available through the Service.

Investors are able to switch between investment options and make lump sum or regular contributions and withdrawals.

In addition to the various investment options, Investors may also elect to include supplementary insurance benefits such as life cover, total and permanent disablement, trauma cover and income cover.

Investors are offered the choice of investing in unit trusts (both New Zealand and Australian domiciled) and/or group investment funds (GIFs) and UK Investment Trusts and possibly in the future a master superannuation fund. The superannuation fund will in turn offer a choice of investment in wholesale superannuation funds, GIFs and unit trusts.

Investors in the Service may be supplied with both life and non-life insurance cover through the Service.

Investors come to CSNZL to use the Service through their financial advisers. The Manager, the Administrator and the Custodian of the Service act only as directed by Investors and do not give any investment advice or make any investment decisions under delegated authority from the Investors. Jarden Morgan Investment Services Limited under contract to CSNZL selects the product mix of the Service and makes the asset allocation decisions of the premixed selection options.

Reporting to Investors under the Service is purely to provide information to Investors on details of their investments and income from their investments as well as to deliver an annual statement for taxation purposes. The reports do not constitute what is regarded in the industry as "monitoring" nor do they contain investment advice.

The Investors' agent and Manager of the Service is CSNZL. The Manager of the Service is appointed as the Investors' agent pursuant to an investment authority given under the Investor Information Document ("the IID") to instruct the Custodian to acquire, dispose of and receive the income from investments on behalf of the Investor.

The Administrator is charged under the Administration Agreement primarily with making and withdrawing from investments on behalf of Investors as well as collecting and processing the cash flows that arise from them. As an adjunct to that activity it must carry out the consequential administration, reporting and record keeping activities that make up the Service.

Investors under the IID appoint the Custodian to act as bare trustee and nominee in subscribing for and holding investments in safe custody in its name on their behalf. Investors undertake to be bound by the terms of the Custodian Agreement, and authorise the Manager to delegate its powers (including those delegated to it by the Custodian) to the Administrator.

The Custodian also establishes a trust account under the Cash Holding Account Agreement to facilitate all the cash flows of the Service. The administration and management of that account is delegated to the Manager who in turn delegates it to the Administrator.

An Investor who wishes to use the Service will be handed an IID, which will:

- Background the structure of the Service.
- Explain in general terms the operation of the pertinent Administration, Custodian, Delegation and Cash Holding Account Agreements (together with the IID described as “the Agreements”) by which the Service is implemented.
- Contain detachable application forms and an Investment Authority by which Investors can identify their investment selections.

An Investor wishing to use the Service will then make application and execute an Investment Authority under which the Investor will:

- Provide a declaration pursuant to which Investors will: authorise the Manager and Custodian to act as their agent and bare trustee/nominee respectively, be bound by the Custodian Agreement and consent to the delegation of services to the Administrator.
- Confirm the Investor’s receipt of investment statements for each option selected.

Investors in products other than the superannuation fund first pay their moneys into a Cash Holding Account of the Custodian run by the Administrator who records and identifies by Investor all deposits, investments, income, withdrawals, expenses and tax information. From this account the Administrator as delegate of the Manager disperses funds into Investors’ various investment options. Interest and dividend income as well as sale proceeds and further investment moneys are all received into the Cash Holding Account which acts as a general clearing account for all funds received from or to be disbursed to Investors. There is a requirement on Investors to maintain a minimum credit balance in this account.

Investors in the superannuation scheme (if made available) will become direct members of the scheme, and their investment choices are activated as members of the scheme.

Investors expressly acknowledge receipt of an investment statement (and at their option a prospectus) from their financial adviser for each product that they select, including the superannuation scheme (if made available).

The relevant documentation is:

- (a) The Administration Agreement, being an agreement between the Manager and the Administrator.
- (b) The Custodian Agreement, being an agreement between the Manager and the Custodian.
- (c) The Cash Holding Account Agreement between the Custodian and the Manager.
- (d) The IID (and the Investment Authority given under the IID by the Investor) between the Manager, the Investor and the Investor’s financial adviser.
- (e) The Delegation Agreement between the Manager and the Custodian.

The Investor in the IID undertakes to be bound by the 3 other agreements relevant to the Investor.

Title to investments is held by the Custodian, and the Cash Holding Account is also in the name of the Custodian.

The Administrator will operate the Cash Holding Account, record and trace all investments made to individual Investors, and report to them at regular intervals on the value of their investments, the income derived and any tax deductions made.

The Administrator under the Administration Agreement provides a means of recording each Investor’s interest in the underlying products.

The Custodian Agreement at paragraph 2.1(e) expressly describes the pooling as aggregation for “administrative convenience”. The pooling is subject to the proviso that adequate tracing be maintained at all times.

Taking into account the effect of delegations, the essence of the Agreements can be summarised as follows:

- The Manager provides the entire facility and arranges for investments to be made, changed, or sold by instructing the Custodian as the Investor’s agent.
- The Custodian holds title to the investments and the Cash Holding Account as bare trustee for each Investor.
- The Administrator makes, changes or sells the investments, pays and collects the resulting cash flows and attends to all consequential administration, processing, record keeping and reporting requirements of the Service.

The services rendered in respect of each fee charged in relation to the Service are:

- Investment/Contribution fee:
 - Processing applications by Investors.
 - Arranging the acquisition of investments.
 - Providing four switches per annum.
 - Providing documentation.

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- Administration fee:
 - Keeping records of Investors and their portfolios.
 - Investor level transaction recording and tracing.
 - Maintaining a computer system that delivers the service requirements.
 - Allocating and processing distributions for Investors.
 - Reporting to Investors and preparation of Investor tax statements.
 - Executing proxies and voting rights of Custodian.
 - Reporting to the Custodian.
 - Maintaining Investors' Cash Holding Accounts.
 - Responding to Investor queries about the Service.
- Custodian fee:
 - Use of the Custodian's name as security holder. (The tasks of subscribing, safe custody and withdrawing from the investments are delegated to the Administrator, leaving the Custodian merely lending his or her name as security holder for the investment.)
- Switching fee:
 - Processing investment switches.
- Expense fee:
 - Printing and distributing Investor information documentation, investment statements and prospectuses, excluding establishment expenses of the Service.
 - Audit, accounting and legal compliance services, excluding establishment expenses of the Service.
- Regular withdrawal fee:
 - Direct crediting money to accounts for singular/regular withdrawals.
- Withdrawal fee:
 - Processing withdrawal applications.
- Adviser service fee:
 - Supplying financial planning and portfolio monitoring services.
- Fund manager fee:
 - On-going charging for management (investment and administration) of the following group investment funds:
 - TEA GAM Multi-Emerging Markets Funds.
 - Guardian Small Companies Fund.
 - National Mutual Mortgaged Backed Fund.
 - Perpetual Trust Mortgage Fund.

The fees and related services that make up the fund manager fee charged by these funds are:

- Annual Management Fee
 - On-going monitoring of the investments.
 - Purchasing and selling investments.
 - Maintaining computer system to record investments.
 - Receiving and processing distributions.
 - Reporting to Investors.
 - Reporting to trustee.
 - Responding to customer queries.

- Trustee fee/statutory supervisor fee
 - Use of the trustee/statutory supervisor's name as security holder. (The tasks of subscribing, safe custody and withdrawing from the investments are delegated to the Manager, leaving the trustee/statutory supervisor merely lending his or her name as security holder for the investment.)
- Expense reimbursement fee
 - Maintaining register of Investors.
 - Accounting and legal fees excluding establishment expenses of the fund.
 - Preparing and distributing cheques and statements.
 - Printing stationery.
 - Cost of holding investor meetings.
 - Any other miscellaneous cost incurred in managing the funds.
 - Issuing expenses.
- Brokerage fee:
 - Brokerage paid to broker to arrange entry into listed trusts.
 - Brokerage paid to broker to arrange exit from listed trusts.
- Insurance cover:
 - The supply of life insurance cover.
 - The supply of non-life insurance cover.

The adviser service fee, the fund manager fee and the brokerage fee are not charged by the Manager, Custodian or the Administrator of the Service. Investors through the Service pay these fees for services supplied to them through the Service by their adviser, fund managers and brokers. This Ruling does not consider the goods and services tax treatment of the adviser services fee, the fund manager fee and the brokerage fee paid by Investors.

In respect of the fees charged by fund managers, a separate contribution fee is ordinarily charged for set up costs. Due to the size of the investment through the Service, the fund managers have waived this fee for Investors through the Service.

Assumptions made by the Commissioner

This Ruling is based on the following assumptions:

- The Investors are resident in New Zealand under section OE 1 or OE 2 of the Income Tax Act 1994.
- Where an Investor is under a legal disability, the Manager, Administrator and the Custodian will not have or exercise the receipt, control, or disposition of any income derived by that investor, but may act on the instructions of whomsoever the law gives the capacity to act on behalf of that Investor. No additional powers accrue to the Manager, Administrator or

the Custodian because of a lack of capacity of an Investor beneficiary so as to change the nature of the bare trust relationship.

- Except for the non-life insurance cover supplied to Investors through the Service, the investments and facilities available through the Service are any debt security, equity security, participatory security, credit contract, contract of life insurance, superannuation scheme, or futures contract referred to in section 3(1)(ka) of the Goods and Services Tax Act 1985.
- The fees described in this Ruling are charged only for the services listed under each fee in the arrangement.
- The final form of the Agreements will not differ materially from the draft Agreements received by Adjudication & Rulings on 17 April 1998.
- The fees charged by the Administrator to the Manager under the Administration Agreement will be negotiated on an arm's length basis.
- The Manager, Custodian and the Administrator undertake no services that involve planning an Investor's portfolio or advising on an Investor's portfolio or making investment decisions for an Investor.
- Colonial makes goods and services tax returns as a group under the provisions of section 55 of the Goods and Services Tax Act 1985.
- The only activities carried on by the Administrator in relation to the Service are as described in the Arrangement to this Ruling.

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 Service, to be launched to the public by CSNZL, as the Manager and the Investors' agent, JMNZL as the Administrator, and NNL as the Custodian of the Service pursuant to a bare trust, is not a "unit trust" as defined in section OB 1 and the Investors are not "unit holders" as also defined in section OB 1.
- As a consequence of Investors having direct ownership of their investment choices, the income from investments made by the Investors through the Service and held by the Custodian, will be gross income under section BD 1 of the relevant Investor, and not the Manager, the Administrator or the Custodian.
- All the fees listed in the Arrangement that are paid by an Investor who is liable to be assessed pursuant to sections CD 3, CD 4, or CD 5 in respect of gross income received from investments through the Service, are deductible to that Investor under section BD 2, except to the extent that the fees (not being either contingent upon implementation of a "financial arrangement" or non-contingent upon implementation of a "financial arrangement" but exceeding 2% of the

"core acquisition price" of a "financial arrangement" as those terms are defined in the qualified accrual rules) are incurred in gaining or producing exempt income or an amount that is excluded from being gross income.

- The following fees are not deductible to an Investor who is not liable to be assessed pursuant to sections CD 3, CD 4, or CD 5 in respect of gross income received from investments through the Service:
 - The investment/contribution fee.
 - The withdrawal fee.
 - The brokerage fee.
 - The switching fee.
 - The adviser service fee to the extent that it relates to planning services.
- The following fees paid by an Investor who is not liable to be assessed pursuant to sections CD 3, CD 4, or CD 5 in respect of gross income received from investments through the Service, are deductible to that Investor under section BD 2 except to the extent that the fees (not being either contingent upon implementation of a "financial arrangement" or non-contingent upon implementation of a "financial arrangement" but exceeding 2% of the "core acquisition price" of a "financial arrangement" as those terms are defined in the qualified accrual rules) are incurred in gaining or producing exempt income or an amount that is excluded from being gross income:
 - The administration fee.
 - The custodian fee.
 - The expense fee.
 - The regular withdrawal fee.
 - The fund manager fee.
 - The adviser service fee to the extent that it relates to monitoring services.
- The fees paid by the Manager in relation to the Service to the Administrator, or to any broker, agent, or associate of the Administrator, or to any independent research resource, are deductible under section BD 2 by the Manager.
- GST is payable in respect of any fees charged for non-life insurance cover to Investors through the Service.
- Except for any fees charged for non-life insurance cover to Investors through the Service, the fees listed in the Arrangement in this Ruling that are charged by the Manager, the Custodian and the Administrator in relation to the Service are exempt from GST by reason of the application of section 14 of the Goods and Services Tax Act 1985.
- The representative member of the Colonial group is required to make a return of goods and services tax under section 55(7) of the Goods and Services Tax Act 1985 in respect of any fee charged for the Administrator's services supplied in relation to the Service, where Investors are supplied with non-life insurance cover through the Service.

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- There is no requirement for the representative member of the Colonial group to make a return of goods and services tax under section 55(7) of the Goods and Services Tax Act 1985, in respect of the Administrator's services supplied in relation to the Service, except where Investors are supplied with non-life insurance cover through the Service.

The period for which this Ruling applies

This Ruling will apply for the period 13 August 1998 until 31 March 2002.

This Ruling is signed by me on the 11th day of August 1998.

Martin Smith
General Manager (Adjudication & Rulings)

Withdrawal of product rulings 97/88, 97/89, 97/90, 97/92, 98/58

Product ruling BR Prd 97/88

1. This is a notice of withdrawal of a product ruling made under section 91FJ of the Tax Administration Act 1994.
2. Product ruling 97/88 is hereby withdrawn, due to a change in the repayment periods referred to in the Arrangement and the Assumptions, and a change in the name of the convertible note company. It is replaced by product ruling 98/59.
3. Product ruling 97/88 originally applied to investors in a fund for the period 15 December 1997 to 31 March 2001, and notice of its making appeared in the *New Zealand Gazette* of 18 December 1997. It is withdrawn on and from 13 August 1998.

Martin Smith
General Manager (Adjudication & Rulings)

Product ruling BR Prd 97/89

1. This is a notice of withdrawal of a product ruling made under section 91FJ of the Tax Administration Act 1994.
2. Product ruling 97/89 is hereby withdrawn, due to a change in the repayment periods referred to in the Arrangement and the Assumptions, and a change in the name of the convertible note company. It is replaced by product ruling 98/60.
3. Product ruling 97/89 originally applied to investors in a fund for the period 15 December 1997 to 31 March 2001, and notice of its making appeared in the *New Zealand Gazette* of 18 December 1997. It is withdrawn on and from 13 August 1998.

Martin Smith
General Manager (Adjudication & Rulings)

Product ruling BR Prd 97/90

1. This is a notice of withdrawal of a product ruling made under section 91FJ of the Tax Administration Act 1994.
2. Product ruling 97/90 is hereby withdrawn, due to a change in the repayment periods referred to in the Arrangement and the Assumptions. It is replaced by product ruling 98/61.

3. Product ruling 97/90 originally applied to investors in a fund for the period 15 December 1997 to 31 March 2001, and notice of its making appeared in the *New Zealand Gazette* of 18 December 1997. It is withdrawn on and from 13 August 1998.

Martin Smith
General Manager (Adjudication & Rulings)

Product ruling BR Prd 97/92

1. This is a notice of withdrawal of a product ruling made under section 91FJ of the Tax Administration Act 1994.
2. Product ruling 97/92 is hereby withdrawn, due to a change in the repayment periods referred to in the Arrangement and the Assumptions. It is replaced by product ruling 98/62.
3. Product ruling 97/92 originally applied to investors in a fund for the period 15 December 1997 to 31 March 2001, and notice of its making appeared in the *New Zealand Gazette* of 18 December 1997. It is withdrawn on and from 13 August 1998.

Martin Smith
General Manager (Adjudication & Rulings)

Product ruling BR Prd 98/58

1. This is a notice of withdrawal of a product ruling made under section 91FJ of the Tax Administration Act 1994.
2. Product ruling 98/58 is hereby withdrawn, due only to:
 - a change to one of the entities listed, being a party to the Cash Holding Account Agreement, in the Arrangement; and
 - Navigator Nominees Limited not having been defined as NNL in the Arrangement.

It is replaced by product ruling 98/71, which in all respects other than those above, is identical to product ruling 98/58.

3. Product ruling 98/58 originally applied for the period 6 August 1998 to 31 March 2002, and notice of its making appeared in the *New Zealand Gazette* of 13 August 1998. It is withdrawn on and from 13 August 1998.

Martin Smith
General Manager (Adjudication & Rulings)

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.

Assignment of joint venture rights – assessability of payment

Renouf Corporation Limited, Kirkcaldie & Stains Limited and Renouf Industries Limited v CIR

Decision date: 28 July 1998

Act: Income Tax Act 1976

Keywords: Assigning over rights to profits

(a) RCL's right under the joint venture and

(b) a right to the expected dividend corresponding to one half of the distributable development profit earned by WTL.

Summary

The Court of Appeal rejected the Commissioner's appeal.

Facts

Renouf Corporation Ltd ("RCL") had a number of subsidiary companies which included Renouf Industries Ltd ("RIL") and Renouf Property Developments Ltd ("RPDL"). RCL was approached by Mainzeal Group Ltd, which was interested in developing a site owned by RCL. The site was transferred to a shelf company, Wellington Tower Ltd ("WTL") with RCL and Mainzeal each taking half of the \$1 shares in WTL.

Under an agreement RCL assigned to RPDL "its rights under the Joint Venture Agreement to fifty percent of the future development profits arising from the development of that site" for the consideration of \$2.75 million. The Commissioner included the payment of \$2.75 million from RPDL to RCL under the agreement as assessable income in the hands of RCL. The Commissioner relied alternatively upon the provisions of section 65(2)(a), the third limb of section 65(2)(e), section 65(2)(1) and section 191(4)(A) of the Income Tax Act 1976 to support his view that the \$2.75 million payment was assessable income.

Decision

On appeal the Commissioner submitted that all that passed to RPDL under the 20 August 1985 agreement was:

The Court of Appeal rejected this submission and found that the agreement assigned to RPDL the beneficial interest in RCL's shares in WTL along with all its rights under the joint venture agreement. As the transaction related to the WTL shares it was structural in nature and not a contract in the course of business or revenue earning activities.

The Commissioner submitted that the sale of RCL's interest in the joint venture came within the ambit of sections 65(2)(e) and 191(4A) because the sale of its interest in the joint venture and the WTL shares was derived from the carrying out of a scheme or undertaking.

The Court of Appeal held that there was nothing in the present case that indicated that RCL and Mainzeal intended, when they formed their joint venture, to quit their WTL shareholdings once the Jervois Quay project was completed and sold. The Court of Appeal concluded that in these circumstances the sale of the WTL shares and the interest in the joint venture did not produce any sum "derived from the carrying on or carrying out" of the alleged scheme. There was no pursuance of the scheme when RCL sold its interests, rather there was a withdrawal from the scheme.

The Court of Appeal rejected an argument that section 191(4A) applied in this case.

(The High Court decision is covered in TIB Volume Ten, No.3)

Assessability of money drawn from company

J P R Alexander v CIR

Decision date: 29 July 1998

Act: Income Tax Act 1976

Keywords: Assessable income, company drawings

Summary

The Court of Appeal found in favour of the Commissioner

Facts

J P R Alexander claimed that income from certain assets was income from J P R Alexander Ltd ('the company') and returned by the company. Two aircraft were purchased, insured and registered in the name of the company.

The aircraft were left off the company's balance sheet and depreciation was not claimed.

Decision

J P Alexander's application to lead "considerable" further evidence which was not allowed. The Court of Appeal held that the material concerned could have been discovered and led if reasonable diligence had been used in the High Court. That in its self disposed of the appeal. But the Court of Appeal said even if fresh evidence had been adduced, it would have made no difference.

J P Alexander argued that money was taken from the company and held on trust by him, and that later the money was returned to the company by the purchase of the said aircraft. The Court of Appeal held that even if he were a trustee for the company he would be assessable in any event.

(The High Court decision is covered in TIB Volume Seven, No.13)

Due dates reminder

September 1998

- 5 Large employers: PAYE deductions and deduction schedules for period ended 31 August 1998 due.
- (We will accept payments received or posted on Monday 7 September as in time for Saturday 5 September.)*
- 7 Provisional tax and/or Student Loan interim repayments: first 1999 instalment due for taxpayers with May balance dates.
- Second 1999 instalment due for taxpayers with January balance dates.
- Third 1998 instalment due for taxpayers with September balance dates.
- 1998 end of year payments due (income tax, Student Loans, ACC premiums) for taxpayers with October balance dates.
- 1998 income tax returns due to be filed for all non-IR 5 taxpayers with May balance dates.
- QCET payment due for companies with October balance dates, if election is to be effective from the 1999 year.
- 20 Large employers: PAYE deductions and deduction schedules for period ended 15 September 1998 due.
- Small employers: PAYE deductions and deduction schedules for period ended 31 August 1998 due.
- Gaming machine duty return and payment for month ended 31 August 1998 due.
- RWT on interest deducted during August 1998 due for monthly payers.
- RWT on dividends deducted during August 1998 due.
- Non-resident withholding tax (or approved issuer levy) deducted during August 1998 due.
- (We will accept payments received or posted on Monday 21 September as in time for Sunday 20 September.)*
- 30 GST return and payment for period ended 31 August 1998 due.
- Non-resident Student Loan repayments - second 1999 instalment due.

October 1998

- 5 Large employers: PAYE deductions and deduction schedules for period ended 30 September 1998 due.
- 7 Provisional tax and/or Student Loan interim repayments: first 1999 instalment due for taxpayers with June balance dates.
- Second 1999 instalment due for taxpayers with February balance dates.
- Third 1999 instalment due for taxpayers with October balance dates.
- 1998 end of year payments due (income tax, Student Loans, ACC premiums) for taxpayers with November balance dates.
- 1998 income tax returns due to be filed for all non-IR 5 taxpayers with June balance dates.
- QCET payment due for companies with November balance dates, if election is to be effective from the 1999 year.
- 20 Large employers: PAYE deductions and deduction schedules for period ended 15 October 1998 due.
- Small employers: PAYE deductions and deduction schedules for period ended 30 September 1998 due.
- FBT return and payment for quarter ended 30 September 1998 due.
- Gaming machine duty return and payment for month ended 30 September 1998 due.
- RWT on interest deducted during September 1998 due for monthly payers.
- RWT on interest deducted 1 April 1998 to 30 September 1998 due for six-monthly payers.
- RWT on dividends deducted during September 1998 due.
- Non-resident withholding tax (or approved issuer levy) deducted during September 1998 due.
- 30 GST return and payment for period ended 30 September 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 website at <http://www.ird.govt.nz/rulings/> Under the "Adjudication & Rulings" heading, click on "Draft Rulings", then under the "Consultation Process" heading, click on the drafts that interest you. You can return your comments via the Internet.

Name _____
 Address _____

✓ **Public binding rulings**

Comment Deadline

<input type="checkbox"/> 3123: Subsidised transport provided by employers to employees – value for fringe benefit tax purposes	30 September 1998
<input type="checkbox"/> 0023: Debt factoring arrangements and GST	30 September 1998
<input type="checkbox"/> 0003: Year 2000 expenditure – income tax deductibility (re-issued)	30 September 1998

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



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

Affix
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Here

The Manager (Field Liaison)
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 National Office
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