

TAX INFORMATION BULLETIN

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Contents

Standard practice statements

Stamp duty – transferring land in excess of 4,500m ² (GNL-150)	3
Payment of debt by compulsory deductions from bank accounts (RDC-3)	4

Legislation and determinations

Foreign currency amounts – conversion to NZ currency	6
Use of money interest rates reduced from 8 November 1998	9

Questions we've been asked

Answers to enquiries we've received at Inland Revenue, which could have a wider application.
See the inside front cover for a list of topics covered in this bulletin.

Binding rulings

Bonus payments – tax deductions and assessability (BR Pub 95/7 non-renewal)	11
---	----

General interest items

Company returns – determination of losses carried forward	11
---	----

Legal decisions - case notes

Notes on recent cases heard by the Taxation Review Authority, the High Court, the Court of Appeal and the Privy Council. See the inside front cover for a list of cases covered in this bulletin.

Regular features

Due dates reminder	14
Public binding rulings and interpretation statements: your chance to comment before we finalise them	15

This TIB has no appendix

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

Contents continued - questions and legal case notes

Questions we've been asked (page 10)

GST registration backdated – penalties	10
--	----

Legal decisions - case notes (pages 12-13)

TRA 96/90	Business sold while not functioning – whether a going concern	12
Great Northern Motor Co, Kat Agency, Ron McDonald Ltd v CIR	Judicial review proceedings – assessments involving company loss offsets	13
FB Duvall v CIR	GST refund cannot be delayed – no authority to reassess registered person	13

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Where to find us

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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.

Stamp duty – transferring land in excess of 4,500m²

Standard Practice Statement GNL-150

Introduction

This standard practice statement sets out the practices of the Christchurch Duties Unit when land being transferred is in excess of 4,500 m² and has a house on it, or a house will be built on the land.

Effective date

This standard practice statement takes effect immediately.

Legislation

Section 24(2)(b) of the Stamp and Cheque Duties Act 1971 gives the Commissioner of Inland Revenue the authority to exempt from duty land that is in excess of 4,500m², in certain circumstances.

The exemption from duty is for so much of the area of land as is reasonably appropriate for residential purposes, having regard to the size and character of the dwelling house. Dwelling house is defined in Section 2 as

...a building, or part of a building, that is a house, flat, townhouse, home unit, or similar dwelling erected primarily and principally as a residence, and includes any land improvements, or appurtenances, belonging to the dwelling house or usually enjoyed with it ...

The legislation will be applied using the following procedure.

Procedures

To claim an exemption you should:

1. Make application on an IR 673 form "Residential home purchase exemption". This form is a prescribed form.
2. Provide a valuation of the "dwelling house", signed by a registered valuer, the licensee of a real estate firm, or two arm's length parties when they contractually agree. This is to establish the value of the exempt area.
3. Provide a reasoned argument if a total exemption is being sought. Evidence is required to support this argument.

4. Your request will be considered and if accepted the documents will be noted accordingly.
5. If the request is not accepted the disputes resolution process will be initiated.

Example 1

'A' purchased a bare block of land in Kamo. The area of land was 2 hectares. The land is relatively flat in character and has been purchased as a "lifestyle" block. 'A' intends to erect a kitset dwelling within the next six months. 'A' may run a few sheep to keep the grass down.

An application has been received to exempt the total area.

The Commissioner would not exempt the total area in this case. There is no evidence to suggest that the extended area should form part of the "dwelling house". A "lifestyle" block does not meet the definition of "dwelling house". However, a 2ha property with extensive gardens, swimming pool, or steep hill boundaries, could meet the requirements. Plans, maps and photographs can also be used.

Example 2

'B' purchased a steep property in the Marlborough Sounds. The lower boundary is a vertical drop into Queen Charlotte Sound. There is also a covenant noted on the title restricting the clearing of native bush. The area of land is 1 hectare. An abstract has been received with a transfer and agreement, but without an IR 673.

The documents will be returned asking for an IR 673. The IR 673 is a prescribed form, which is required to be completed before consideration can be given to an application.

Example 3

Same as Example 2, but an IR 673 was received.

Using the above example the application would be approved. The character of the land, the covenant and the steep drop would render most of the land unsuitable for any other land use.

Tony Bouzaid
National Manager Operations Policy

Payment of debt by compulsory deductions from bank accounts

Standard practice statement RDC-3

Introduction

This standard practice statement outlines Inland Revenue's position on the use of deduction notices for deductions from bank accounts. Inland Revenue has recently reviewed the format of the notices, how they are applied and interpretation of parts of the legislation. Changes were also required to accommodate the requirements of the new interest regime.

This statement covers:

- monitoring of bank accounts
- overdraft facilities
- joint bank accounts
- interest
- term investments
- income tested benefits

Application date

This policy applies to all deduction notices issued from 1 November 1998.

Legislation

Section 157 of the Tax Administration Act 1994 allows deductions of tax from payments due to a defaulting customer. When a customer fails to pay any income tax, interest or civil penalty the Commissioner may issue a written notice to any person, instructing that person to deduct funds from any amounts payable to the defaulting customer. The deductions may be a lump sum or instalments. Daily interest may also be deducted from the date of the written notice, until the amount in default has been deducted.

Example

A customer has not paid income tax and penalties for the year ended 31 March 1997. An investigation into the case reveals that the customer has a bank account with sufficient funds to clear the amount in default. The Commissioner forwards written notice to the bank to deduct the full amount.

The following legislation is similar in content to section 157 of the Tax Administration Act 1994:

- Section 43 of the Goods and Services Tax Act 1985
- Section 46 of the Student Loan Scheme Act 1992
- Section 43 of the Accident Rehabilitation and Compensation Insurance Act 1992
- Section 46 of the Accident Compensation Act 1982
- Section 12 of the Gaming Duties Act 1971
- Section 130 of the Accident Rehabilitation and Compensation Insurance Act 1992
- Section 154 of the Child Support Act 1991

Monitoring of bank accounts

In the past when a deduction notice was placed on a bank account, the account was frozen and Inland Revenue required the bank to monitor the account daily. This would continue until Inland Revenue lifted the notice or the amount in default was fully paid. This has caused the banks some problems with their relationship with some customers and the cost involved in monitoring.

After discussions with the Bankers' Association it has been agreed that the banks will not be required to monitor the accounts daily or to freeze activity on customers' accounts. However, if there is an exceptional case where Inland Revenue considers daily monitoring to be necessary, we will ask the bank to make deductions for a specific period. Inland Revenue's requirements will be discussed with the bank at the time.

Example

The customer has a large debt, which has been outstanding for some time. Inland Revenue is aware that the customer is expecting to receive funds from an overseas source. It is known that payment will be made in the first week of the month, but the exact day of payment is not known. Inland Revenue will consult with the bank concerned and request that the account be monitored for the first week of the month.

Overdraft facilities

Inland Revenue cannot, by making a deduction from a bank account, put a customer into, or further into overdraft.

If Inland Revenue issues a deduction notice on an account which is in credit and the customer attempts to evade it by transferring funds to an overdraft, then the notice will take priority.

Joint bank accounts

Previously the Commissioner applied deduction notices to a joint account if the signatory was "either or".

This practice has recently been considered by the High Court in *ANZ Banking Group (New Zealand) Limited v CIR* (Unreported CP326/97). The Commissioner applied a deduction notice to a joint account. The bank refused to release the funds to the Commissioner, arguing that section 157 did not give the Commissioner the power to obtain funds from a joint bank account. The judge ruled that the Commissioner could not obtain funds from a joint account by way of a deduction notice.

The Commissioner is not appealing the decision and we will no longer apply deduction notices to any joint accounts. However, the Commissioner does have the

power to deduct money from joint bank accounts under Section 155 of the Child Support Act 1991.

Family support

Section KD 4(4) of the Income Tax Act 1994 states that when an overpayment has occurred the person who received the overpayment and their spouse (if they were the spouse throughout the income year to which the overpayment relates) are jointly and severally liable for the overpayment. This allows the Commissioner to recover the overpayment as if it were payable by the spouse. The Commissioner is therefore able to apply a deduction notice to an account in the name of the spouse or a joint account in the name of the recipient and the spouse.

Interest

Section 157(1A) was introduced to reflect the new interest regime effective from 1 April 1997.

This section now allows the Commissioner to make deductions of daily interest starting on the date of the notice and ending on the day on which the amount in default has been deducted. Section 157(1B) requires the bank to calculate the daily interest if requested.

Term investments

Inland Revenue may seize money that is held in a term investment before the date that the investment is due to mature. This may result in a reduced rate of interest on the investment.

Investment portfolios

Inland Revenue may seize money that is in investment portfolios e.g. superannuation schemes. However, once the money is converted into units (no longer cash), Inland Revenue cannot access these by way of a deduction notice.

Prosecution

If a bank fails to make deductions required and there were funds available Inland Revenue has the power to prosecute parties who do not act on deduction notices.

Tony Bouzaid
National Manager
Operations Policy

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.

Foreign currency amounts – conversion to NZ currency

The tables in this item list exchange rates acceptable to Inland Revenue for converting foreign currency amounts to New Zealand currency under the controlled foreign company (CFC) and foreign investment fund (FIF) rules for the six months ending 30 September 1998. In the past we've published these rates in an annual IR 270G form. However, we are now going to publish them six-monthly in the Tax Information Bulletin instead. The conversion rates for the first six months of each income year will be published following the end of the September quarter, and the rates for the full 12 months rates at the end of each income year.

To convert foreign currency amounts to New Zealand dollars for any country listed, divide the foreign currency amount by the exchange rate shown.

Table A

Use this table to convert foreign currency amounts to New Zealand dollars for:

- branch equivalent income or loss under the CFC or FIF rules under section CG 11(3) of the Income Tax Act 1994
- foreign tax credits calculated under the branch equivalent method for a CFC or FIF under section LC 4(1)(b) of the Income Tax Act 1994
- FIF income or loss calculated under the accounting profits, comparative value (except if Table B applies) or deemed rate of return methods under section CG 16(11) of the Income Tax Act 1994.

Key

x
y

- x is the exchange rate on the 15th day of the month, or if no exchange rates were quoted on that day, on the next day on which they were quoted.
- y is the average of the mid-month exchange rates for that month and the previous 11 months.

Example 1

A CFC resident in Hong Kong has an accounting period ending on 30 September 1998. Branch equivalent income for the period 1 October 1997 to 30 September 1998 is 200,000 Hong Kong dollars (HKD).

$$\text{HKD } 200,000 \div 4.3442 = \text{NZ\$}46,038.40$$

A similar calculation would be needed for a FIF using the branch equivalent or accounting profits methods.

Example 2

A taxpayer with a 31 March balance date purchases shares in a Philippines company (which is a FIF) for 350,000 pesos on 7 September 1998. Using the comparative value or deemed rate of return methods, the cost is converted as follows:

$$\text{PHP } 350,000 \div 21.9387 = \text{NZ\$}15,953.54$$

Alternatively, the exchange rate can be calculated by averaging the exchange rates "x" which apply to each complete month in the foreign company's accounting period.

Example 3

A CFC resident in Singapore was formed on 21 April 1998 and has a balance date of 30 September 1998. During this period, branch equivalent income of 500,000 Singapore dollars was derived.

- Calculating the average monthly exchange rate for the complete months May-September 1998:
 $(0.8839 + 0.7446 + 0.8842 + 0.8777 + 0.8908) \div 5 = 0.8562$
- Conversion to New Zealand currency:
 $\text{SGD } 500,000 \div 0.8562 = \text{NZ\$}583,975.71$

Table B

Table B lists the end of month exchange rates acceptable to Inland Revenue for the 6 month period ending 30 September 1998. Use this table for converting foreign currency amounts to New Zealand dollars for:

- items "a" (market value of the FIF interest on the last day of the income year) and "c" (market value of the FIF interest on the last day of the previous income year) of the comparative value formula
- foreign tax credits paid on the last day of any month calculated under the branch equivalent method for a CFC or FIF under section LC 4(1)(a) of the Income Tax Act 1994.

Example 4

A New Zealand resident with a balance date of 30 September 1998 held an interest in an FIF resident in Thailand. The market value of the FIF interest at 30 September 1998 (item "a" of the comparative value formula) was 500,000 Thailand baht (THB).

$$\text{THB } 500,000 \div 19.4608 = \text{NZ\$}25,692.67$$

Note: If you need an exchange rate for a country or a day not listed in these tables, contact one of New Zealand's major trading banks. Round the exchange rate calculations to four decimal places wherever possible.

Table A: Mid-month and 12 month cumulative average exchange rates

Country	Foreign Currency to NZ \$		15 Apr 98	15 May 98	15 Jun 98	15 Jul 98	17 Aug 98	15 Sep 98
			12 mth rate	12 mth rate	12 mth rate	12 mth rate	12 mth rate	12 mth rate
United States	Dollar	USD	0.5490	0.5355	0.4996	0.5236	0.5033	0.5157
			0.6236	0.6103	0.5945	0.5827	0.5713	0.5614
United Kingdom	Pound	GBP	0.3256	0.3283	0.3057	0.3202	0.3112	0.3072
			0.3786	0.3708	0.3612	0.3550	0.3474	0.3401
Australia	Dollar	AUD	0.8482	0.8505	0.8510	0.8403	0.8465	0.8669
			0.8825	0.8787	0.8733	0.8682	0.8668	0.8659
Austria	Schilling	ATS	6.9236	6.6829	6.3483	6.6494	6.3598	6.1646
			7.7589	7.6270	7.4585	7.3153	7.1576	7.0138
Bahrain	Dollar	BHD	0.2068	0.2017	0.1882	0.1976	0.1896	0.1941
			0.2348	0.2297	0.2239	0.2194	0.2151	0.2114
Belgium	Franc	BEF	20.3448	19.5968	18.5557	19.4479	18.6459	18.0520
			22.8058	22.4154	21.9116	21.4793	21.0116	20.5849
Canada	Dollar	CAD	0.7863	0.7749	0.7323	0.7743	0.7621	0.7754
			0.8742	0.8583	0.8401	0.8288	0.8182	0.8093
China	Yuan	CNY	4.5335	4.4194	4.1358	4.3339	4.1630	4.2653
			5.1577	5.0460	4.9155	4.8173	4.7231	4.6412
Denmark	Krone	DKK	3.7678	3.6212	3.4284	3.5947	3.4509	3.3320
			4.5883	4.5165	4.4237	4.3444	4.2586	4.1799
European Community	Unit	XEU	0.4983	0.4830	0.4562	0.4777	0.4585	0.4448
			0.5615	0.5515	0.5386	0.5281	0.5165	0.5059
Fiji	Dollar	FJD	1.0667	1.0674	1.0279	1.0620	1.0383	1.0460
			0.9752	0.9826	0.9871	0.9970	1.0065	1.0164
Finland	Markka	FIM	2.9939	2.8868	2.7347	2.8684	2.7527	2.6653
			3.3264	3.2706	3.2003	3.1457	3.0814	3.0236
France	Franc	FRF	3.3119	3.1902	3.0193	3.1650	3.0372	2.9341
			3.7192	3.6543	3.5699	3.4973	3.4197	3.3495
French Polynesia	Franc	XPF	60.0898	57.8594	54.7614	57.3947	55.0281	53.2201
			67.4611	66.2837	64.7502	63.4391	62.0290	60.7555
Germany	Deutschemark	DEM	0.9888	0.9519	0.9012	0.9444	0.9061	0.8748
			1.1079	1.0890	1.0645	1.0436	1.0210	1.0001
Greece	Drachma	GRD	171.5156	164.2981	153.1743	156.3084	152.4665	149.5628
			176.4906	174.5399	171.5858	169.0311	166.3542	164.0362
Hong Kong	Dollar	HKD	4.2508	4.1460	3.8703	4.0551	3.8972	3.9929
			4.8249	4.7219	4.6006	4.5089	4.4205	4.3442
India	Rupee	INR	21.5348	21.3758	20.9362	22.2099	21.5023	21.9008
			23.0811	22.8030	22.5118	22.4071	22.3117	22.2279
Indonesia	Rupiah	IDR	4035.32	5663.00	7154.08	7638.55	6341.69	5829.86
			2893.59	3225.12	3683.68	4184.93	4567.35	4899.19
Ireland	Pound	IEP	0.3917	0.3780	0.3573	0.3744	0.3609	0.3493
			0.4267	0.4203	0.4121	0.4067	0.4001	0.3943
Italy	Lira	ITL	975.76	937.11	886.57	930.27	892.70	863.49
			1085.07	1066.52	1042.71	1023.68	1002.32	982.77
Japan	Yen	JPY	71.0939	71.5765	72.1252	73.2805	73.5518	68.3115
			76.4461	75.6197	75.0545	74.8421	74.6857	73.9873
Kuwait	Dollar	KWD	0.1675	0.1637	0.1533	0.1608	0.1548	0.1566
			0.1895	0.1855	0.1810	0.1776	0.1742	0.1712
Malaysia	Ringgit	MYR	2.0734	2.0019	2.0095	2.1569	2.1070	1.9599
			2.0073	2.0281	2.0517	2.0897	2.1172	2.1234
Netherlands	Guilder	NLG	1.1123	1.0720	1.0148	1.0637	1.0200	0.9859
			1.2460	1.2250	1.1976	1.1743	1.1488	1.1256

Table continued on page 8

Table A (cont'd): Mid-month and 12 month cumulative average exchange rates

Country	Foreign Currency to NZ \$		15 Apr 98	15 May 98	15 Jun 98	15 Jul 98	17 Aug 98	15 Sep 98
			12 mth rate	12 mth rate	12 mth rate	12 mth rate	12 mth rate	12 mth rate
Norway	Krone	NOK	4.0967	3.9883	3.8180	4.0134	3.8526	3.8897
			4.5672	4.4932	4.3957	4.3154	4.2302	4.1695
Pakistan	Rupee	PKR	24.3024	23.6077	22.1182	24.2596	25.6215	27.5269
			26.1755	25.8149	25.3543	25.1439	25.1271	25.2863
Papua New Guinea	Kina	PGK	1.0844	1.0827	1.0203	1.1440	1.2188	1.2079
			0.9731	0.9832	0.9892	1.0078	1.0350	1.0608
Philippines	Peso	PHP	20.7966	21.0879	20.1116	21.7243	21.7540	22.3058
			20.8469	21.0877	21.2644	21.5002	21.7622	21.9387
Portugal	Escudo	PTE	101.0481	97.5076	92.1178	96.7020	92.7628	89.7758
			112.5787	110.8364	108.4355	106.4504	104.2452	102.2157
Singapore	Dollar	SGD	0.8732	0.8839	0.7446	0.8842	0.8777	0.8908
			0.9658	0.9564	0.9366	0.9304	0.9225	0.9171
Solomon Islands	Dollar	SBD	2.4382	2.4644	2.2408	2.4846	2.3878	2.4661
			2.4248	2.4199	2.3992	2.4040	2.4087	2.4218
South Africa	Rand	ZAR	2.7570	2.7177	2.6483	3.1293	3.1627	3.2098
			2.9578	2.9246	2.8876	2.8963	2.9105	2.9310
Spain	Peseta	ESP	83.8293	80.6763	76.3621	80.0137	76.4793	74.1856
			93.3964	91.8531	89.8272	88.1326	86.2244	84.5220
Sri Lanka	Rupee	LKR	33.9724	33.8343	32.3669	34.1249	33.1323	33.6784
			37.1727	36.6090	35.9732	35.5981	35.2495	34.9344
Sweden	Krona	SEK	4.2533	4.1208	3.9927	4.2163	4.1159	4.0465
			4.8444	4.7493	4.6375	4.5555	4.4708	4.4030
Switzerland	Franc	CHF	0.8193	0.7925	0.7482	0.7960	0.7590	0.7215
			0.9112	0.8940	0.8736	0.8580	0.8404	0.8230
Thailand	Baht	THB	21.7273	20.5332	21.6650	21.5660	20.7810	20.9934
			22.4112	22.6392	23.0588	23.2250	23.3080	23.2287
Tonga	Pa'anga	TOP	0.7651	0.7739	0.7463	0.7867	0.7758	0.8133
			0.8097	0.8032	0.7946	0.7907	0.7876	0.7874
Vanuatu	Vatu	VUV	67.9538	67.1287	65.1295	67.9378	64.7408	67.3127
			73.3782	72.4525	71.4225	70.7696	70.0458	69.5241
Western Samoa	Tala	WST	1.5537	1.5315	1.4885	1.5285	1.5276	1.5456
			1.6233	1.6090	1.5916	1.5803	1.5731	1.5660

Table B: End of month exchange rates

Country	Foreign Currency to NZ \$		30 Apr 98	29 May 98	30 Jun 98	31 Jul 98	31 Aug 98	30 Sep 98
United States	Dollar	USD	0.5526	0.5326	0.5065	0.5129	0.4936	0.5014
United Kingdom	Pound	GBP	0.3307	0.3272	0.3039	0.3133	0.2936	0.2934
Australia	Dollar	AUD	0.8509	0.8560	0.8340	0.8410	0.8718	0.8397
Austria	Schilling	ATS	6.9626	6.6783	6.4638	6.4275	6.1055	5.9116
Bahrain	Dollar	BHD	0.2081	0.2005	0.1909	0.1932	0.1859	0.1889
Belgium	Franc	BEF	20.4125	19.5253	18.9045	18.7832	17.9105	17.2929
Canada	Dollar	CAD	0.7935	0.7743	0.7445	0.7717	0.7705	0.7563
China	Yuan	CNY	4.5641	4.4071	4.1917	4.2463	4.0831	4.1492
Denmark	Krone	DKK	3.7778	3.6077	3.4917	3.4718	3.3025	3.1875
European Community	Unit	XEU	0.5010	0.4808	0.4625	0.4625	0.4405	0.4257
Fiji	Dollar	FJD	1.0793	1.0652	1.0365	1.0438	1.0363	1.0263
Finland	Markka	FIM	3.0019	2.8772	2.7867	2.7680	2.6415	2.5520
France	Franc	FRF	3.3235	3.1776	3.0762	3.0591	2.9082	2.8132
French Polynesia	Franc	XPF	60.2766	57.6125	55.8404	55.4825	52.7451	51.0339
Germany	Deutschemark	DEM	0.9921	0.9476	0.9173	0.9128	0.8674	0.8388
Greece	Drachma	GRD	174.0849	162.5367	154.4671	151.5729	148.2931	144.0488
Hong Kong	Dollar	HKD	4.2755	4.1251	3.9228	3.9720	3.8249	3.8838
India	Rupee	INR	21.7820	22.0310	21.4479	21.7163	20.9091	21.2009
Indonesia	Rupiah	IDR	4,458.18	6,102.34	7,669.86	7,687.57	5,454.67	5,420.43
Ireland	Pound	IEP	0.3926	0.3757	0.3640	0.3624	0.3469	0.3350
Italy	Lira	ITL	978.54	933.45	903.40	899.50	856.59	828.98
Japan	Yen	JPY	73.1023	73.8351	71.7868	73.6830	69.9422	67.7197
Kuwait	Dollar	KWD	0.1686	0.1628	0.1554	0.1571	0.1506	0.1520
Malaysia	Ringgit	MYR	2.0611	2.0920	2.1139	2.1122	2.0812	1.9068
Netherlands	Guilder	NLG	1.1159	1.0674	1.0337	1.0279	0.9781	0.9450
Norway	Krone	NOK	4.1203	4.0133	3.8908	3.8716	3.8919	3.7035
Pakistan	Rupee	PKR	24.3382	23.4947	23.2426	26.1974	26.1058	26.8409
Papua New Guinea	Kina	PGK	1.1121	1.0702	1.0743	1.1972	1.1190	1.1310
Philippines	Peso	PHP	21.9707	20.5738	21.0270	21.4972	21.5528	21.9086
Portugal	Escudo	PTE	101.6411	97.1160	94.0170	93.4933	88.9864	86.0539
Singapore	Dollar	SGD	0.8762	0.8907	0.8673	0.8829	0.8734	0.8390
Solomon Islands	Dollar	SBD	2.4543	2.3945	2.4045	2.4351	2.3436	2.4557
South Africa	Rand	ZAR	2.7852	2.7586	2.9779	3.1403	3.2055	2.9173
Spain	Peseta	ESP	84.0691	80.3938	77.8161	77.3178	73.5597	71.1979
Sri Lanka	Rupee	LKR	34.5454	34.3952	32.8578	33.4305	32.5954	33.0479
Sweden	Krona	SEK	4.2825	4.1562	4.0446	4.0716	3.9603	3.9167
Switzerland	Franc	CHF	0.8273	0.7865	0.7723	0.7646	0.7107	0.6952
Thailand	Baht	THB	21.1452	21.2116	21.2800	20.8579	20.6749	19.4608
Tonga	Pa'anga	TOP	0.7858	0.7732	0.7578	0.7752	0.7919	0.8133
Vanuatu	Vatu	VUV	68.7001	67.6403	66.0315	65.4232	64.7652	65.4410
Western Samoa	Tala	WST	1.5561	1.5396	1.4872	1.5013	1.5198	1.5184

Use of money interest rates reduced from 8 November 1998

The use of money interest rates have been reduced. From 8 November 1998, the use of money interest rates on revenues and duties will decrease from 14.69% to 12.48% for underpayments and from 8.26% to 4.79% for overpayments.

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.

GST registration backdated – penalties

Sections 120 and 139B, Tax Administration Act 1994

A taxpayer has asked what, if any, penalties she will incur under the compliance and penalties rules if she requested her GST registration to be retrospective, and it resulted in GST output tax to pay.

The taxpayer also asked if her customers could claim an input tax deduction for supplies received from the retrospective registration date.

We advised the taxpayer that under section 139B of the Tax Administration Act 1994 (the Act) she would be liable for late payment penalties. These penalties would apply to each period she was liable for output tax, if that output tax was not paid by the corresponding due date.

We also advised the taxpayer that she could be liable for a shortfall penalty ranging from lack of reasonable care to evasion depending on her level of culpability. The imposition of a shortfall penalty would be considered for each period in question and for each tax position taken. If the taxpayer makes a voluntary disclosure of the shortfall any shortfall penalty would be reduced by up to 75% depending on the timing of the voluntary disclosure.

Under section 120D of the Act she will also be liable to pay interest on any amount of tax and penalties not paid by due date. This applies to any taxable periods starting on or after 1 April 1997.

For her customers to be able to claim an input tax deduction for supplies received from the date of the retrospective registration they would have to meet the

requirements of section 20(2) of the Goods and Services Tax Act 1985, which states:

20(2) [Deduction of input tax] Notwithstanding any other provision in this Act, no deduction of input tax shall be made in respect of a supply, unless-

- (a) A tax invoice or debit note or credit note, in relation to that supply, has been provided in accordance with sections 24 and 25 of this Act and is held by the registered person making that deduction at the time any return in respect of that supply is furnished: or
- (b) A tax invoice is not required to be issued pursuant to section 24(5) or section 24(6) of this Act, or a debit note or credit note is not required to be issued pursuant to section 25 of this Act: or
- (c) ...

For supplies over \$50 the taxpayer's customers would have to hold a tax invoice, as defined in section 24 of the GST Act, before they could claim an input tax deduction. For supplies under \$50 the customers would have to have sufficient records to support any input tax claim made.

The taxpayer does not have to automatically issue tax invoices for supplies over \$50, as section 24(1) of the GST Act requires a tax invoice to be issued only when requested by the customer.

See TIB Volume Seven, No.3 (September 1995) for more detail on backdated voluntary GST registrations.

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.

Bonus payments – tax deductions and assessability

Notice of non-renewal of public ruling BR Pub 95/7

Ruling number and publication details: BR Pub 95/7 appeared in Volume Seven, No.6 (December 1995) of Inland Revenue's *Tax Information Bulletin* at page 1.

Ruling title: Bonus payments – tax deductions and assessability.

Ruling application period: Applies to bonuses paid to employees in the 1997, 1998, and 1999 income years.

Date of this notice: 14 October 1998.

The Commissioner has determined that upon expiry the above-referenced Public Ruling will not be re-issued.

It is considered that the legislation on the subject matter covered by the Ruling is clear, and that the topic is adequately dealt with in other Inland Revenue publications, e.g. the Guide for Employers – IR 184.

The non-renewal of the Ruling should not be taken as an indication of change to the interpretation of the legislation as set out in the Ruling. The Commissioner's view on the issue remains the same.

Martin Smith
General Manager (Adjudication & Rulings)

General interest items

Company returns – determination of losses carried forward

Inland Revenue has implemented computer software changes to resolve two problems with determinations of losses to carry forward for company returns.

The first problem arose when there was a foreign investor tax credit returned. The amount of any foreign investor tax credit was being incorrectly added to the amount of the deemed loss, thereby inflating the amount of the loss available to carry forward.

The second problem occurred when losses for loss attributing qualifying companies were attributed to shareholders. When this happened, the loss was incorrectly treated as also being available for the company to carry forward to the next year's return.

In both instances, although the amount of the loss to carry forward was incorrect, the residual income tax was correctly assessed as zero, so the company's tax obligations were not altered.

We stopped issuing notices of determination of loss, as the amount advised would have been incorrect, conflicting with correct calculation of any loss to carry forward made by the company or the company's tax agent.

We started issuing these notices again with the implementation of the software changes in mid-August.

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.

Business sold while not functioning – whether going concern

TRA 96/90, Decision No 21/98

Decision date: 25 September 1998

Act: Goods and Services Tax Act 1985

Keywords: *going concern, taxable supply*

Summary

The Commissioner acted correctly in not treating the sales receipt of \$765,000 (or any part of it) as being for a supply of a taxable activity as a going concern.

Facts

The Objector entered into a sale and purchase agreement with N (“the purchaser”). The agreement provided for a purchase price of \$765,000, including all plant and stock; the purchase price was to be inclusive of GST (if any); a deposit of \$20,000 and the balance of the purchase price was to be paid in cash on the date of possession.

Settlement did not occur on 30 April 1995 and the agreement was in therefore in default. The purchaser and the Objector could not agree about the GST status of the transaction.

An agreement was reached and settlement took place on 11 August 1995. One of the terms of the settlement was the Objector’s provision of a GST tax invoice.

The purchaser claimed and was paid input tax on the transaction. The Objector filed its GST return and

declared the sale price of \$765,000 to be a zero-rated supply and its GST liability to be a credit of \$71,734.82.

The Commissioner then advised the Objector that the sale was GST inclusive and that the Objector’s GST return would be adjusted accordingly.

Decision

Barber J held that there was no supply of a taxable activity or of anything which was going when possession of the property was given, as the sale and purchase agreement did not incorporate the sale of the joinery business or any part of it as a going concern. The joinery business was closed down on sale and did not remain active and operating “before, during and after its transfer to new ownership”.

His Honour found that there was no supply of an income earning process, rather there was a supply of a business structure upon which an income earning process (namely the kitchen joinery making enterprise) could be resurrected or created at a later date.

His Honour also found that the form of contract was indicative. Here the form used was a sale of land and buildings form, not the sale of a business form.

Barber J also said that whether one regards the purchaser as having taken possession on 1 May 1995 or 30 April 1995 or whenever, there was no joinery business operating from 30 April 1995 and consequently no such business was taken over as a going concern.

Judicial review proceedings – assessments involving company loss offsets

Great North Motor Company (in liquidation), Kat Agency (in liquidation) and Ron McDonald Ltd v CIR

Decision date: 23 September 1998

Act: Income Tax Act 1976

Summary

The Applicants filed judicial review proceedings to prevent the Commissioner exercising his statutory powers in relation to income tax assessments issued to the first and second applicants for the 1994 tax year. In application the Commissioner sought to strike out these proceedings.

Facts

The third applicant sought to offset \$1.8 million in tax losses for the 1994 income tax year.

The losses were claimed by the first and second applicants, which are alleged to form part of a group of companies including the third applicant.

The Commissioner disallowed the losses in the absence of source documentation, which did not enable an accurate assessment to be made.

The Commissioner then decided to reassess the tax liability to nil.

Decision

The Court held that it did not consider that there was material before it which suggested the applicants cause of action was untenable. Accordingly they were entitled to have their case heard and determined.

Further it held that the circumstances alleged by the applicants, if proved, would place the case in the exceptional category justifying the judicial review proceedings notwithstanding the primacy of the objection procedures.

The appeal was dismissed.

GST refund cannot be delayed – no authority to reassess registered person

FB Duvall v CIR

Decision date: 15 September 1998

Act: Goods and Services Tax Act 1985

Summary

Justice Baragwanath refused to grant the stay as the Commissioner had no authority to reassess the clients and therefore had no grounds to delay making the refund.

Facts

This is a JG Russell related matter. An earlier successful appeal in the same matter is reported at (1997) 18 NZTC 13,740.

The Commissioner sought a stay of the judgment to enable him to “undo” the input tax credits claimed by the clients of the Objector.

Because the clients had claimed the tax paid by them to the Objector as input tax credits the Commissioner would need to reassess those clients to remove the input tax credits claimed on non-existent supplies. Once this

was done the output tax the Objector sought would be payable by the Objector to the clients and the Commissioner could then recover the tax as part of recovering the incorrectly claimed input tax from the clients.

The Objector opposed this and sought a refund of the output tax.

Decision

His Honour determined that section 43 would override section 45 in circumstances where the Objector was obliged to repay the tax to his clients and the clients in turn were obliged to repay the tax to the Commissioner.

He also determined that section 37(4) was not operative in this case (as there is no appeal), so there was no basis to defer the refund and that there was unjust enrichment for the Objector for which the clients could recover money from the Objector.

It was also held that section 20(3) is inapplicable because of the findings there were no supplies made: without taxable supplies there was no entitlement to deductions.

Due dates reminder

November 1998

- 5 Large employers: PAYE deductions and deduction schedules for period ended 31 October 1998 due.
- 7 Provisional tax and/or student loan interim repayments: first 1999 instalment due for taxpayers with July balance dates.
- Second 1999 instalment due for taxpayers with March balance dates.
- Third 1999 instalment due for taxpayers with November balance dates.
- Annual income tax returns due to be filed for all non-IR 5 taxpayers with July balance dates.
- 1998 end of year payments due (income tax, student loans, ACC premiums) for taxpayers with December balance dates.
- QCET payment due for companies with December balance dates, if election is to be effective from the 1999 year.
- (We will accept payments received or posted on Monday 9 November as in time for Saturday 7 November.)*
- 20 Large employers: PAYE deductions and deduction schedules for period ended 15 November 1998 due.
- Small employers: PAYE deductions and deduction schedules for period ended 31 October 1998 due.
- Gaming machine duty return and payment for month ended 31 October 1998 due.
- RWT on interest deducted during October 1998 due for monthly payers.
- RWT on dividends deducted during October 1998 due.
- Non-resident withholding tax (or approved issuer levy) deducted during October 1998 due.
- 30 GST return and payment for period ended 31 October 1998 due.

December 1998

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

<p>✓ Public binding rulings</p> <p><input type="checkbox"/> 2222: Directors' fees and GST</p> <p>✓ Interpretation statements</p> <p><input type="checkbox"/> 2966: Exclusion from term "dividends" – whether distribution made in lieu of dividends' payment</p>	<p>Comment Deadline</p> <p>30 November 1998</p> <p>Comment Deadline</p> <p>30 November 1998</p>
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We must receive your comments by the deadline shown if we are to take them into account in the finalised item



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



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