

T AX INFORMATION BULLETIN

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Legislation and determinations

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

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 12 months ending 31 March 1999.

The conversion rates for the first six months of each income year are published in the Tax Information Bulletin 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 31 December 1998. Branch equivalent income for the period 1 January 1998 to 31 December 1998 is 200,000 Hong Kong dollars (HKD).

$$\text{HKD } 200,000 \div 4.1717 = \text{NZ\$}47,942.09$$

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 December 1998. Using the comparative value or deemed rate of return methods, the cost is converted as follows:

$$\text{PHP } 350,000 \div 21.2667 = \text{NZ\$}16,457.65$$

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 November 1998. During this period, branch equivalent income of 500,000 Singapore dollars was derived.

- (i) Calculating the average monthly exchange rate for the complete months May-November 1998:

$$(0.8839 + 0.8696 + 0.8842 + 0.8777 + 0.8908 + 0.8666 + 0.8885) \div 7 = 0.8802$$
- (ii) Conversion to New Zealand currency:

$$\text{SGD } 500,000 \div 0.8802 = \text{NZ\$}511,613.63$$

Table B

Table B lists the end of month exchange rates acceptable to Inland Revenue for the 12 month period ending 31 March 1999. 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 31 December 1998 held an interest in an FIF resident in Thailand. The market value of the FIF interest at 31 December 1998 (item "a" of the comparative value formula) was 500,000 Thailand baht (THB).

$$\text{THB } 500,000 \div 19.2550 = \text{NZ\$}25,697.28$$

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.

Exchange rates continued on page 4

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	4,035.3180	5,663.0000	7,154.0800	7,638.5450	6,341.6900	5,829.8550
			2,893.5875	3,225.1175	3,683.6833	4,184.9255	4,567.3528	4,899.1906
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	975.7616	937.1061	886.5708	930.2714	892.6977	863.4878
			1,085.0714	1,066.5187	1,042.7053	1,023.6818	1,002.3212	982.7726

Country	Foreign Currency to NZ \$		15 Oct 98	16 Nov 98	15 Dec 98	15 Jan 99	15 Feb 99	15 Mar 99
			12 mth rate	12 mth rate	12 mth rate	12 mth rate	12 mth rate	12 mth rate
United States	Dollar	USD	0.5377	0.5373	0.5211	0.5397	0.5492	0.5341
			0.5525	0.5452	0.5389	0.5360	0.5333	0.5288
United Kingdom	Pound	GBP	0.3155	0.3229	0.3077	0.3256	0.3361	0.3273
			0.3333	0.3296	0.3251	0.3229	0.3214	0.3194
Australia	Dollar	AUD	0.8479	0.8435	0.8406	0.8529	0.8479	0.8391
			0.8636	0.8592	0.8544	0.8515	0.8500	0.8479
Austria	Schilling	ATS	6.2282	6.3700	6.0429	6.3483	6.6947	6.7309
			6.8737	6.7773	6.6641	6.5815	6.5214	6.4620
Bahrain	Dollar	BHD	0.2026	0.2000	0.1950	0.2032	0.2070	0.2011
			0.2081	0.2051	0.2027	0.2015	0.2005	0.1989
Belgium	Franc	BEF	18.1543	18.6606	17.6684	18.5565	19.5677	19.7201
			20.1593	19.8724	19.5286	19.2790	19.0960	18.9142
Canada	Dollar	CAD	0.8293	0.8318	0.8023	0.8259	0.8184	0.8130
			0.8041	0.8002	0.7966	0.7967	0.7950	0.7938
China	Yuan	CNY	4.4476	4.4504	4.3091	4.4664	4.5426	4.4183
			4.5665	4.5072	4.4556	4.4317	4.4094	4.3738
Denmark	Krone	DKK	3.3558	3.4344	3.2627	3.4253	3.6110	3.6313
			4.1019	3.6725	3.6089	3.5622	3.5278	3.4930
European Community	Unit	XEU	0.4483	0.4592	0.4367	0.4605	0.4857	0.4893
			0.4953	0.4884	0.4802	0.4745	0.4704	0.4665
Fiji	Dollar	FJD	1.0599	1.0526	1.0266	1.0506	1.0600	1.0507
			1.0269	1.0373	1.0471	1.0602	1.0568	1.0507
Finland	Markka	FIM	2.6866	2.7466	2.6051	2.7377	2.8880	2.9084
			2.9660	2.9257	2.8772	2.8416	2.8155	2.7895
France	Franc	FRF	2.9601	3.0327	2.8782	3.0237	3.1907	3.2088
			3.2808	3.2337	3.1785	3.1383	3.1092	3.0793
French Polynesia	Franc	XPF	53.6473	55.0284	52.2246	54.8256	57.8116	58.2254
			59.5065	58.6511	57.6506	56.9212	56.3848	55.8431
Germany	Deutschemark	DEM	0.8829	0.9040	0.8584	0.9020	0.9497	0.9571
			0.9796	0.9653	0.9486	0.9364	0.9274	0.9184
Greece	Drachma	GRD	152.0353	151.1752	143.4058	149.0933	155.8087	156.6502
			161.9413	160.4714	158.5687	157.2549	156.3318	154.6245
Hong Kong	Dollar	HKD	4.1653	4.1581	4.0350	4.1788	4.2535	4.1354
			4.2757	4.2200	4.1717	4.1489	4.1283	4.0949
India	Rupee	INR	22.7222	22.5542	21.9519	22.8432	23.2663	22.5979
			22.1912	22.1824	22.0702	22.0657	22.1426	22.1163
Indonesia	Rupiah	IDR	4,747.6100	4,247.3442	3,881.8804	4,616.5547	4,738.9899	4,875.8981
			5,108.8633	5,287.4513	5,366.3473	5,399.7710	5,365.0931	5,314.2304
Ireland	Pound	IEP	0.3535	0.3624	0.3449	0.3625	0.3823	0.3852
			0.3873	0.3832	0.3781	0.3734	0.3701	0.3668
Italy	Lira	ITL	873.2179	894.2148	849.0381	891.3782	940.0168	947.2379
			963.7147	950.7123	935.1425	923.6579	915.1067	906.7499

Exchange rates continued on page 4

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

Country	Foreign Currency to NZ \$		15 Apr 98 12 mth rate	15 May 98 12 mth rate	15 Jun 98 12 mth rate	15 Jul 98 12 mth rate	17 Aug 98 12 mth rate	15 Sep 98 12 mth rate
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
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	0.8696	0.8842	0.8777	0.8908
			0.9658	0.9564	0.9470	0.9408	0.9330	0.9275
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

Country	Foreign Currency to NZ \$		15 Oct 98	16 Nov 98	15 Dec 98	15 Jan 99	15 Feb 99	15 Mar 99
			12 mth rate	12 mth rate	12 mth rate	12 mth rate	12 mth rate	12 mth rate
Japan	Yen	JPY	63.9834	65.7102	60.1651	61.1192	62.7566	63.4190
			72.7831	71.6965	70.2452	69.0579	68.2192	67.2577
Kuwait	Dollar	KWD	0.1618	0.1625	0.1569	0.1627	0.1662	0.1624
			0.1684	0.1662	0.1641	0.1630	0.1621	0.1607
Malaysia	Ringgit	MYR	2.0440	2.0436	1.9812	2.0532	2.0876	2.0306
			2.1276	2.1261	2.1026	2.0679	2.0572	2.0457
Netherlands	Guilder	NLG	0.9957	1.0205	0.9656	1.0148	1.0704	1.0781
			1.1027	1.0870	1.0683	1.0546	1.0445	1.0345
Norway	Krone	NOK	4.1060	4.0197	4.0316	4.0164	4.1741	4.1633
			4.1333	4.1051	4.0799	4.0542	4.0359	4.0141
Pakistan	Rupee	PKR	28.8231	30.3060	27.2218	27.3770	27.8464	26.6706
			25.5198	25.7619	25.8518	26.0309	26.2261	26.3068
Papua New Guinea	Kina	PGK	1.1988	1.1374	1.0991	1.1219	1.2089	1.2340
			1.0847	1.0997	1.1085	1.1185	1.1321	1.1465
Philippines	Peso	PHP	23.2417	21.6749	20.1350	20.6452	21.0379	20.6859
			22.0828	22.1411	21.9542	21.6451	21.4609	21.2667
Portugal	Escudo	PTE	90.7578	92.8022	88.0625	92.4768	97.5217	98.2074
			100.2119	98.8238	97.1456	95.9317	95.0344	94.1452
Singapore	Dollar	SGD	0.8666	0.8885	0.8530	0.9032	0.9248	0.9214
			0.9170	0.9091	0.8984	0.8905	0.8875	0.8864
Solomon Islands	Dollar	SBD	2.6126	2.5585	2.4865	2.5914	2.6398	2.5513
			2.4443	2.4654	2.4881	2.4927	2.4977	2.4935
South Africa	Rand	ZAR	3.0474	3.0571	3.1321	3.3688	3.3362	3.3035
			2.9344	2.9379	2.9564	3.0005	3.0396	3.0725
Spain	Peseta	ESP	74.9930	76.8015	72.9498	76.5953	80.8159	81.3865
			82.8550	81.7194	80.3670	79.3655	78.6500	77.9240
Sri Lanka	Rupee	LKR	35.4172	36.1533	35.2036	36.3497	37.7447	37.0055
			34.7015	34.6313	34.5282	34.6141	34.8052	34.9153
Sweden	Krona	SEK	4.2827	4.3609	4.1727	4.1992	4.3106	4.3253
			4.3573	4.3307	4.2923	4.2582	4.2255	4.1997
Switzerland	Franc	CHF	0.7181	0.7453	0.6911	0.7319	0.7771	0.7825
			0.8043	0.7936	0.7799	0.7698	0.7637	0.7569
Thailand	Baht	THB	20.4152	19.7554	18.5714	19.8588	20.1317	19.8470
			23.0228	22.7137	22.0398	21.2994	20.7775	20.4871
Tonga	Pa'anga	TOP	0.8474	0.8554	0.8362	0.8472	0.8576	0.8461
			0.7899	0.7933	0.7964	0.8015	0.8080	0.8126
Vanuatu	Vatu	VUV	68.8444	68.5464	66.5055	68.5530	69.3593	68.6986
			69.0798	68.6180	68.1368	67.8696	67.7613	67.5592
Western Samoa	Tala	WST	1.5714	1.5889	1.5564	1.5847	1.6011	1.5797
			1.5596	1.5565	1.5533	1.5529	1.5553	1.5548

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	4,458.1835	6,102.3400	7,669.8550	7,687.5700	5,454.6700	5,420.4300
Ireland	Pound	IEP	0.3926	0.3757	0.3640	0.3624	0.3469	0.3350
Italy	Lira	ITL	978.5390	933.4504	903.4006	899.5017	856.5923	828.9833
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

Country	Foreign Currency to NZ \$		30 Oct 98	30 Nov 98	31 Dec 98	29 Jan 99	26 Feb 99	31 Mar 99
United States	Dollar	USD	0.5265	0.5285	0.5267	0.5346	0.5258	0.5307
United Kingdom	Pound	GBP	0.3140	0.3195	0.3168	0.3240	0.3276	0.3291
Australia	Dollar	AUD	0.8429	0.8339	0.8600	0.8531	0.8398	0.8462
Austria	Schilling	ATS	6.1298	6.3742	6.2344	6.4641	6.5434	6.8058
Bahrain	Dollar	BHD	0.1983	0.2000	0.2000	0.1990	0.1979	0.2000
Belgium	Franc	BEF	17.9235	18.6292	18.1600	18.8906	19.1734	19.9017
Canada	Dollar	CAD	0.8147	0.8098	0.8144	0.8104	0.7930	0.8012
China	Yuan	CNY	4.3558	4.3736	4.3592	4.4262	4.3488	4.3926
Denmark	Krone	DKK	3.3046	3.4349	3.3645	3.4782	3.5317	3.6743
European Community	Unit	XEU	0.4420	0.4580	0.4511	0.4682	0.4757	0.4950
Fiji	Dollar	FJD	1.0387	1.0364	1.0372	1.0451	1.0374	1.0492
Finland	Markka	FIM	2.6436	2.7471	2.6790	2.7831	2.8276	2.9419
France	Franc	FRF	2.9185	3.0333	2.9630	3.0749	3.1201	3.2460
French Polynesia	Franc	XPF	52.9364	55.0095	53.8633	55.6987	56.5731	59.0400
Germany	Deutschemark	DEM	0.8706	0.9043	0.8847	0.9158	0.9304	0.9680
Greece	Drachma	GRD	147.8855	151.1966	148.2483	149.5937	153.6116	160.0833
Hong Kong	Dollar	HKD	4.0764	4.0906	4.0775	4.1395	4.0716	4.1084
India	Rupee	INR	22.1119	22.2762	22.1218	22.6531	22.2964	22.4372
Indonesia	Rupiah	IDR	3,899.2164	3,834.5620	4,242.8350	4,865.7227	4,587.9256	4,632.5750
Ireland	Pound	IEP	0.3484	0.3629	0.3548	0.3688	0.3745	0.3895
Italy	Lira	ITL	859.8902	894.5546	874.3167	906.6491	921.0005	957.8817
Japan	Yen	JPY	61.4592	65.0096	60.4567	62.2040	62.7759	63.7467
Kuwait	Dollar	KWD	0.1585	0.1602	0.1588	0.1644	0.1599	0.1619
Malaysia	Ringgit	MYR	2.0018	2.0105	2.0025	2.0318	1.9991	2.0147
Netherlands	Guilder	NLG	0.9805	1.0177	0.9951	1.0319	1.0470	1.0905
Norway	Krone	NOK	3.8810	3.9774	4.0027	4.0151	4.1326	4.1329
Pakistan	Rupee	PKR	28.8850	28.5219	26.8283	27.1301	26.7718	26.5730
Papua New Guinea	Kina	PGK	1.1348	1.1333	1.0902	1.1196	1.1546	1.2549
Philippines	Peso	PHP	21.3171	20.7211	20.4901	20.5298	20.3827	20.4317
Portugal	Escudo	PTE	89.3091	92.7441	90.5133	93.8630	95.3585	99.1900
Singapore	Dollar	SGD	0.8528	0.8692	0.8682	0.9002	0.9030	0.9177
Solomon Islands	Dollar	SBD	2.5061	2.5154	2.5175	2.5559	2.5064	2.5444
South Africa	Rand	ZAR	3.0047	3.0046	3.0844	3.2218	3.2334	3.2919
Spain	Peseta	ESP	73.8648	76.8333	74.8700	77.9107	79.2663	82.2767
Sri Lanka	Rupee	LKR	34.8965	35.6270	35.6650	36.6041	36.3175	36.6650
Sweden	Krona	SEK	4.1010	4.3137	4.2810	4.1442	4.2659	4.4218
Switzerland	Franc	CHF	0.7086	0.7456	0.7280	0.7552	0.7557	0.7908
Thailand	Baht	THB	19.2836	18.9965	19.2550	19.5881	19.5688	19.8817
Tonga	Pa'anga	TOP	0.8430	0.8368	0.8550	0.8480	0.8366	0.8432
Vanuatu	Vatu	VUV	67.4326	67.2511	67.8300	67.4563	67.0431	68.6150
Western Samoa	Tala	WST	1.5703	1.5666	1.5780	1.5801	1.5565	1.5788

1999 international tax disclosure exemption ITR10

Introduction

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

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

Under section 61(2), the Commissioner has issued an international tax disclosure exemption which applies for the income year ended 31 March 1999. This exemption may be cited as "International Tax Disclosure Exemption ITR10", and the full text appears at the end of this item.

Scope of exemption

The scope of the 1999 disclosure exemption is the same as the 1998 exemption.

Interests held by residents

Disclosure is required by residents for these interests:

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

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

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

Example

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

They are not required to account for attributed foreign income or loss under the controlled foreign

company rules. However, they would have to account for FIF income or loss under the FIF rules.

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

Foreign company interests

A resident who holds a control or income interest in a foreign company must disclose that interest, regardless of the company's country of residence. The 1999 international tax disclosure exemption also makes no distinction about residence, and any interest in a foreign company which is an "income interest of 10% or greater" must be disclosed. Disclosure is to be made on form *Interest in a Foreign Company Disclosure Schedule (IR 4G)*.

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

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

Foreign investment fund interests

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

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

However, any interest that does not fall within the above types or which is specifically excluded as an interest in a

FIF under section CG 15(2) does not have to be disclosed. The following are listed in section CG 15(2) as exemptions from what constitutes an interest in a FIF:

- an “income interest of 10% or greater” in a CFC
- an interest in a foreign company that is resident and liable to income tax in a country or territory specified in Schedule 3, Part A of the ITA (i.e., Australia, Canada, Federal Republic of Germany, Japan, Norway, United Kingdom and the United States of America).
- an interest in an employment-related foreign superannuation scheme
- a qualifying foreign private annuity, unless an election has been made to remain within the FIF regime, by the due date for filing the person’s 1999 tax return. See Inland Revenue’s booklet *Overseas Private Pensions (IR 258A)* for more information.
- interests in foreign entities held by a natural person, if the aggregate cost or expenditure incurred in acquiring the interests remains under \$20,000 at all times during the income year
- an interest held by a natural person in a foreign entity located in a country where exchange controls prevent the person deriving any profit or gain or disposing of the interest for New Zealand currency or consideration readily convertible to New Zealand currency
- an interest in a foreign life insurance policy or foreign superannuation scheme acquired by a natural person before he or she became a New Zealand resident for the first time, for a period of up to four years.

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

A resident who holds an interest in a FIF at any time during the 1999 income year must disclose the interest and calculate FIF income or loss on the form *Interest in Foreign Investment Fund Disclosure Schedule and Worksheet (IR 4H)*. The FIF rules allow a person four options to calculate FIF income or loss (accounting profits method, branch equivalent method, comparative value method and deemed rate of return method), so the Commissioner has prescribed five forms under the IR 4H series to disclose and calculate FIF income or loss from an interest in a FIF using one of the methods.

Overlap of interests

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

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

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

1. Use the appropriate IR 4H series form to disclose all FIF interests, and in particular:
 - an interest in a foreign company which is not resident in a Schedule 3, Part A country and is not a CFC (regardless of the level of interest held)
 - an income interest of less than 10% in a CFC which is not resident in a Schedule 3, Part A country
 - an interest in a foreign life insurance policy or foreign superannuation scheme, regardless of the country or territory in which the entity was resident.
2. Use the IR 4G or IR 4GS form to disclose an “income interest of 10% or greater” in a foreign company (regardless of the country of residence) that is not being disclosed on the appropriate IR 4H series form.

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

Interests held by non-residents

The 1999 disclosure exemption excludes the need for interests held by non-residents in foreign companies and FIFs to be disclosed.

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

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

Summary

The 1999 international tax disclosure exemption removes the requirement of a resident to disclose an interest held in a foreign company (if the interest is not also an interest in a FIF) that does not constitute an “income interest of 10% or greater” (i.e., it is less than 10%). The disclosure exemption is not affected by the foreign company’s country of residence. Further, an interest in a FIF must be disclosed.

The 1999 disclosure exemption also removes the requirement for a non-resident to disclose interests held in foreign companies and FIFs.

Text of determination on page 12

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

This exemption may be cited as “International Tax Disclosure Exemption ITR10”

1. Reference

This exemption is made under section 61(2) of the Tax Administration Act 1994. It details interests in foreign companies in relation to which any person is not required to comply with the requirement in section 61 of the Tax Administration Act 1994 to make disclosure of their interests, for the income year ending 31 March 1999. This exemption does not apply to interests in foreign companies which are interests in foreign investment funds, unless that interest is held by a non-resident of New Zealand.

2. Interpretation

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

3. Exemption

- (i) Any person who has an income interest or a control interest in a foreign company (not being an interest in a foreign investment fund), in the income year ending 31 March 1999, is not required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year, unless the interest held by that person during any

accounting period of the foreign company (the last day of which falls within that income year of the person), would constitute an “income interest of 10% or greater”, as defined by section OB 1 of the Income Tax Act 1994, as if the foreign company was a controlled foreign company.

- (ii) Any non-resident person who has an income interest or a control interest in a foreign company or an interest in a foreign investment fund in the income year ending 31 March 1999, is not required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year if either or both of the following apply:
- No attributed foreign income or loss arises in respect of that interest in that foreign company by virtue of section CG 6(1) of the Income Tax Act 1994, and/or
 - No foreign investment fund income or loss arises in respect of that interest in that foreign investment fund by virtue of section CG 16(4) of the Income Tax Act 1994.

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

This exemption is signed on the 1st day of April 1999.

Max Carr
National Manager, Corporates

Local authority trading enterprise definition

Introduction

The Local Government Amendment Act 1999 amends the definition of local authority trading enterprise (LATE) to remove non-business charitable organisations from the definition of LATE. The Act also simplifies the definition of LATE for both accountability and tax purposes.

Background

In 1989 the Local Government Act 1974 was amended to permit councils to establish LATEs. It was intended that these council-controlled businesses would face the same commercial pressures as any other firm – including the requirement to pay tax. However, it became apparent that, because of the very broad legal meaning of ‘charity’, most activities carried out by LATEs could be structured to obtain tax-exempt status.

Section 3 of the Taxation Remedial Provisions Act 1998 was thus enacted to prevent LATEs from obtaining income tax exemptions under section CB 4(1)(c), (e) and (j). However, it became clear that because of the broad definition of LATE, a number of non-business charities

would lose their tax-exempt status. This was an unintended effect. As a result, the application date for section 3 of the Taxation Remedial Provisions Act 1998 was deferred until 1999-2000 income years so that the definition of LATE could be reviewed.

Key features

- The definition of LATE in the Local Government Act 1974 has been amended to include only
 - (i) a company that is directly or indirectly controlled by one or more local authorities; or
 - (ii) an organisation that is directly or indirectly controlled by one or more local authorities where the organisation carries out a trading undertaking with the intention or purpose of making a profit.
- Local authorities will need to control 50% or more voting rights to obtain control of a company or an organisation. In addition, local authorities may obtain control of an organisation by obtaining the right to appoint half or more of the trustees, directors or managers of the organisation.

- The definition of LATE in section OB 1 of the Income Tax Act 1994 has also been amended to include, in addition to LATEs as defined in the Local Government Act 1974, council-controlled holding organisations that control a LATE.

Application dates

The amendments to the Local Government Act apply from 1 April 1999 and the amendments to the Income Tax Act apply from the 1999-2000 income year.

Detailed analysis

The Local Government Amendment Act 1999 amends the current definition of LATE in the Local Government Act 1974, which provide that LATEs must satisfy certain accountability requirements. For these accountability purposes a LATE means:

- (i) A company in which equity securities carrying 50% or more of the voting rights at a meeting of the shareholders of the company are –
 - (A) held by 1 or more local authorities; or
 - (B) controlled, directly or indirectly, by 1 or more local authorities; or
- (ii) An organisation that –
 - (A) operates a trading undertaking with the intention or purpose of making a profit; and
 - (B) is subject to significant control, directly or indirectly, by 1 or more local authorities;...

The definition of ‘significant control’ applicable to the definition of LATE has also been amended so that it now reads:

“Significant controls” means, in relation to an organisation, –

- (a) control of **50** percent or more of the votes at any meeting of the members or controlling body of the organisation; or
- (b) the right to appoint **half or more of the trustees** directors, or managers (howsoever described) of the organisation, – whether or not jointly with other local authorities or persons. (emphasis added)

The Act also amends the definition of LATE in section OB 1 of the Income Tax Act 1994. This is the definition applicable for tax purposes and it states that:

Local authority trading enterprise means –

- (a) A local authority trading enterprise (as defined in section 594B of the Local Government Act 1974):
- (b) An organisation (as defined in section 594B(2) of the Local Government Act 1974) that –
 - (i) is subject to significant control (as defined in section 594B (2) of that Act), directly or indirectly, by 1 or more local authorities; and
 - (ii) has significant control (as so defined), directly or indirectly, of a local authority trading enterprise within the meaning of paragraph (a):...

The tests for identifying a LATE vary depending on whether the entity is a company or an organisation.

Company

Under the amended definition of LATE in the Local Government Act 1974, a company is a LATE if one or more local authorities hold or control, directly or indirectly, 50% or more of the voting rights at a meeting of the company.

There is no requirement that a company must carry out a trading undertaking. This requirement is subsumed under the company structure. It is assumed that if local authorities set up a company, their intention must be to use that company to carry out a trading undertaking for the purpose of making a profit. This assumption is largely consistent with the other provisions of the Local Government Act 1974. Under that Act, local authorities are often required to carry out certain trading undertakings (such as providing transport services) using a company structure.

A company that is not a LATE under the Local Government Act 1974 will not be a LATE for tax purposes.

Non-company organisation

Under the amended definition of LATE in the Local Government Act 1974, a non-company organisation (other than a committee of local authorities) is a LATE if:

- one or more local authorities have control of 50% or more votes at a meeting of the members or controlling body of the organisation; or
- one or more local authorities have the right to appoint half or more of the trustees, directors, or managers of the organisation, whether or not jointly with other local authorities or persons; and
- it operates a trading undertaking with the intention or purpose of making a profit.

Control

The definition of LATE envisages two ways that local authorities may obtain control of an organisation. In addition to obtaining control by obtaining 50% or more voting rights at any meeting of the organisation, local authorities may control an organisation (such as a joint venture) by obtaining the right to appoint half or more of the trustees, directors or managers of the organisation.

Trading undertaking with the intention or purpose of making a profit

The amended definition clarifies that a local authority controlled organisation is a LATE only if it operates a ‘trading undertaking with the intention or purpose of making a profit’.

From a policy perspective, the term ‘operates a trading undertaking with the intention or purpose of making a profit’ is analogous to ‘running a business’. Support for this interpretation can be found in the definition of

continued on page 14

from page 13

'business' under the Income Tax Act 1994 and the ordinary meaning of business. Under section OB 1 of the Income Tax Act 1994, business is defined to include 'any profession, trade, manufacture, or undertaking carried on for pecuniary profit'. However, as the term 'trading undertaking' is used throughout the Local Government Act 1974, it would not have been appropriate to substitute the phrase with a business test.

At the practical level, whether an activity amounts to a business is an issue that has been widely tested at the court of law. To constitute a business, the activity must exhibit a number of characteristics. The leading case law in this area is *Grieve v CIR* (1984) 6 NZTC 61,682. The factors to be taken into account when considering whether the activity carried out by an organisation is a business are:

- whether the actions of the organisation exhibits an intention to make a profit;
- the nature of the activity;
- the period over which the organisation engaged in the activity;
- the scale of operations and the volume of transactions;
- the commitment of time, money and effort;
- the pattern of activity; and
- the financial results.

These factors, taken together, will determine whether an organisation carries out a trading undertaking with the intention or purpose of making a profit.

Holding organisation

The definition in the Local Government Act 1974 precludes holding organisations (organisations that hold investment assets) from becoming a LATE, as they do not operate a trading undertaking with the intention or purpose of making a profit. Examples of organisations like these are community trusts that were set up by local authorities solely to hold strategic or investment assets.

However, a holding organisation may be a LATE for tax purposes. The definition in section OB 1 of the Income Tax Act 1994 provides that an organisation will be a LATE if:

- (a) it is controlled by one or more local authorities; and
- (b) it controls a LATE as defined in the Local Government Act 1974.

The definition in section OB 1 of the Income Tax Act 1994 contemplates that a holding organisation that controls a business entity is effectively a LATE even though it does not carry out a business directly. The revenue risk of not recognising the holding organisation as a LATE is significant, as income derived by the holding organisation from the business entity could then be directed back to the local authorities without being taxed. This outcome would have been inconsistent with the intention of taxing local authorities on all income they derive from their LATEs, regardless of the form it is returned to them.

LATEs and income tax exemptions

The amended definition of LATE for tax purposes will apply from the 1999-2000 income year to coincide with the application date of section 3 of the Taxation Remedial Provisions Act 1998. Together these provisions ensure that a LATE will not be able to obtain the charitable and district improvement income tax exemptions under sections CB 4(1)(c), (e) and (j) of the Income Tax Act 1994.

Under the amended definition of LATE, a non-business charitable organisation will not be a LATE. The organisation may continue as a tax-exempt entity as long as it continues to satisfy the statutory criteria of a charity. However, charitable companies and charitable business organisations that are controlled by the local authorities will remain as LATEs and, hence, lose their charitable income tax exemptions under sections CB 4(1)(c), (e) and (j).

Fabric samples and fabric display stock

Depreciation determination not to be issued

In Tax Information Bulletin Volume Nine, No.5 (May 1997), we published a draft general depreciation determination on fabric samples and fabric display stock. It proposed a general depreciation rate of 100%, based on an estimated useful life of one year, under both the "Shops" and "Textile, Garment and Carpet Manufacturing" industry categories.

We received a number of submissions on the draft determination. As a result of those submissions, the Commissioner has decided not to issue the determination because of the variable life of each sample. Taxpayers have advised that these samples are only useful for as long as they have stock of the particular fabric. On that basis, the life of a sample may be as short as one month,

or, occasionally, as long as two years. In most situations, it would seem that a sample has a useful life of less than twelve months.

Any general depreciation rate must be one of the banded rates set out in Schedule 11 to the Income Tax Act 1994. Under that schedule, the maximum depreciation rate that can be set is 100%, which translates to an estimated useful life of one year. For the reasons outlined above this rate is not appropriate, and so the Commissioner has decided not to issue the determination.

The circumstances of each case must dictate whether such samples can be fully deducted in the year the cost is incurred, or depreciated over a longer period.

Plastic growing trays

Draft general depreciation determination

We have been advised that there is no suitable general depreciation rate for plastic growing trays, used in the Agriculture, Horticulture and Aquaculture industries for growing forestry seedlings. The trays are fed into a machine, and each cell is filled with the growing medium plus a seed. The trays are then placed into a controlled environment until the seedlings are mature enough to be transferred outside. The seedlings (and the trays) are constantly irrigated, and when kept outside are subject to UV radiation.

The Commissioner proposes to issue a general depreciation determination which will insert a new asset class "Plastic growing trays, for producing forestry seedlings" into the "Agriculture, Horticulture and Aquaculture" industry category, with a depreciation rate of 33% D.V. (24% S.L.), based on an estimated useful life of 5 years.

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

General Depreciation Determination DEP[X]

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

1. Application

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

This determination applies to "depreciable property" other than "excluded depreciable property" for the 1998/1999 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 "Agriculture, Horticulture and Aquaculture" industry category the general asset class, estimated useful life, and diminishing value and straight-line depreciation rates listed below:

	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Agriculture, Horticulture and Aquaculture			
Plastic growing trays, for producing forestry seedlings	5	33	24

3. Interpretation

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

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

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

We need to receive your submission by 31 May 1999 if we are to take it into account in finalising the determination.

FBT prescribed rate of interest for quarter starting 1 January 1999

The prescribed rate of interest used to calculate the fringe benefit value of low-interest employment related loans has been reduced. The new rate of 6.5% will apply for the quarter commencing on 1 January 1999 and subsequent quarters.

The prescribed rate, down from 6.94%, is a reflection of the fall in market rates.

General interest items

Trading stock: nursery plants

Inland Revenue has received enquiries about the valuation of certain nursery plants that are trading stock. This item sets out our response.

Background

The new trading stock legislation enacted in November takes effect from the 1998-99 income year. The legislation was enacted following extensive consultation with taxpayers, both on the proposals outlined in the Government discussion document on the proposed reforms and during the Parliamentary process.

The discussion document indicated that the issue of whether trading stock should include trees and crops grown in the land would be considered at a later stage. It was envisaged that this review of the trading stock treatment of trees and crops would encompass a range of issues, including the valuation of plants that were trading stock. Such a review would, of course, involve consultation with affected taxpayers under the generic tax policy process.

The reference to crops in the discussion document prompted queries to Inland Revenue's Policy Advice Division from nursery industry representatives. We told them there would be consultation with the nursery industry on any industry-specific changes to the tax treatment of trading stock.

More recently, tax advisers and nursery plant growers have asked how nursery plants that are trading stock are to be valued for the 1998-99 year.

Interpretation

This item outlines Inland Revenue's view as to how nursery plants should be valued under the trading stock rules for the 1998-99 and 1999-00 income years. This interpretation may be altered for the 2000-01 and future years as a result of consultation with the nursery plants industry this year.

Trees and crops grown in the ground are considered to be part of the land and are therefore excluded from the definition of trading stock.

The new legislation requires nursery plants that are trading stock to be valued at market selling value or using a cost valuation method. Difficulties in determining market values or cost values meant that previously Inland Revenue accepted that immature plants that were not for sale could be valued at nil. Inland Revenue also accepted that mature plants which were grown by a nursery and which were valued under the cost option could be valued at 50% of the listed selling price.

At this stage this remains the best available information for valuing these items on a cost or market basis and will continue to be accepted by Inland Revenue up to the end of the 1999-00 income year.

Our administrative practice will be to accept the following valuations under the new trading stock regime for the 1998-99 and 1999-00 income years:

- the market selling value of immature plants that are not for sale is nil; and
- mature plants that are grown by the nursery and that are valued using a cost valuation method can be valued at 50% of the listed selling price.

This administrative practice will ensure that compliance costs for growers are minimised until they have an opportunity to work through valuation issues with Inland Revenue. If taxpayers think that there are better methods to value their nursery plants using a cost valuation method or market selling value, they may use them.

The consultation on calculating market selling value and cost will take place in this income year. Officials will work through the following details with the nursery industry:

- how the market selling value of immature plants that are not for sale can be established
- how immature and mature plants that are grown by the nursery can be valued at cost, or another cost valuation method such as discounted selling price.

Growers or other interested parties who want to be involved with consultation on valuation issues for nursery plants may contact Jane Tait in the Policy Advice Division (ph 04 474 7182; fax 04 474 7217), PO Box 2198, Wellington, jane.tait@ird.govt.nz.

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.

Temporary shortfall: definition of later return period

Section 141 I(3)(b), Tax Administration Act 1994: Temporary shortfall – reduction

A tax practitioner has asked about the meaning of “later return period” as used in the definition of Temporary tax shortfall.

Section 141 I states:

141I(3) [Temporary tax shortfall] A tax shortfall is a temporary tax shortfall for a return period if the Commissioner is satisfied that –

- (a) The tax shortfall has been permanently reversed or corrected in an earlier or later return period, so that (disregarding penalties or interest) the taxpayer pays the correct amount of tax or calculates and returns the correct tax liability in respect of the item or matter that gave rise to the tax shortfall; and
- (b) No tax shortfall will arise in a later return period in respect of a similar item or matter; and
- (c) No arrangement exists in any return period which has the purpose or effect of creating a further related tax deferral or advantage; and
- (d) The tax shortfall was permanently reversed or corrected before the taxpayer is first notified of a pending tax audit or investigation.

If “later return period” in subsection (b) has the same meaning as in subsection (a) a taxpayer who makes a mistake in two consecutive periods before correcting the mistake would not be eligible for a temporary shortfall reduction because the same or similar shortfall has arisen

in a later return period. This would mean that if a taxpayer makes the same or similar mistake twice before permanently correcting or reversing them, the shortfalls will not qualify as temporary and penalties will not be reduced.

Inland Revenue considers that “later return period” in paragraph (b) refers to a return period arising after the review by the Commissioner. It is not intended to mean any return period arising after the period in which the shortfall first occurred. The Commissioner’s review is when he examines the temporary shortfall to satisfy himself of the various requirements prescribed in section 141I.

Section 141I(3)(b) says that for the correction to be a temporary shortfall the Commissioner must be satisfied that no similar tax shortfall **will** arise in a later return period. The word “will” indicates that this subsection is referring only to future similar shortfalls – those occurring in a return period after the Commissioner’s review.

We advised the practitioner that provided the mistake was permanently reversed or corrected before the Commissioner detected it and the Commissioner is satisfied that the same or similar tax shortfall will not arise after his review, the shortfall will be a temporary shortfall.

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.

Insurance company's share profits: revenue or capital CIR v National Insurance Company of New Zealand Limited

Decision date: 22 March 1999

Act: Income Tax Act 1976

Keywords: Share purchase, diversification

Summary

The Court of Appeal did not overturn an earlier High Court decision that profits on a share sale by an insurance company were not assessable.

Facts

National Insurance Company of New Zealand Limited ("National Insurance") is a fire and general insurer, carrying on business in New Zealand, Australia, and the Pacific Islands. In the early 1970s it began to look for opportunities to diversify into other businesses complementary to its insurance business. It acquired 15% of the shares in Chase NZ in May 1972. These shares were swapped in 1982 for a 30% share in Southpac following the merger and reorganisation of NZI and South British.

In late 1987-88 National Insurance sold its 30% shareholding of the issued capital of South Pacific Merchant Finance Ltd (Southpac) for \$80m. Of this amount \$40m was paid to National Insurance by way of two equal dividends. The profit on sale was \$67,151,671.40. The shares had been acquired in December 1982.

The Commissioner included the amount of the profit in National Insurance's assessable income on the basis that the purchase and subsequent sale of the Southpac shares was part of the ordinary business of National Insurance. Alternatively the Commissioner considered that the profit was assessable under section 65(2)(e) second limb. A further alternative argument was that the Commissioner considered that the way in which National Insurance sold the shares was in contravention of section 99 of the Act.

Decision

Essentially the judgment of the Court is based on the findings of fact made by Williams J in the High Court.

The Court was not convinced that the findings made by Williams were not open to be made by the Judge on the evidence before his Honour.

- "[54] For the above reasons we are not taken to the point where it could be said that this Court should interfere with what ultimately were essentially findings of fact." In respect of the first issue (section 65(2)(a))
- "[42] The Judge has not been shown to be wrong in his final conclusions under this head." In respect of the second issue (section 65(2)(e))

In relation to the application of section 65(2)(a) ('business profits'), the Court appeared to accept the application of the principles of law normally applying to this area (i.e. *Californian Copper Syndicate*; *Punjab Co-operative Bank Ltd*; *Auckland Savings Bank*; *Union Bank of Australia*; *Liverpool and London and Globe Insurance Co*; *London Australia Investment Co*), though with an important qualification. The qualification was that business of a bank or insurance company involves the investment in 'readily realisable securities'. This is a significant departure from the banking and insurance cases which have held on more than one occasion, that profits derived from the sale of property (land and buildings) intended to be held long term or indefinitely, and held for more than 10 years, were assessable.

The general principle was stated by the Court in paragraph 9 of the judgment as being 'Whether the gains produced in a business are revenue or capital depends on the nature of the business and the relationship of the transactions producing the gain to the conduct of the business.' This general principle is contained in the Court of Appeal decision in *AA Finance Ltd v CIR* (1994) 16 NZTC 11,383 at 11,391.

A major issue put to the court was the distinction between the phrases 'diversification of business' and 'diversification of investment'. Williams J had not made a distinction between the two phrases in the High Court judgment. Williams J had in fact used the two phrases interchangeably. Despite direct submissions on the point, the Court of Appeal has provided no comment.

In the course of the judgment, the Court reviewed the factors relied on by Williams J and those put forward by the Commissioner. The Court found that the factors listed by Williams J were not compelling support for the question at issue. But despite this finding the Court considered that the judgment overall supported the conclusions arrived at by Williams J.

As a key authority and for a discussion of the principles of law applicable, the Court referred to the *National Distributors* case with regards to section 65(2)(e) second limb.

Under this head the Commissioner had argued that Williams J had not considered the different acquisitions of the Southpac shares individually. This was accepted by the Court, which found that Williams J had not been shown to be wrong.

The various factors put forward by Williams J in the High Court judgment were considered by the Court. The one factor that appears to have been given greatest weight was the oral evidence of the witnesses that was 'unshaken in cross-examination'.

In respect of the cross-appeal, which the Court did not allow, their Honours stated that in their view all that needed to be said on this issue is that when a Court decides to take into account the amount of a party's solicitor and client costs, the appropriate figure to use for that purpose is the amount actually payable by that party, including any GST component of that liability. The amount of the actual award will remain in the discretion of the Court in the usual way, and in exercising that the Court can take into account all other relevant considerations.

Timber cost: establishing deductible amount

Tasman Forestry Limited v CIR

Decision date: 24 March 1999

Act: Income Tax Act 1976

Keywords: Cost of "timber", exchange, sale

Summary

The Court of Appeal held partially for the Commissioner. Their Honours held that "cost" equated to the amount paid for the shares which gave access to the forestry assets, the "cost of timber" is the proportion of the price paid for the shares allocated to the timber and exchange can be a "sale" for the purposes of section 74(5).

Facts

Tasman Forestry Limited ("Tasman") is part of the Fletcher Challenge Group. In the income years ending 30 June 1986-90 it claimed a deduction for the cost of timber against income from the sale of that timber.

The nature of the acquisitions varied. Firstly there were acquisitions by way of in specie distributions from companies liquidated by the objector in 1986. Tasman sought to include as the cost of timber for deduction against income received from subsequent sales of felled timber, an amount corresponding to the fair market value of the timber at the time of the in specie distributions. The value of the forests claimed was equal to the value of the shares in the companies which were liquidated.

Secondly, there were acquisitions following exchanges with Elders Resources NZFP Ltd ("Elders") in 1988. Tasman exchanged certain forests and preference shares held in another Fletcher company for forests owned by Elders. Tasman then sought to claim as the "cost" of forests the market value of the acquired forests.

Thirdly, there was an in specie distribution in 1990 of the assets of Crista Holdings Ltd ("Crista"). Tasman had

acquired the shareholding of Crista in 1988 for \$105 million. Tasman then caused the assets of Crista to be revalued up to \$169 million on the basis of fair market value. In 1989 Crista was liquidated and the assets distributed in specie to Tasman. Tasman then claimed as the "cost" of the Matahina Forest the amount of \$169 million.

Decision

The Judgment of the Court of Appeal was delivered by Gault J.

The Court held that section 74(2)(b) had two limbs and the first called for the identification of profits and gains from the sale of timber in the relevant year. Its focus is quite distinct from that giving rise to the cost of that timber for the purpose of reduction of the profit or gain in accordance with the second limb. The first limb has nothing to do with the means by which the timber was acquired and the cost to be ascertained under the second limb. Accordingly there is nothing in section 74(2)(b) that requires a sale transaction to enable a cost to be isolated.

The Court agreed with Justice Laurenson in the High Court that section 74(5) is merely a machinery provision which is not the only means by which cost of timber can be identified.

The Commissioner submitted that "cost" in section 74(2)(b) equated with expenditure and the appellant submitted that "cost" is to be equated with economic sacrifice and that the cost of acquisition was the economic value sacrificed to acquire the timber.

The Commissioner's submission was rejected. The Court stated that "profits or gains" in section 74(2)(b) is to be given its ordinary business meaning (*CIR v Mitsubishi Motors New Zealand Limited* [1995] 3 NZLR 513 at 515) and accordingly the word "cost" in the same sentence should also not be construed narrowly.

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The Court held that in respect of the in specie distributions the “cost” to Tasman in acquiring the forests was the amount paid for the company shares which gave access to the forestry assets. The appropriate proportion of that cost is to be treated as the cost of timber.

The Court held that with regard to the Matahina forest the cost of the timber was that proportion of the price paid for the shares allocated to the standing timber. This differs from what Tasman claimed and the subsequent revaluation from \$105 million to \$169 million cannot be taken into account in the cost of timber for Tasman.

The Court had no difficulty in holding that in the exchange transaction Tasman incurred a cost in the acquisition of the forests received. The transfer of forests and the allocation of shares was something of value,

money’s worth, which Tasman had to give to acquire the timber. The cost to Tasman was the loss of the proportion of the assets transferred by it which represented the value of the timber acquired.

The Court went on to state that they were not persuaded that the exchange was not a sale for the purposes of section 74(5). The Court therefore did not apply that aspect of the decision in *VH Farnsworth v CIR* (1982) 5 NZTC 61,259.

As obiter comment the Court stated that they were not convinced that the exchange transaction in question could properly be described as an exchange within the technical meaning of that term so as to distinguish it from the separate concepts of sale and barter.

Loans acquired in business takeover: whether capital or revenue

CIR v Wrightson Limited

Decision date: 15 March 1999

Act: Income Tax Act 1976

Keywords: Acquisition of book debts, capital v revenue, assessable income

Summary

This was the Commissioner’s appeal from the High Court decision of Heron J. The Court of Appeal reversed the decision of Heron J and found in favour of the Commissioner.

Facts

Wrightson Limited (“Wrightson”) was part of the Fletcher Challenge group of companies. It provided a wide range of services to the rural community and operated through 40 rural service centres. The services it provided through these centres included the sale of goods (e.g. seeds, fertilisers, fencing materials), services as real estate agents/stock agents/auctioneers and credit and loan facilities to its customers.

The credit and loan facilities related to both short-term credit on the purchase of goods and medium-long term loans to customers with security taken over assets owned by the borrowing customer. Wrightson also took money on call and term deposits, paying interest accordingly. Therefore, in many respects part of Wrightson’s activities were similar to that of any ordinary lending institution.

In 1986 Wrightson acquired all of the rural services business of Dalgety Crown. At the time, Dalgety Crown was carrying on a business which was substantially the same as Wrightson, including the provision of credit and

loan facilities to its customers. As part of the deal to acquire the rural services business of Dalgety Crown, Wrightson acquired debts with a face value of \$117m at a cost of \$104.3m.

The High Court found that the accounts were purchased for the purpose of adding to the profit-making structure of Wrightson’s stock and station agency business and therefore the amounts subsequently recovered in excess of the cost of the debts were capital receipts.

For the purposes of the appeal the Commissioner abandoned his argument under section 65(2)(e), third limb, and concentrated on section 65(2)(a). On its part, Wrightson conceded the point that they were in the business of money lending.

Decision

The Court of Appeal accepted Wrightson’s submission that, in the absence of a provision like section 85 dealing with a particular kind of asset, when an asset like stock in trade or a book debt is acquired as part of a capital transaction it is ordinarily to be treated as a capital item. Basically, it would appear to make no difference whether the acquirer is starting up a new business or supplementing an existing business. As long as the acquirer continues to operate the acquired business separately from its existing business, the gains or losses made on the trading stock are capital in nature. However, if the retailer on acquiring the competitor’s new business immediately integrates it into its existing business and the purchase was made with that objective a different view can be taken.

The Court was prepared to accept that if Wrightson had done no more than collect the debts on a separate ledger

and applied the proceeds elsewhere in its business then the transaction would have retained a capital character in relation to the debts. The Court in *Crompton v Reynolds & Gibson* makes that clear. However, Wrightson in this case did not acquire the book debts without material change. They were revolving accounts and thus had fluctuating balances. They were intended to be turned into cash by collection in the ordinary operation of Wrightson's business. Further advances were also made to meet the seasonal requirements of the former Dalgety clients.

At page 10 of the decision Justice Blanchard stated:

“When so appropriated to that business, which happened immediately, the debts became part of the taxpayer's circulating capital and repayments were then revenue receipts. They became part of the taxpayer's money dealing activity. In the language of the President in *AA Finance Limited* ... the debts then “were part of the revenue earning process rather than additions to the profit-making structure.” As the appropriation was immediate the value adopted was that attributed for the purpose of calculating the price paid to Dalgety.”

Thus the case of *Crompton*, so heavily relied upon by Wrightson, was distinguished and the appeal allowed.

Due dates reminder

May 1999

- 5 Large employers: PAYE deductions for period ended 30 April 1999 due, and employer monthly schedule for whole of April 1999 due.
- 7 Provisional tax and/or student loan interim repayments: first 2000 instalment due for taxpayers with January balance dates.
- Second 1999 instalment due for taxpayers with September balance dates.
- Third 1999 instalment due for taxpayers with May balance dates.
- 20 Large employers: PAYE deductions for period ended 15 May 1999 due.
- Small employers: PAYE deductions and employer monthly schedule for period ended 30 April 1999 due.
- Gaming machine duty return and payment for month ended 30 April 1999 due.
- RWT on interest deducted during April 1999 due for monthly payers.
- RWT on dividends deducted during April 1999 due.
- Non-resident withholding tax (or approved issuer levy) deducted during April 1999 due.
- 28 GST return and payment for period ended 30 April 1999 due.
- 31 All employers: 1999 PAYE and ACC reconciliation and calculation sheet (IR 68A and IR 68P) due to be filed, and 1999 ACC residual claims levy to be paid.
- FBT - employers who elected to pay FBT on annual basis: annual liable return (1/4/98-31/3/99) and payment due.
- RWT on interest: 1999 reconciliation (IR 15S) to be filed.
- RWT on dividends: 1999 specified dividend reconciliation (IR 17S or IR 17SA) to be filed.

June 1999

- 5 Large employers: PAYE deductions for period ended 31 May 1999 due, and employer monthly schedule for whole of May 1999 due.
- (We will accept payments received or posted on Tuesday 8 June as in time for 5 June.)*
- 7 Provisional tax and/or Student Loan interim repayments: first 2000 instalment due for taxpayers with February balance dates.
- Second 2000 instalment due for taxpayers with October balance dates.
- Third 1999 instalment due for taxpayers with June balance dates.
- IR 5 tax returns due to be filed.
- (We will accept payments received or posted on Tuesday 8 June as in time for 7 June.)*
- 20 Large employers: PAYE deductions for period ended 15 June 1999 due.
- Small employers: PAYE deductions and employer monthly schedule for period ended 31 May 1999 due.
- Gaming machine duty return and payment for month ended 31 May 1999 due.
- RWT on interest deducted during May 1999 due for monthly payers.
- RWT on dividends deducted during May 1999 due.
- Non-resident withholding tax (or approved issuer levy) deducted during May 1999 due.
- Imputation: Debit balances as at 31 March 1999 due to be paid.
- FBT: Final day for "small" employers to elect to pay annually.
- (We will accept payments received or posted on Monday 21 June as in time for 20 June.)*
- 30 GST return and payment for period ended 31 May 1999 due.
- Non-resident Student Loan repayments: first instalment of 2000 Student Loan non-resident assessment due.

Binding rulings, interpretation statements, standard practice statements: your chance to comment before we finalise them

This page shows the draft public binding rulings, interpretation statements and standard practice statements that we now have available for your review. You can get a copy and give us your comments in these 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 other offices.

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

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Address _____

✓ **Standard practice statements**

Comment Deadline

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|---|-------------|
| <input type="checkbox"/> ED0003 Late filing penalty | 31 May 1999 |
| <input type="checkbox"/> ED0004 Content standards for notices of proposed adjustment and notices of response | 31 May 1999 |

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