TAX INFORMATION BULLETIN

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Budget legislation

Three tax-related measures were announced in the Government's 1999 Budget:

the abolition of stamp duty on the sale and lease of commercial land and buildings, including farms; the removal from the statutes of provisions relating to estate duty, abolished in 1992; and the introduction of the "Parental Tax Credit" to provide financial support to low to middle income working families after the birth of a child.

As a result, the following Acts were enacted:

- Stamp Duty Abolition Act 1999, on 20 May 1999 (No.61, 1999);
- Estate Duty Repeal Act 1999, on 24 May 1999 (No.64, 1999); and
- Taxation (Parental Tax Credit) Act 1999, on 24 May (No.62, 1999).

See pages 3 to 5 for a full description of the legislation.

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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.

Parental Tax Credit – introduced as part of "Family Plus" tax assistance package

TAXATION (PARENTAL TAX CREDIT) ACT 1999

The Taxation (Parental Tax Credit) Act introduced the concept of "Family Plus", which incorporates the Family Tax Credit (formerly the Guaranteed Minimum Family Income), the Child Tax Credit (formerly the Independent Family Tax Credit), and a new Parental Tax Credit.

The Parental Tax Credit will entitle low to middle-income working families to financial support of up to $1200 after the birth of a child. An estimated 26,000 families will be eligible to receive the Parental Tax Credit. Of these, about 90 percent are expected to receive the full $1200.

Family Support will continue unchanged.

Background

The new Parental Tax Credit is designed to provide additional financial support to working families for the eight-week period following the birth of a child. It is the third element of the new, "Family Plus" package, which also comprises the Family Tax Credit (formerly the Guaranteed Minimum Family Income) and the Child Tax Credit (formerly the Independent Family Tax Credit). These tax credits are designed to give income support to low and middle-income working families. The new names of the tax credits will appear on Inland Revenue forms after 1 April 2000.

The Independent Family Tax Credit first became available on 1 July 1996. It is directed at low and middle-income families who are not significantly dependent on the state for financial support. The Guaranteed Minimum Family Income tax credit has been available since 1986. Its purpose is to ensure that full-time earners with one or more dependent children receive a minimum family income.

Key features of the legislation

The main legislative amendments are to Part KD of the Income Tax Act 1994.

- The Parental Tax Credit will apply to births that occur on or after 1 October 1999.
- Entitlement begins from the date of birth and will be a maximum annual entitlement of up to $1200 for each newborn child.
- It is payable at the rate of up to $150 per week, per child for up to eight weeks (payments made fortnightly) paid directly into a bank account from the date the application is processed, or at the end of the income year.
- The Parental Tax Credit will raise the maximum family assistance income threshold, and so increase the number of families receiving assistance. It will be the last tax credit to be abated, after Family Support and the Child Tax Credit, so will be abated at 30 cents in the dollar. The current threshold level of income of a family with one newborn child at which family assistance is fully abated away is $33,547; the new level will be $37,547. Families that receive Family Support and the Child Tax Credit will receive the full amount of the new Parental Tax Credit.
- It will be paid to the principal caregiver or shared between two principal caregivers in shared custody cases.
- Entitlement to the Parental Tax Credit ceases if the family receives a social welfare benefit, weekly accident compensation payments for more than three months, a student allowance, New Zealand Superannuation or the veteran's pension within the eight weeks after birth.
- If the child dies in the eight-week entitlement period following birth payment will continue for the full eight weeks.
- For multiple births a family will receive multiple entitlements to the new tax credit.

Application date

The parental tax credit will apply to births that occur on or after 1 October 1999.

More about the Parental Tax Credit

Who receives the payment?

The new credit will be paid to the principal caregiver.

In the case of adoptions, it will be paid to the person who is the principal caregiver of the child in the first eight weeks from the date of birth. If the adoption occurs at birth, the new credit will go to the family adopting the child. If the birth mother keeps the baby for the eight-week period, she will receive the new credit.

When the custody of a child is shared during the eight-week period, with each parent having custody of the child for at least one-third of the entitlement period, entitlement will be shared between both parents.

When is it paid?

The Parental Tax Credit can be paid during the year in fortnightly instalments from the date the application is processed, or at the end of the income year when a family assistance declaration is filed.

Families who want to receive the parental tax credit in fortnightly instalments must apply within three months of the date of birth of the child. Instalments will be paid directly into the principal caregiver's bank account. Families who do not apply within three months will receive their entitlement as part of the end-of-year square-up in the income year in which the birth occurred.

If the payment period spans income years payment will continue into the new income year. The amount of the payment may vary between income years, depending on the level of the family's income. Families in this situation can choose whether to delay receiving their Parental Tax Credit until the new income year, provided they apply for it within three months of the date of the birth.

If a family is entitled to the credit but applies for it later while receiving a social welfare benefit, weekly accident compensation payments for more than three months, a student allowance, New Zealand Superannuation or the veteran's pension, it will receive the Parental Tax Credit at the end of the year.

Stamp Duty Abolished

STAMP DUTY ABOLITION ACT 1999

Introduction

The Stamp Duty Abolition Act 1999 abolished stamp duty on the sale and lease of commercial land and buildings, including farms.

Background

Introduced in 1867, stamp duty originally applied to most residential and commercial property and to financial instruments. This scope was significantly narrowed in 1988, leaving two main types of stamp duty: conveyance duty and lease duty. Conveyance duty applied to sales of commercial land and buildings and shares in a flat or office-owning company. Lease duty applied to leases of commercial land and buildings.

The abolition of conveyance duty and lease duty completes the progressive phasing out over recent years of stamp duties and similar duties. As part of this process, conveyance and lease duty on residential property were repealed in 1988, stamp duty on the creation of forestry rights in 1994, and credit card transaction duty from last year.

Conveyance duty was charged as follows:

- at 1% on the first $50,000 of the sale price;
- then at 1.5% on the amount between $50,000 and $100,000;
- and at 2% plus $1,250 on the amount over $100,000.

Lease duty was generally charged at 40 cents per $100 of the maximum annual rental payable under a lease, and $1 per $100 of any premium payable under the lease.

Key features

The Stamp Duty Abolition Act 1999 abolished the two types of stamp duty - conveyance duty and lease duty - imposed under the Stamp and Cheque Duties Act 1971.

The abolition of stamp duty involved the repeal of significant parts of the Stamp and Cheque Duties Act 1971 and making a large number of consequential amendments to other Acts.

The repeal of the various stamp duty provisions and the other amendments apply to:

- instruments executed after 20 May 1999; and

- instruments executed between 20 May 1991 and 20 May 1999 (both dates inclusive) if the related transactions were not completed or, in the case of leases were not carried into effect, on or before 20 May 1999.

Whether or not a transaction has been "completed" very much depends on the nature of the particular transaction in question.

A conveyance of land under the Land Transfer Act is generally completed on registration at the Land Registry Office. Authority for this proposition can be found in Hinde McMorland & Sim (Vol 2) paragraph 10.094, which in turn cites *Montgomery and Rennie v Continental Bags (NZ) Limited* [1972] NZLR 884 at 893, where Speight J said:

> "I conclude that title of the land remains with the vendor until registration, that the commonly described practice of 'settlement' viz., the exchange of memorandum to enable registration to be effected does not amount to a completion of the transaction or conveyance and the contract of sale still governs the relationship of the parties until registration."

If registration of a transfer at the Land Registry Office is not required to convey legal title to the transferee, the transaction is normally completed on settlement. An example of such a transaction would be an assignment of a lease. With a declaration of trust, where persons declare that they now hold land registered in their names in trust, the transaction is completed on the date of execution of the deed.

The "carried into effect" requirement in relation to leases applies only to instruments creating leases or instruments varying existing leases. (The "completed" test applies to instruments transferring existing leases, such as deeds of assignment.)

A lease is "carried into effect" when it becomes operative. The relevant test in this case is whether possession was given and taken on or before 20 May 1999. Likewise, an instrument providing for a rent increase is "carried into effect" on the date the rent payable under the lease increased. Therefore the relevant test in this case is whether the rent payable under the lease increased on or before 20 May 1999.

A person may apply for a refund of stamp duty that has been paid on an instrument executed between 20 May 1991 and 20 May 1999 (both dates inclusive) if the related transaction was not completed or, in the case of a lease was not carried into effect, on or before 20 May 1999.

The application provision in the Act ensures that unpaid stamp duty on transactions completed (or leases carried into effect) on or before 20 May 1999 can continue to be collected.

Cheque duty and the approved issuer levy for non-resident debt holders, both provided for in the Stamp and Cheque Duties Act 1971, will continue unchanged.

Application date

Stamp duty is abolished on:

- instruments executed after 20 May 1999; and
- instruments executed between 20 May 1991 and 20 May 1999 (both dates inclusive) if the related transactions were not completed or, in the case of leases were not carried into effect, on or before 20 May 1999.

Estate Duty Legislation Repealed

ESTATE DUTY REPEAL ACT 1999

The Estate Duty Repeal Act 1999 repealed the legislative provisions relating to estate duty.

No estate duty has been payable on the estate of any person who has died on or after 17 December 1992. This was achieved by the Estate Duty Abolition Act 1993 amending section 3 of the Estate and Gift Duties Act 1968, the section which imposed liability for estate duty. However, the estate duty provisions themselves, which are mainly contained in Parts I, II and III of the Estate and Gift Duties Act 1968, were not repealed.

The main legislative amendments made by the Estate Duty Repeal Act 1999 are the repeal of significant parts of the Estate and Gift Duties Act 1968. Consequential amendments to remove references to estate duty in other Acts and a regulation have also been made.

The gift duty provisions in the Estate and Gift Duties Act 1968 incorporate certain estate duty provisions. Amendments to re-enact the substance of those estate duty provisions in the gift duty provisions have been made.

The repealed estate duty provisions continue to apply to the estates of people who died before 17 December 1992.

Application date

The repeal of the estate duty provisions applies from 24 May 1999, the date of enactment.

National Average Market Values of Specified Livestock Determination 1999

This determination may be cited as "The National Average Market Values of Specified Livestock Determination, 1999".

This determination is made in terms of section EL 8(1) of the Income Tax Act 1994 and shall apply to specified livestock on hand at the end of the 1998-99 income year.

For the purposes of section EL 8(1) of the Income Tax Act 1994, the national average market values of specified livestock for the 1998-99 income year are as set out in the following table.

National Average Market Values of Specified Livestock

Type of Livestock	Classes of Livestock	Average Market Value per Head $
Sheep	Ewe hoggets	39
	Ram and wether hoggets	36
	Two-tooth ewes	50
	Mixed-age ewes (rising three-year and four-year old ewes)	44
	Rising five-year and older ewes	35
	Mixed-age wethers	26
	Breeding rams	121
Beef cattle	***Beef breeds and beef crosses:***	
	Rising one-year heifers	237
	Rising two-year heifers	395
	Mixed-age cows	488
	Rising one-year steers and bulls	325
	Rising two-year steers and bulls	489
	Rising three-year and older steers and bulls	628
	Breeding bulls	1,309
Dairy cattle	***Friesian and related breeds:***	
	Rising one-year heifers	314
	Rising two-year heifers	647
	Mixed-age cows	769
	Rising one-year steers and bulls	268
	Rising two-year steers and bulls	437
	Rising three-year and older steers and bulls	610
	Breeding bulls	863
	Jersey and other dairy cattle:	
	Rising one-year heifers	301
	Rising two-year heifers	647
	Mixed-age cows	775
	Rising one-year steers and bulls	180
	Rising two-year and older steers and bulls	356
	Breeding bulls	712

Type of Livestock	Classes of Livestock	Average Market Value per Head $
Deer	***Red deer:***	
	Rising one-year hinds	143
	Rising two-year hinds	276
	Mixed-age hinds	325
	Rising one-year stags	170
	Rising two-year and older stags (non-breeding)	286
	Breeding stags	1,370
	Wapiti, elk, and related crossbreeds:	
	Rising one-year hinds	176
	Rising two-year hinds	314
	Mixed-age hinds	372
	Rising one-year stags	198
	Rising two-year and older stags (non-breeding)	325
	Breeding stags	1,334
	Other breeds:	
	Rising one-year hinds	53
	Rising two-year hinds	104
	Mixed-age hinds	120
	Rising one-year stags	63
	Rising two-year and older stags (non-breeding)	119
	Breeding stags	337
Goats	***Angora and angora crosses (mohair producing):***	
	Rising one-year does	20
	Mixed-age does	26
	Rising one-year bucks (non-breeding)/wethers	22
	Bucks (non-breeding)/wethers over one year	26
	Breeding bucks	120
	Other fibre and meat producing goats (Cashmere or Cashgora producing):	
	Rising one-year does	18
	Mixed-age does	24
	Rising one-year bucks (non-breeding)/wethers	21
	Bucks (non-breeding)/wethers over one year	24
	Breeding bucks	55
	Milking (dairy) goats:	
	Rising one-year does	150
	Does over one year	253
	Breeding bucks	183
	Other dairy goats	63
Pigs	Breeding sows less than one year of age	150
	Breeding sows over one year of age	198
	Breeding boars	211
	Weaners less than 10 weeks of age (excluding sucklings)	40
	Growing pigs 10 to 17 weeks of age (porkers and baconers)	76
	Growing pigs over 17 weeks of age (baconers)	109

This determination is signed by me on the 13th day of May 1999.

Martin Smith
General Manager (Adjudication & Rulings)

Creation of Work and Income New Zealand

SCHEDULE TO THE EMPLOYMENT SERVICES AND INCOME SUPPORT (INTEGRATED ADMINISTRATION) ACT 1998.

The Employment Services and Income Support (Integrated Administration) Act 1998 provided for the transfer of payment of benefits from Income Support (Department of Social Welfare) to Work and Income New Zealand (WINZ). As a result of this change, a number of consequential changes have been made to the following Revenue Acts to replace the Director-General of Social Welfare with the Chief Executive of the department responsible for the administration of the Social Security Act 1964, WINZ, and to replace the Department of Social Welfare with WINZ:

- Child Support Act 1991
- Student Loan Scheme Act 1992
- Income Tax Act 1994
- Tax Administration Act 1994.

The changes do no more than reflect the change in the delivery agency of benefit payments, there are no changes of a technical nature.

The changes came into force on 1 October 1998.

Community wage and child support information

SECTION 80 AND SCHEDULE 1 OF THE SOCIAL SECURITY AMENDMENT ACT 1998

From 1 October 1998, various benefits, such as the unemployment and sickness benefits, were replaced by the community wage. As a result of this change, a number of consequential changes have been made by Schedule 1 to the following Revenue Acts:

- Estate and Gift Duties Act 1968 *
- Goods and Services Tax Act 1985
- Child Support Act 1991
- Income Tax Act 1994.

In addition to changes of a purely consequential nature, an amendment was made to section CB 6 of the Income Tax Act 1994 to exempt from income tax any participation allowance paid to people who are in receipt of the community wage and are engaged in community work. In addition to the allowance, which is $21 a week, a further $20 may be payable for extra expenses. Both amounts are exempt from income tax.

The changes came into force on 1 October 1998.

Section 80 of the Social Security Amendment Act 1998 amended the Child Support Act 1991 to allow the Commissioner to advise custodians of child support payment details.

This change, which came into force on 1 February 1999, is designed to help beneficiaries planning to return to the workforce by providing them with information on the amount of child support that they can expect to receive.

* The amendment was to one of the estate duty provisions. This legislation has since been repealed by the Estate Duty Repeal Act 1999.

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.

Inducement fee - whether monetary remuneration

Case: TRA Number 94/015. Decision Number 005/99

Decision date: 7 April 1999

Act: Income Tax Act 1976

Keywords: Inducement fee, monetary remuneration

Summary

Willy J held that the payment received by the Objector was capital and not within the definition of monetary remuneration under section 65(2)(b) of the Income Tax Act 1976.

Facts

The Objector was employed as an Investment Analyst at Company A. In the course of his employment he became involved with Company B ("the company") who offered the Objector a job. The Objector was invited to name his terms of employment with the company.

An oral agreement was made between the company and the Objector on 2 July 1986 and a written offer followed on 3 July 1986. The written offer enclosed two cheques for $200,000, one drawn on the company account and the other on the personal account of the two company principals.

The Objector contacted the company to say that the terms set out in the letter of 3 July 1986 were not acceptable. By letter of 8 July 1986, the Objector set out his terms of employment, which were accepted by the company. The Objector then banked the two cheques.

Inland Revenue issued the assessment on the basis that the letter of 8 July 186 was backdated, in reliance on an allegation to that effect in some company documents.

Decision

Willy J found that the parties acknowledged and intended this non-refundable payment of $400,000 to be an inducement demanded by the Objector to leave Company A. It didn't form part of the employment contract he was entering and it was not conditional upon the Objectors performance of the employment contract.

Tax liability - whether relief taxi drivers independent contractors or employees

Case: TRA Number 97/75. Decision 006/99

Decision date: 14 April 1999

Act: Goods and Services Tax Act 1985

Keywords: Independent contractors or employees

Summary

Barber J found in favour of the Objector but stated that this was a "somewhat borderline" case. He said that if such a case was borderline then the outcome should be particularly influenced by the genuine intentions of parties.

Facts

The Objector is a holder of a passenger licence under the Transport Services Licencing Act 1989 and owned during the period 1 April 1993 to 31 December 1995 between 3 and 5 taxis at any one time. The Objector is a registered person for the purposes of the Goods and Services Tax Act 1985.

The Objector engaged a number of relief drivers to drive the taxis owned by him. In 1992 the Objector approached Inland Revenue to clarify the tax liability of his drivers as far as PAYE deductions and GST liability went. His drivers proceeded to calculate and deduct PAYE acting as independent contractors. None of the drivers were required to register for GST purposes, as they did not meet the $30,000 GST registration threshold.

In May 1993 the Commissioner conducted a review of the Objector's relationship with his drivers and concluded that the drivers were the Objector's employees and were not independent contractors. The Commissioner then assessed the Objector for GST on the percentage of gross takings retained by the drivers, as a taxable supply made by the Objector and chargeable with GST output tax.

Decision

Barber J found that in this case he could not doubt that the intentions of the parties were to create the status of independent contractors for the drivers of the Objector.

His Honour reiterated his views expressed in a similar case, Case T13. His Honour found therefore the Objector does not have to account for GST on the percentage of gross takings retained by the drivers.

Taxable Activity - Business or hobby?

Case: TRA Number 98/24. Decision Number 007/99

Decision date: 16 April 1999

Act: Goods and Services Tax Act 1985

Keywords: Taxable activity, apportionment, hobby or pastime

Summary

Barber J found for the Commissioner but with a few adjustments.

Facts

The Objector was a company engaged in cleaning and catering operations which contracted solely with an airline to provide services at a major New Zealand airport. The shareholders were husband and wife who used their private residence as the administrative centre of operations. The husband had also been involved in a horse racing and breeding activities for more than 20 years.

The Objector claimed input tax credits on horse racing and breeding activities, claiming that they were part and parcel of the Objector's business. The Objector also claimed input credits on all domestic expenses and expenses relating to gifts and tokens of goodwill made in the course of doing business with it client.

The Commissioner contended that only 36% of the household outgoings were attributable to the Objectors taxable activity, that none of the improvements were so attributable and nor the gifts. The Commissioner also maintained that the stud activity was not part of the Objector's business, rather it was in the nature of a hobby conducted by one the Objectors shareholders.

Decision

The bulk of the dispute rested on the Objector's stud activity. Barber J held that though it may have reached the 'taxable activity' threshold, the evidence showed that the activity was in the nature of a personal, recreational pursuit and as such the Objector was unable to claim any input credit on stud expenses.

His Honour adjusted the household expenses from 36% to 50% saying that it was difficult to be precise when making an apportionment regarding the business and private use of house and it helped to look at areas allocated to either or both purposes and the extent of their use for such purposes.

His Honour also held that a special relationship existed between the Objector and its employees and clients and the goods in question were acquired for the principal purpose of making taxable supply.

Part XA Income Tax Act - whether valid in terms of Magna Carta

Case: Reginald Stevens Shaw v CIR

Decision date: 19 April 199

Act: Income Tax Act 1976

Keywords: Validity of Part XA

Summary

The Court of Appeal dismissed the appellant's appeal and stated that the legislation must stand.

Facts

The appellant is a New Zealand superannuitant. In the 1994 and 1995 income years the appellant derived income from sources other than New Zealand

superannuation that exceeded the specified exemption and he therefore became liable for tax under section 336C of the Income Tax Act 1976 ("ITA").

The appellant challenged the validity of Part XA of the ITA. Part XA (now repealed) imposed an additional rate of tax on New Zealand superannuitants where their income from other sources exceeded a specified exemption.

The appellant argued that the Court was empowered under section 3 of the Declaratory Judgments Act 1908 to determine the validity of Part XA; that Part XA breached the Magna Carta; and that there are limits to parliamentary sovereignty and that those limits are to be determined by the judiciary.

Decision

The Court of Appeal held that a court's power under section 3 of the Declaratory Judgments Act 1908 is limited to ensuring that a statute was properly enacted. The Court of Appeal also held that although chapter 29 of the 1297 Magna Carta forms part of New Zealand's law it does not constitute supreme law, in the sense of a limit on New Zealand Parliaments' sovereignty.

The Court of Appeal said that "those who object to such a tax [the superannuation surcharge]... have their remedy in the legislative, or ultimately in the electoral process".

Tax Avoidance - interest deduction on loan to purchase associated company shares

Case: TRA Number 97/114. Decision Number 008/99

Decision date: 4 May 1999

Act: Income Tax Act 1976

Keywords: Tax avoidance

Summary

Willy J found in favour of the Objector.

Facts

The Objector was involved in a "raro route" arrangement in the 1986 income tax year. It purchased new issued shares in an associated company borrowing from a financial company to do so. The Objector also paid interest on the advance up front. By a series of mutual loans and repayments through a number of corporate entities, the Objector received back the interest payment (less fees) as a non taxable inter-corporate dividend. The Commissioner relied on section 99 and disallowed the interest deduction.

The Objector argued that there were numerous procedural failures by the Commissioner that made the assessment invalid:

Decision

There was a tax avoidance arrangement therefore the Commissioners reconstruction in terms of section 99 was correct. However the procedural defects invalidated the assessment.

Remuneration paid in respect of leave owed - whether capital or revenue expenditure

Case: New Zealand Forest Research Institute Limited v CIR

Decision date: 18 May 1999

Act: Income Tax Act 1976

Keywords: Capital expenditure or Revenue expenditure

Summary

The Court of Appeal found in favour of the taxpayer and reversed the finding of the High Court.

Facts

This was an appeal by the taxpayer from the High Court decision of Salmond J issued on 3 September 1998.

On 1 July 1992 New Zealand Forest Research Institute Limited ("NZFRI") acquired certain Crown assets and the Crown's business related to forest research. Under the transfer agreement NZFRI assumed certain liabilities from the Crown, effective from the transfer date. Those liabilities included ones related to the business or activity carried on by the Ministry of Forestry before the transfer date or to the transfer or employment of any employee of the Ministry, or on the terms on which any employee was previously employed.

The Crown was obliged to adjust the purchase price for the assets transferred to NZFRI by an amount determined having regard to "accrued staff liabilities". These liabilities included different types of leave pay which employees of the Crown had become entitled to before the business and assets were transferred to NZFRI.

Pursuant to the Crown Research Institutes Act 1992 and to the Transfer Agreement between the Crown and NFRI, NZFRI recognised transferring employees as being entitled to certain paid leave with effect from 1 July 1992 and paid $836,978 in the succeeding year to employees on account of that leave. The Commissioner disallowed the deduction on the basis that it was a capital item and non deductible.

Decision

The Court of Appeal found that, firstly, the payments were made as remuneration paid by the taxpayer to its employees in respect of leave taken during the first income year of the company ending 30 June 1993. Second, remuneration for leave has all the attributes of revenue character payments.

Third, the payments in question were not made in the discharge of a liability to pay a quantified sum as at the commencement of the year 1 July 1992. The employees' rights and the taxpayer's obligations to them were as provided for in the collective employment contract and section 41 of the CRI Act. Fourth, in terms of section 41, the employment contract of every transferring employee is "deemed to have been unbroken" and the employee's period of service with the Crown is "deemed to have been a period of service with the Crown Research Institute". Therefore, any payment in respect of leave paid by the taxpayer is not in respect of service to another employer, i.e. the Crown.

Fifth, the $836,978 payment was not paid by the taxpayer in discharge of the Crown's accrued liability to the employees. The payment was made pursuant to the contract of employment as affected by section 41 and not pursuant to the transfer agreement. In this regard, the case is clearly distinguishable from *Royal Insurance Company, Tata Hydro-Electric Agencies Limited (Bombay), Bombay Presidency and Eden* and *Nicholls and Others*.

Sixth, by statute the pre- 1 July 1992 service of the transferring employees is deemed to have been unbroken service with the company. The contract of employment must be accorded that status and given that effect for all purposes including tax purposes.

On this point, the Court stated that given the purpose, scheme and scope of the income tax legislation and the significance to the Revenue and to the economy and the tax treatment of employment as a source of income, deductions in arriving at business profits, collection responsibilities (e.g. PAYE) and special arrangements (e.g. fringe benefit tax) there is much force in the argument that the Income Tax Act is "an enactment ... relating to the employment of each such employee".

Finally, the Court found that the expenditure was incurred and paid in carrying on a business for the purposes of gaining and producing assessable income for the taxpayer. It was paid pursuant to the employment contract because the employees are deemed to have worked for the taxpayer for the pre-1 July 1992 periods involved.

Input tax credits on purchase of land for residential care

Case: Wairakei Court Limited v CIR

Decision date: 13 May 1999

Act: Goods and Services Tax Act 1985

Keywords: Input tax credit claims

Summary

The High Court found in favour of the taxpayer in respect of the claims for the studio units and for the CIR in respect of the claim for the villas.

Facts

In 1994 Wairakei Court Limited ("WCL") decided to expand its rest home facilities. Additional land was acquired by WCL to update and extend the rest home, construct studio units and villas.

The residents of the studio units took occupation by way of a licence to occupy, which contained a clause making it mandatory for the resident to accept and pay for either full or partial care.

The residents of the villas also took occupation under licences to occupy but did not have the contractual obligation to accept any level of care at all.

WCL claimed an input tax credit on the purchase of land and for the construction of studios and villas as part of the rest home complex.

The Commissioner contended that the expenditure was for the principal purpose of making exempt supply of accommodation.

Decision

Chilsolm J considered the villas and studios separately.

Chilsolm J found that in relation to the villas, any rest home care component was ancillary or incidental and the absence of a mandatory care clause in the licence to occupy did not enable WCL to make taxable supplies of residential care on the villas.

In relation to the studios, His Honour found that regardless of whether looked factually or legally at the situation, the licences to occupy were tied to the provision of care for the elderly. He held that it was simply unrealistic to say that the principal purpose of acquiring land was to make exempt supplies of accommodation, as this was merely incidental.

Whether property was sold as a going concern

Case: TRA Number 98/11.
Decision Number 009/99

Decision date: 26 May 1999

Act: Goods and Services Tax Act 1985

Keywords: Sale of a going concern

Summary

Judge Willy held that both parties understood that they were selling and buying a going concern which was zero rated for GST and found in favour of the Objector.

Facts

The Objector husband and wife were in partnership in a horticultural business. The Objectors sold their horticultural property in August 1994 for $350,000.00. At the time of the sale of their business they concentrated their efforts solely on carnation growing. The sale included land, glasshouses, two oil tanks and heaters.

The purchaser took possession in early December 1994 and agreed to the vendor's use of the property for three weeks to enable them to harvest their carnation crop. As the vendors vacated the glass houses the purchaser worked in behind them and planted his crop of tomatoes. He also upgraded the irrigation system and other facilities.

The agreement for sale and purchase contained a clause, pursuant to which, the parties agreed that the property was being purchased as a going concern.

The purchaser gave evidence that this clause was inserted at the time of his original offer for the property plus chattels and carnations. He claimed that, had he been fully aware of the effect of this clause, he would have asked for it to have been removed when it become clear ultimately that there was not going to be the sale of a going concern. The Objectors claimed a GST input of $16,666.67. The Commissioner disallowed this input on the basis that the sale of the property was not the sale of a going concern.

Decision

Judge Willy cited the following extract from Belton v CIR (1997) 18 NZTC 13,403:

"The test is not what the parties' intention was, but what objectively happened and within what time frame which must be determinative of the issue."

Judge Willy stated that such comments were made in cases where the parties had not stated unequivocally in their written document of agreement that they were buying and selling a going concern. Rather the Courts were left to determine the intentions of the parties from an objective review of the facts. His Honour stated that different considerations arose where there was an express agreement between the affected parties.

His Honour concluded that the Objectors met their requirement of proof that at the point of sale there existed on the land all of the structure and chattels of the concern of market gardening. That concern was going at the date of possession and together with the land and other improvements was what the purchaser bought. The fact that he changed the style and emphasis of the concern from carnations to tomatoes did not detract from the existence of the nature of the concern which was that of a horticultural business.

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.

Subsidised Transport provided by employers to employees – value for fringe benefit tax purposes

PUBLIC RULING - BR Pub 99/2

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

Taxation Laws

All legislative references are to the Income Tax Act 1994 unless otherwise stated.

This Ruling applies in respect of sections CI 2(1), CI 3(6), CI 4(1), and the definition of "subsidised transport" in OB 1 of the Income Tax Act 1994.

The Arrangement to which this Ruling applies

The Arrangement is the provision of:

- Transportation to an employee by the employer of that employee, where that employer carries on a business that consists of or includes transportation of the public; or
- Transportation to an employee by a person with whom the employer of that employee has entered into an arrangement for the provision of that transportation, where that employer carries on a business that consists of or includes transportation of the public.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- Where transportation is provided by the employer to an employee, the value of the benefit for fringe benefit purposes is 25% of the highest amount charged by the employer to the public for transportation of the same class, extent, and occasion.
- Where transportation is provided to an employee by a third party with whom the employer has entered into an arrangement for that benefit to be so provided or granted to the employee, the value of the benefit for fringe benefit purposes is the greater of:
  - 25% of the highest amount charged by the third party to the public for transportation of the same class, extent, and occasion; or
  - The amount that the employer is so liable to pay or has so paid to the third party for the benefit being provided by the third party.

In the definition of "subsidised transport" in section OB 1, "class" refers to the classes of transportation available, such as first, business, or economy class; "extent" refers to transportation with the same departure and destination points; and "occasion" refers to the time of carriage.

The period for which this Ruling applies

This Ruling will apply for the period 1 July 1999 to 30 June 2002.

This Ruling is signed by me on the 18th day of May 1999.

Martin Smith
General Manager (Adjudication & Rulings)

COMMENTARY ON PUBLIC RULING BR Pub 99/2

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Ruling BR Pub 99/2 ("the Ruling").

The subject matter covered in the Ruling was previously dealt with in Public Information Bulletin 136 (May 1985) at pages 28 and 29 under the heading "Subsidised Transport". This Ruling supersedes that earlier statement.

Background

Employers who are in the business of providing transportation to the public may provide transportation to their staff, either free or at a price lower than that paid by the public. These employers may also enter into arrangements with third parties to provide the employers' staff with either free transportation or transportation at a price lower than that paid by the public.

If the provision of this transportation falls within the definition of "subsidised transport", it is a fringe benefit. The employer will be liable to pay fringe benefit tax in accordance with the FBT rules.

This Ruling applies where an employer, who carries on a business that consists of or includes transportation of the public, provides transportation to an employee of that employer, or enters into an arrangement with another person for transportation to be provided or granted by that person to an employee of the employer.

Legislation

Section CI 1 states:

In the FBT rules, "fringe benefit", in relation to an employee and to any quarter or (where fringe benefit tax is payable on an income year basis under section ND 4) income year, means any benefit that consists of-

...

(d) Any subsidised transport:

"Subsidised transport" is defined in section OB 1:

"Subsidised transport", in the FBT rules, means the provision, in any quarter or (where fringe benefit tax is payable on an income year basis under section ND 4) income year, by an employer, being a person who carries on a business that consists of or includes the transportation, for hire or reward, of persons who are members of the general public, to an employee of the employer of carriage or entitlement to carriage in the course of the transportation (not being transportation in a motor vehicle) where the amount (if any) paid by the employee of the employer in respect of the carriage or entitlement to carriage is less than the amount that is the highest amount charged, in the quarter or (where fringe benefit tax is payable on an income year basis under section ND 4) income year in which the provision occurs, by the employer of the employee for the provision by that employer, to persons who are members of the general public, of carriage or, as the case may be, entitlement to carriage that is of the same class and extent and on or for the same occasion or occasions as the class and extent and occasion or occasions of the carriage or the entitlement to carriage first mentioned in the definition.

The main valuation provision for subsidised transport is section CI 3(6), which states:

For the purposes of the FBT rules, the value of any fringe benefit, being a benefit that consists of subsidised transport provided in any quarter or (where fringe benefit tax is payable on an income year basis under section ND 4) income year, by an employer, shall be the greater of-

(a) 25% of the amount that, in relation to the subsidised transport so provided is, within the meaning of the definition of "subsidised transport", the highest amount charged by the employer:

(b) The amount that the employer is so liable to pay or has so paid for the benefit being provided.

Section CI 4(1) further states:

Subject to this section, for the purposes of the FBT rules the taxable value of any fringe benefit provided by the employer of the employee in any quarter or (where fringe benefit tax is payable on an income year basis under section ND 4) in any income year shall be the value of that fringe benefit, reduced by-

(a) The amount (if any) paid by the employee (or, where section GC 15(1) applies, by the associated person) in relation to the quarter or the income year for the receipt or enjoyment of that fringe benefit (not being an amount paid for the acquisition or improvement by the employee or associated person of an asset the receipt or enjoyment of which does not constitute the fringe benefit), except where the fringe benefit is an employment related loan:

In relation to benefits provided by third parties, section CI 2(1) states:

For the purposes of the FBT rules, where a benefit is provided for or granted to an employee by a person with whom the employer of the employee has entered into an arrangement for that benefit to be so provided or granted, that benefit shall be deemed to be a benefit provided for or granted to the employee by the employer of the employee.

The definition of an "arrangement" is provided in section OB 1:

"Arrangement" means any contract, agreement, plan or understanding (whether enforceable or unenforceable), including all steps and transactions by which it is carried into effect.

Application of the Legislation

The legislative provisions concerning the valuation of subsidised transport provided to employees are uncertain in their application. This Ruling sets out how the Commissioner will interpret these provisions.

Subsidised transport may be provided to an employee by the employee's employer or by a third party that has an arrangement with the employer to provide the employee with a benefit. These two situations are discussed separately below.

Subsidised transport provided by the employer

The valuation of subsidised transport provided by an employer to an employee of that employer is provided for in section CI 3(6). This requires the value to be the greater of:

- 25% of the highest amount charged by the employer to the public for transportation of the same class, extent, and occasion; and
- the amount that the employer is liable to pay or has so paid for the benefit being provided.

Some commentaries on the value of subsidised transport refer to the cost to the employer of providing the transportation. This has caused confusion about whether costs incurred by an employer itself in providing transportation to an employee, such as the cost of food and fuel on an airline, should be taken into account in the second limb of section CI 3(6).

It is the Commissioner's view that section CI 3(6)(b) was inserted into the valuation provision to provide for the situation where the transport is provided by a third party and the employer pays more to the third party for the transport than 25% of the highest fare. Previously, the valuation provision referred only to 25% of the highest fare.

The words "liable to pay or has so paid" in section CI 3(6)(b) do not refer to the cost to the employer. Paragraph (b) of section CI 3(6) only applies when an employer actually pays a third party to provide transportation for its employees. This situation is discussed below. If an employer provides transportation itself, there will generally be no amount that the employer is liable to pay, as the employer does not charge itself for the employee's transportation. While the employer may incur costs in providing the transportation, these are not to be taken into account in determining the value of the benefit.

In summary, it is the Commissioner's view that, where the transportation is provided by an employer to an employee of that employer, the value of the benefit is 25% of the highest fare charged to the public for transportation of the same class, extent, and occasion. The meaning to be given to the "highest fare", "class", "extent", and "occasion" is discussed below.

Subsidised transport provided by a third party that has an arrangement with the employer

The valuation of subsidised transport provided by a third party that has an arrangement with the employer to provide transport to an employee of that employer is also provided for in section CI 3(6). The interpretation of this section is problematic. This is in part due to the effect of section CI 2(1). Under section CI 2(1), if an employer has entered into an arrangement with another to provide a benefit to an employee of that employer, the benefit is deemed to be provided by the employer.

Interpreting section CI 3(6) without reference to section CI 2(1), the benefit is valued as the greater of:

- 25% of the highest amount charged by the employer to the public for transportation of the same class, extent, and occasion; and
- the amount that the employer is liable to pay or has so paid for the benefit being provided.

If the employer offers the same transportation to the public that was arranged to be provided to the employee by the third party, an amount will be charged by the employer to the public for the same transportation. In this instance, the benefit will be the greater of the two options.

However, in the majority of cases, the employer will not provide the same transportation to the public as that arranged with the third party to be provided for the benefit of the employee. In this instance, there is no amount charged by the employer to the public for that transportation. The value of the benefit depends on the amount paid by the employer for the third party to provide the benefit. That is, it is only paragraph (b) of section CI 3(6) that is relevant.

However, section CI 2(1) affects this interpretation. This section deems a benefit provided to an employee by a person with whom the employer has an arrangement to be provided by the employer. Reading section CI 3(6) in conjunction with section

CI 2(1) may require ascertaining the highest amount charged by the third party to the public and the amount that the third party is liable to pay or has so paid. That is, reading the word "employer" in section CI 3(6) as the third party. In other words, the highest amount charged by the employer refers

to the highest amount charged by the third person, and the amount the employer is liable to pay or has so paid is a reference to the amount that the third party is liable to pay or has so paid.

On the same reasoning that an employer does not charge itself for providing transportation to its employees, the third party does not charge itself for providing transportation to employees of the employer. Accordingly, the value of the benefit depends on the amount charged by the third party to the public for transportation of the same class, extent, and occasion. That is, only paragraph (a) of section CI 3(6) is relevant here.

Alternatively, section CI 2(1) may not require reading the word "employer" in section CI 3(6) as the third party. If this approach is taken, section CI 3(6) would be interpreted in the same manner as above where no account was taken of section CI 2(1). Therefore, only paragraph (b) of section CI 3(6) is relevant here.

The above interpretations, with and without reference to section CI 2(1), with the exception of the limited instance where the employer provides the same transportation service to the public as that provided to the employee by the third party, deny the requirement that the benefit be valued at the greater of two options of any meaning. However, combining the results from the two interpretations would give this requirement meaning in all circumstances.
For example, the value of the benefit is the greater of:

- 25% of the highest amount charged by the third party to the public for transportation of the same class, extent, and occasion; and
- the amount that the employer is liable to pay or has so paid for the benefit being provided by the third party.

It is acknowledged that this approach, which interprets the word "employer" in a different manner under each limb of section CI 3(6), is inconsistent with a strict literal interpretation of the section. However, it is the Commissioner's view that, as the wording used in the legislation is less than ideal, this is the better approach where a benefit is provided by a third party.

In summary, it is the Commissioner's view that if transportation is provided to an employee by a third party with whom the employer has entered into an arrangement for that benefit to be provided or granted to the employee, the value of the benefit is the greater of:

- 25% of the highest fare charged by the third party with whom the employer has an arrangement to the public for transportation of the same class, extent, and occasion; and
- the price the employer paid or is liable to pay to the third party with whom the employer has an arrangement for the benefit being provided.

If the employer is not required to pay the third party with whom the employer has an arrangement, i.e. there is no price paid or payable by the employer for the benefit, the benefit is valued at 25% of the highest fare charged to the public for transportation of the same class, extent, and occasion. That is, only paragraph (a) of section CI 3(6) has relevance in this situation.

Other issues

Carriage and entitlement to carriage

A benefit arises on the provision to an employee of carriage or an entitlement to carriage. "Carriage" refers to the actual carriage on the particular transport, whereas "entitlement to carriage" refers to a specific right to carriage in the future. For example, a bus pass and an airline ticket are both entitlements to carriage. They both provide the employee with a future right to carriage.

If the employee is not entitled to claim a specific right to carriage, e.g. because certain conditions must be met before the entitlement to carriage arises, there is no entitlement to carriage unless those requirements are fulfilled. For example, if an employee is provided with a standby ticket which is subject to the limitation that carriage will only be provided if special loading requirements are met, no entitlement to carriage arises until these requirements have been fulfilled and the employee is *entitled* to the future right to carriage. The employee may then choose whether or not to use the entitlement to carriage. No benefit to the employee will arise if the special conditions that the ticket is subject to are not fulfilled as no entitlement to carriage or carriage will have arisen.

Special conditions that employees may be subject to can be distinguished from intrinsic limitations that everyone is subject to, such as there being available seats on a bus when utilising a bus pass, for example. An employee with a bus pass has an entitlement to carriage, even though he or she may

not gain carriage on the first bus that comes along because it happens to be full. In other words, the availability of seats is not a special condition that must be fulfilled before the entitlement to carriage arises, but a limitation inherent in bus travel that everyone is subject to. This situation can be contrasted with a standby fare, where carriage is subject to certain conditions being fulfilled before the entitlement to carriage arises at all. That is, where an employee is told that he or she will receive an entitlement to carriage or carriage *provided* certain conditions are first met.

A further issue that arises in relation to entitlement to carriage is the suggestion that entitlement to carriage refers to carriage with restrictions attached. The example was given of standby type restrictions. The Commissioner does not agree with this interpretation. As discussed in the preceding paragraphs, no entitlement to carriage will arise where the employee does not become entitled to the carriage. Special conditions or restrictions attached to a ticket are taken into account in the legislation by the use of a 25% basis for calculating the value of the benefit. This percentage reflects that employees may be subject to special standby type conditions, and therefore the value of the benefit should not be based on the full fare paid by the public.

The benefit to the employee arises on the provision of the carriage or entitlement to carriage. It is irrelevant if the entitlement to carriage is not subsequently used by the employee. A benefit does not arise when a carriage is taken pursuant to an entitlement to carriage. For example, say an employee has been provided with a bus pass that entitles her to "free" carriage. A member of the public who has purchased a similar pass will also be provided with carriage without having to pay any more. No benefit arises to the employee in this situation. As neither the employee nor the member of the public is charged for the actual carriage, the employee does not receive the carriage for an amount less that the amount charged to the public. The legislation does not tax the one benefit as a "carriage" and then subsequently as an "entitlement to carriage".

A transportation benefit will not come within the "subsidised transport" definition if the same transportation is not sold to the public. This is because the employee would not be getting transportation at a lesser amount than is charged to the public. If the service is not sold to the public, there can be no charge to the public. However, such a benefit could come within section CI 1(h) as "any benefit of any other kind".

Highest fare charged

The definition of "subsidised transport" in section OB 1 refers to the provision of carriage or entitlement to carriage where:

> ... the amount (if any) paid by the employee ...is less than the amount that is the highest amount charged ... by the employer ... to ... the general public, of carriage or ... entitlement to carriage that is of the same class and extent and on or for the same occasion or occasions as the class and extent and occasion or occasions of the carriage or the entitlement to carriage ...

In determining the value of the subsidised transport, section CI 3(6) then refers in paragraph (a) to:

> ... 25% of the amount that, in relation to the subsidised transport so provided is, within the meaning of the definition of "subsidised transport", the highest amount charged by the employer ...

Accordingly, section CI 3(6) requires that the value of the benefit be determined according to the highest amount charged to the public for carriage or entitlement to carriage that is of the same class, extent, and occasion. It is the Commissioner's view that "class" refers to the classes of travel available, such as first, business, or economy class, as that term is used in the travel industry. The Commissioner does not accept that standby is a class of travel. To include standby fares as a class is to confuse "class" with fares. The special conditions attached to a standby fare have been compensated for by valuing the benefit at only 25% of the amount charged to the public. It was stated in the second reading of the Income Tax Amendment Bill (No 2) (NZPD Vol 461, 1985: 3722) that "The exemption effectively recognises that the true benefit enjoyed by the employee is somewhat less than the full value of the fare". Further, "extent" refers to travel with the same departure and destination points, and "occasion" refers to the time of carriage.

It is arguable that the relevant fare is the highest fare charged during the *quarter* for travel of the same class and extent. However, this interpretation denies the word "occasion" in the definition of "subsidised transport" of any meaning. Both "quarter" and "occasion" need to be given meaning. It is arguable that the inclusion of the reference to "quarter" means the highest fare charged in the quarter as it was the intention of the legislation that the fare be the highest fare charged in the quarter.
However, such an intent is not made clear in the legislation and this interpretation deprives "occasion or occasions" of any meaning.

It is submitted that the words "in the quarter" are a reference to the fact that FBT is charged on a quarterly basis. This view is supported by the fact that the words "in the quarter" are followed by "or (where fringe benefit tax is payable on an income year basis under section ND 4) income year".

This appears to be a reference to the time that FBT is determined. The words "quarter or income year" are repeated throughout the legislation. Apart from the legislative intent, there is no evidence that "quarter or income year" have any greater meaning in this part than they do in any other part.

There are differing views on what "occasion" means. The ordinary meaning of "occasion" is the time of occurrence of a particular event or happening. In this situation the particular event or happening is the carriage. Therefore, it would be consistent with this meaning to use the highest fare charged on the actual transportation as that is the time that the carriage occurs.

It would not be consistent with the ordinary meaning of "occasion" to define it as the day that the actual travel takes place or as the *time* or *season* that the employee is allowed to travel. The better meaning to be given to "occasion or occasions" is the actual time of carriage. This is consistent with the ordinary meaning of "occasion".

In relation to an entitlement to carriage, the relevant occasion is the period of time for which the entitlement to carriage is valid. For example, if the provision is of a bus pass that entitles the employee to carriage on a bus for a period of a month, the relevant value of the benefit is the highest fare charged to the public for that bus pass in that month period. If the entitlement to carriage is a ticket for carriage in the future, such as an airline ticket, the relevant value is the highest fare charged to the public for that particular transportation.

The Commissioner is of the view that the legislation requires the highest fare charged for the actual transportation to be used in valuing the benefit. However, it has been submitted that in some circumstances it may be very difficult, if not impossible, to determine this figure. Accordingly, the Commissioner will accept the highest published market fare that the employer or third party, with whom the employer has entered into an arrangement for the provision of the benefit, ever charges for the service as evidence of the highest fare charged for transportation of the same class, extent, and occasion by the employer or third party. For example, this could be by reference to the Air Tariff Worldwide Fares published by the Air Tariff Publishing Company. However, it is acknowledged that at times there are fares that are published but never charged to the public. Such fares would not satisfy this criterion. The highest actual fare charged is to be used where available in preference to the highest published market fare.

Further, the Commissioner acknowledges the compliance costs involved in complying with the valuation provisions in relation to the occasion of the transportation. Accordingly, the Commissioner will allow the use of the highest publicised market fare charged, in the particular day, week, or month in which the occasion occurs, for transportation of the same class and extent as the value to be attributed to the benefit.

Arrangement

Section CI 2(1) refers to an employer that "has entered into an arrangement" with a third party concerning the provision of benefits by the third party to employees of the employer.

An "arrangement" is defined in broad terms in the Act to mean "any contract, agreement, plan, or understanding (whether enforceable or unenforceable) ...". Case law indicates that an "arrangement" includes an understanding between two or more persons in relation to an agreed course of action that may not be enforceable in law. However, it must be an arrangement "for that benefit to be so provided or granted". An employer that merely allows a third party to place promotional materials offering travel in the staff-room, for example, would probably have entered into an arrangement with that third party, but it would not be an arrangement for the provision of a benefit to the employee. It is necessarily a question of fact and degree in any given situation. Any understanding between an employer and a third party to provide a benefit to employees of the employer could constitute an arrangement to which section CI 2(1) applies. If the arrangement provides for the third party to provide numerous and ongoing benefits to employees of the employer, the employer would need a system in place to ensure that it is aware of exactly what benefits are being provided to its employees.

Employee contributions

Under section CI 4(1), if an employee pays an amount for the receipt or enjoyment of subsidised transport provided by that employee's employer, the value of the benefit provided is reduced by that amount. That is, once the benefit is valued according to section CI 3(6), any amount paid by the employee for that benefit is to be deducted from that amount. This is illustrated in the examples below.

Example 1

An airline employee takes an overseas holiday on his employer's airline. He travels economy class. The highest price charged to the public for a ticket on that flight in economy class, with the same departure and destination points, is $650. The employee pays $200.

Highest fare charged to the public for the same flight	$650
25% of this highest fare	$162.50

As the employee pays more than the value of the benefit ($200 compared to $162.50), the taxable value of the benefit is nil and no FBT is payable by the employer.

Example 2

An airline employee takes a holiday overseas on an airline that has an agreement with her employer. The highest price charged to the public for travel of the same class, extent, and occasion is $650. Under the agreement the employee's airline pays $325 to the airline that carries the employee.

Highest fare charged to the public for the same flight	$650
25% of this highest fare	$162.50
Price paid or payable by the employer	$325

The price paid by the employer is greater than 25% of the highest fare charged for the flight. As the employee does not make any contribution, the taxable value of the benefit is $325.

If the employee pays the employer $200, that amount would be deducted from $325 and the taxable value of the benefit would be $125.

Comments on technical submissions received

The comments received in relation to this Ruling concerned five main areas. Specifically:

1. The valuation of a benefit provided by a third party and the relationship between sections CI 2(1) and CI 3(6).
2. Standby fares are a separate class of travel.
3. The difficulties in obtaining information as to the highest fare charged where a third party provides the transport.
4. With an entitlement to carriage, the benefit arises when the transport is taken.
5. Not all relationships between employers will constitute an "arrangement" for the provision of a benefit.

Point 1 highlights that section CI 2(1) only deems the benefit to be provided by the employer; it does not deem the highest price charged by the third party to be the highest price charged by the employer for the purposes of section CI 3(6). The Ruling acknowledges the difficulties with the legislation and attempts to provide a workable solution to the valuing of transport provided by a third party.

Point 2 has previously been raised during the consultation process. It is not accepted that standby is a "class" of travel.

Point 3 concerns compliance with the Ruling and has been discussed in the commentary.

Point 4 has been considered, but is not agreed with. To conclude otherwise would mean that an entitlement to carriage that is not subsequently utilised by the employee would not be subject to FBT. There is no requirement that the entitlement actually be used by the employee. However, this submission led us to question what constitutes an "entitlement to carriage", as discussed in the commentary.

Point 5 concerns the definition of an "arrangement", and has been further discussed in the commentary.

Licensed premises' operators and entertainment expenditure

PUBLIC RULING - BR Pub 99/3

NOTE (NOT PART OF RULING): This ruling is essentially the same as public ruling BR Pub 96/5 which was published in TIB Volume Seven, No.12, April 1996, but its period of application is from 1 April 1999 to 31 March 2004 and some minor wording and formatting changes have been made. BR Pub 96/5 applied up until 31 March 1999.

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

Taxation Laws

All legislative references are to the Income Tax Act 1994 unless otherwise stated.

This Ruling applies in respect of section DG 1 and Schedule 6A of the Act.

The Arrangement to which this Ruling applies

The Arrangement is the incurring of expenditure by any person who carries on business as a licensed premises' operator ("licensee") and who, in the ordinary course of that business:

- Incurs that expenditure on food or beverages and makes special offers of that food or beverage in arm's length transactions with members of the general public. The special offers of food or beverages to which this Ruling applies include:
  - Happy hours where a licensee offers drinks to customers at reduced prices during a particular time period:
  - Offers of free drinks on certain days or at certain times to customers or categories of customers selected from the general public:
  - Two meals offered to customers for the price of one:
  - "Toss the boss" competitions where for every drink purchased, the customer can toss a coin and has the chance to win a free drink; or
- Pays an allowance to an employee (such as a bar manager) to cover the costs of the employee providing in the ordinary course of business, free drinks to customers on the licensee's business premises but not at a party or similar social function or in a reserved area, or where there is other than an arm's length relationship with the customer.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- The deduction available for expenditure on the special offers of food or beverages is not limited to 50% under section DG 1.
- The deduction available for expenditure on the allowance paid to an employee is not limited to 50% under section DG 1.

The period for which this Ruling applies

This Ruling will apply for the period 1 April 1999 to 31 March 2004.

This Ruling is signed by me on the 17th day of May 1999.

Martin Smith
General Manager (Adjudication & Rulings)

COMMENTARY ON PUBLIC RULING BR Pub 99/3

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in public ruling BR Pub 99/3 ("the Ruling").

All references to a "licensee" are to any person who carries on business as a licensed premises' operator.

Background

Under section DG 1, the deduction allowed for expenditure or loss on "specified types of entertainment" set out in Part A of Schedule 6A is limited to 50% of that expenditure, unless the entertainment or benefit is "excluded entertainment" under Part B of the Schedule. If the entertainment or benefit is excluded entertainment under Part B, the expenditure or loss is fully deductible, provided it is incurred in deriving the taxpayer's gross income or is necessarily incurred in carrying on a business for the purpose of deriving the taxpayer's gross income.

Section DG 1 also treats an allowance paid to reimburse expenditure by an employee on specified types of entertainment that fall within Part A, as being expenditure by the taxpayer on the particular specified type of entertainment.

Legislation

Section DG 1 states:

(1) This section and Schedule 6A are intended to limit the amount of the deduction allowed for expenditure or loss incurred on certain types of entertainment, being entertainment that generally involves a significant element of private benefit, to 50% of that expenditure or loss (but subject always to the express provisions of this section and Schedule 6A).

(2) If a taxpayer incurs expenditure or loss on a type of entertainment or benefit (whether consumed or enjoyed by the taxpayer or anyone else) specified in Part A of Schedule 6A then, unless and to the extent that the entertainment or benefit is specified as excluded entertainment in Part B of that Schedule, the deduction allowed for that expenditure or loss will be limited to 50% of the amount that would be allowed as a deduction but for this section.

(3) For the purposes of this section -

(a) A taxpayer will be treated as incurring expenditure on a specified type of entertainment to the extent that the taxpayer pays an allowance for, or reimburses an employee's expenditure on, the specified type of entertainment and the allowance or reimbursement is exempt income under section CB 12:

Part A of Schedule 6A lists four "specified types of entertainment":

- Corporate boxes
- Holiday accommodation
- Pleasure craft
- Food or beverages.

Effectively, a description of "food or beverages" for the purposes of Part A of Schedule 6A is contained in Clause 4 of Part A, which states:

Food or beverages -

(a) Provided or consumed as an incidence of any of the types of entertainment specified in clauses 1 to 3; or

(b) Provided or consumed off the business premises of the taxpayer; or

(c) Provided or consumed on the business premises of the taxpayer -

(i) At a party, reception, celebration meal, or other similar social function; or

(ii) In an area of the premises, such as a boardroom or an executive or client dining room, reserved for use at the time only by those at a certain level of seniority and their guests and not open to all employees of the taxpayer working in the premises.

The Schedule defines "Business premises" as:

(a) The normal business premises; or

(b) A temporary workplace,-

of the taxpayer or of an associated person (not being premises or a workplace established principally for the purposes of enjoying entertainment).

Part B of the Schedule lists *excluded entertainment* (i.e. entertainment which, being one of the *specified types of entertainment* under Part A of the Schedule, would otherwise be subject to the 50% deduction limit). Clause 9 of Part B states:

Entertainment that is provided by the taxpayer for market value (or otherwise in an arm's length transaction) in the ordinary course of the taxpayer's business which consists of providing one or more specified types of entertainment.

Application of the Legislation

The 50% deduction limit in section DG 1 applies to expenditure that is otherwise fully deductible but which is a "specified type of entertainment" under Part A and not "excluded entertainment" under Part B of Schedule 6A.

Special offers of food or beverages to the public:

A. As a "specified type of entertainment"

When a licensee makes a special offer of food or beverages to the public, the expenditure on that food or beverages is, in most cases, not a *specified type of entertainment* under Part A of the Schedule (and thus not subject to the 50% deduction limit). This is despite the food or beverages being provided or consumed on the "business premises" of the licensee, in terms of clause 4(c) of Part A.

Clause 4(c) has two sets of criteria, both of which must be met before such expenditure falls within a *specified type of entertainment*:

- The first requires that the food or beverages are provided or consumed on the "business premises" of the taxpayer; and
- The second contains two alternatives, which require that the food or beverages be provided or consumed, either at a party [clause 4(c)(i)], or in a reserved area of the premises [clause 4(c)(ii)].

The special offers of food or beverages made to the public by licensees, although meeting the first set of criteria in clause 4(c), do not ordinarily come within either of the alternatives in the second set.

In relation to the first set of criteria in clause 4(c), the licensed premises where the offer occurs are the licensee's "business premises" as they are the normal business premises of the licensee. The definition of "business premises" in the Schedule excludes "premises or a workplace established principally for the purposes of enjoying entertainment". It could be argued that licensed premises are established principally for the purposes of enjoying entertainment and so would not be the licensee's "business premises". However, it is considered that from the licensee's perspective, the licensed premises are established principally for the purpose of running a business and not for the purposes of enjoying entertainment, and so are the licensee's "business premises" in terms of the Schedule.

Note that, for the purposes of the definition of "business premises", licensed premises are not a temporary workplace of a person who merely conducts a business meeting at the licensed premises because, from that person's perspective, the licensed premises are a workplace established principally for the purposes of enjoying entertainment.

As already indicated in relation to the second set of criteria in clause 4(c), food or beverages provided or consumed on "business premises" (apart from food or beverages consumed in a corporate box, holiday accommodation, or a pleasure craft) are only included as a *specified type of entertainment* if the food or beverages are consumed either at a party or similar social function, or in a reserved area of the premises. In some situations, food and beverages consumed on licensed premises may be consumed at a party or similar social function or in an area reserved at the time for use by certain employees and guests. However, special offers of food and beverages of the type to which the Ruling applies that are made to the public by the licensee during ordinary opening hours of the licensed premises, would not ordinarily be consumed at a party or similar social function, or in an exclusive area as contemplated in clause 4(c) of the Schedule.

B. As "excluded entertainment"

Quite apart from the position outlined in the above, special offers of food or beverages of the type referred to would be *excluded entertainment* under Part B of the Schedule (and thus not be subject to the 50% deduction limit).

This is because those special offers of food or beverages would usually come within clause 9 of Part B. Clause 9 applies to expenditure on entertainment that is provided at market value, or otherwise in an arm's length transaction, in the ordinary course of a taxpayer's business where that business consists of providing one or more of the specified types of entertainment. Expenditure on such *excluded entertainment* is therefore fully deductible if the entertainment is provided by a business at market value or in an arm's length transaction.

It follows that clause 9 applies to special offers of food or beverages made by a licensee to members of the general public if the food or beverages are provided either at market value, or are otherwise provided in an arm's length transaction in the ordinary course of the licensee's business. In particular:

- The cost to the licensee of "happy hours", where reduced price drinks are provided to customers during a particular time period in an arm's length transaction in the ordinary course of the licensee's business, will be fully deductible.

- The cost to the licensee of free drinks, provided on certain days or at certain times to customers or categories of customers selected from members of the general public, is fully deductible if the provision of such free drinks occurs in an arm's length transaction in the ordinary course of the licensee's business.
- The cost of providing meals, offered in a "two meals for the price of one" deal, is fully deductible if the meals are provided in an arm's length transaction with customers in the ordinary course of the licensee's business.
- The cost to the licensee of drinks provided to customers in "toss the boss" competitions is also fully deductible if the competitor and the licensee have an arm's length relationship. Where this occurs, the free drink prizes are provided in an arm's length transaction in the ordinary course of business.

Allowances for free drinks for customers

A licensee may pay a hospitality allowance to an employee, such as a bar manager, to cover the costs of providing free drinks to customers in the ordinary course of business. The expenditure on such an allowance is not subject to the 50% deduction limit. This is because the drinks are being provided or consumed on the licensee's business premises but not at a party or similar social function or in a reserved area of the premises as contemplated under clause 4(c) of Part A to the Schedule, or are not being provided where there is other than an arm's length relationship with the consumer.

The allowance is fully deductible if it is incurred by the licensee in deriving the licensee's gross income or if it is necessarily incurred by the licensee in carrying on a business for the purpose of deriving gross income.

Example 1

A licensee offers half-price drinks on Saint Patrick's day to all patrons who wear a green hat. All other drinks are provided at full price.

As the half-price drinks are provided to the green hat wearers in arm's length transactions in the ordinary course of the licensee's business, the expenditure on the drinks is excluded from Part A of the Schedule and is fully deductible to the licensee.

Example 2

A licensee offers the next round of drinks free for a period of one hour on a Friday night to any customer who, following the purchase of a round, is able to score more than 10 by throwing a single dart at a dartboard.

As the free rounds of drinks are available to all customers in arm's length transactions in the ordinary course of the licensee's business, the expenditure on the drinks is excluded from Part A of the Schedule and is fully deductible to the licensee.

Correction to a previous item

Qualifying Company Election Tax

In Tax Information Bulletin volume 4, number 8 (April 1993) the Commissioner published a statement in respect of Section 394D (1) of the Income Tax Act 1976 Act (Section ME 4 (1) of the Income Tax Act 1994), which concluded that:

"... the Qualifying Company Election Tax (QCET) that a closely held company pays when it elects to become a Qualifying Company is "income tax paid", so it should be credited to the company's imputation credit Account (ICA) under section 394D(l) of the Income Tax Act 1976."

A review of that statement has been undertaken, and as a result of that review Inland Revenue has concluded that the payment of QCET does not give rise to a credit in the ICA. The statement in TIB Vol.4 No. 8 is now withdrawn. The withdrawal is effective from 1 June 1999.

The reasons for this view are:

Section ME 4 (1) of the Income Tax Act 1994 provides that " There shall arise as credits to be recorded in a company's imputation credit account for any imputation year the following amounts:

(a) The amount of any income tax paid by the company during the imputation year to meet a provisional tax obligation under the provisional tax rules or to satisfy an income tax liability under section BC 9, ...

Therefore, for the payment of QCET to give rise to an ICA credit, it must be either "provisional tax" or "terminal tax".

Provisional tax

"Provisional tax" is defined in section OB 1 of the Act as meaning:

... an amount payable as provisional tax under the provisional tax rules:

The term "provisional tax rules" is defined in section OZ 1 and means:

... sections LD 6, LD 7, MB 1 to MB 6, MB 8 to MB 10, MB 12, and MC 1 of [the Income Tax Act 1994] and sections 119, 139B, and 178 of the Tax Administration Act 1994:

None of those sections provide for the payment of qualifying company election tax. It is therefore Inland Revenue's view that the payment of QCET does not constitute the payment of a provisional tax obligation as required by section ME 4 (1)(a) of the Act.

Terminal tax:

Section ME 4(1)(a) provides that "income tax paid ... to satisfy an income tax liability under section BC 9" will give rise to an ICA credit. Therefore it is necessary to consider whether the payment of QCET can fall within the ambit of the phrase "income tax paid ... to satisfy an income tax liability under section BC 9".

Section BC 8 prescribes the manner in which a taxpayer's income tax liability is to be calculated. Having established the taxpayer's tax liability in respect of their taxable income for the year, section BC 9 of the Act provides that the amount of tax payable is reduced by the taxpayer's credits for tax paid or withheld during the income year. The credits that are so offset do not include any amount of QCET that may have been paid during the year. Where the taxpayer's income tax liability (established pursuant to section BC 8), exceeds the credits that are available, the taxpayer is required to pay terminal tax.

Therefore, where section ME 4(1)(a) refers to "income tax paid to satisfy a taxpayer's income tax liability under section BC 9", it is referring to the payment of terminal tax, in respect of the taxable income that the taxpayer derived during the year. QCET is not paid to satisfy a taxpayer's income tax liability under section BC 9, rather it is paid as a consequence of electing to become a qualifying company.

It is our conclusion that the payment of QCET does not fall within the meaning of the phrase "...provisional tax obligation under the provisional tax rules or to satisfy an income tax liability under section BC 9...". As a result, the payment of QCET does not give rise to a credit in the paying company's imputation credit account.

Application of the new interpretation

From 1 June 1999 newly electing qualifying companies should not treat QCET as a credit in the ICA.

It is not the intention of the Commissioner to retrospectively apply the new policy. However if a company which has applied the previously published policy wishes to be reassessed, its case will be viewed on its own merits.

Booklets available from Inland Revenue

The list shows all of Inland Revenue's information booklets as at the date of this Tax Information Bulletin. There is also a brief explanation of what each booklet is about.

Some booklets could fall into more than one category, so you may wish to skim through the entire list and pick out the booklets that you need. To order any of these booklets, call the forms and stationery number listed under "Inland Revenue" in the blue pages at the front of your phone book. This is an automated service, and you'll need to have your IRD number handy when you call.

We publish this list in the TIB every March, June, September and December. Updates are available at other times from our website at http://www.ird.govt.nz. You can also download many of these booklets from our website.

General information

Binding rulings (IR 115G) – Mar 1998: *Explains binding rulings, which commit Inland Revenue to a particular interpretation of the tax law once given.*

Disputing a notice of proposed adjustment (IR 210K) – Oct 1996: *If we send you a notice to tell you we're going to adjust your tax liability, you can dispute the notice. This booklet explains the process you need to follow.*

Disputing an assessment (IR 210J) – Oct 1996: *Explains the process to follow if you want to dispute our assessment of your tax liability, or some other determination.*

Gift duty (IR 654) – Jun 1998: *Explains the duty payable on gifts.*

How to tell if you need a special tax code (IR 23G): *Information about getting a special "flat rate" of tax deducted from your income, if the usual tax codes don't suit your particular circumstances.*

If you disagree with us (IR 210Z) – Sep 1996: *This leaflet summarises the steps involved in disputing an assessment.*

Income from a Maori Authority (IR 286A) – Feb 1996: *For people who receive income from a Maori authority. Explains which tax return the individual owners or beneficiaries fill in and how to show the income.*

Inland Revenue audits (IR 297) – Mar 1998: *For business people and investors. It explains what is involved if you are audited by Inland Revenue; who is likely to be audited; your rights during and after the audit, and what happens once an audit is completed.*

Maori Community Officer Service (IR 286) – Apr 1996: *An introduction to Inland Revenue's Maori Community Officers and the services they provide.*

New secondary tax codes and extra emolument rates (IR 184R) – May 1998: *Explains the rates and codes available since 1 July 1998.*

New Zealand tax residence (IR 292) – Jun 1997: *An explanation of who is a New Zealand resident for tax purposes.*

Overseas private pensions (IR 257) – Apr 1999: *Explains the tax obligations for people who have interests in a private superannuation scheme or life insurance annuity policy that is outside New Zealand.*

Overseas social security pensions (IR 258) – Jun 1997: *Explains how to account for income tax in New Zealand if you receive a social security pension from overseas.*

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

Provisional tax (IR 289) – Jun 1998: *People whose residual income tax is $2,500 or more must generally pay provisional tax for the following year. This booklet explains what provisional tax is, and how and when it must be paid.*

Putting your tax affairs right (IR 282) – Jun 1997: *Explains the advantages of telling Inland Revenue if your tax affairs are not in order, before we find out in some other way. This book also sets out what will happen if someone knowingly evades tax, and gets caught.*

Rental income (IR 264) – Jun 1998: *An explanation of taxable income and deductible expenses for people who own rental property. This booklet is for people who own one or two rental properties, rather than larger property investors.*

Self-employed or an employee? (IR 186) – Jun 1997: *Sets out Inland Revenue's tests for determining whether a person is a self-employed contractor or an employee. This determines what expenses the person can claim, and whether s/he must pay ACC premiums.*

Stamp duty (IR 665) – Jun 1998: *Explains what duty is payable on transfers of real estate and some other transactions. Written for individual people rather than solicitors and legal firms.*

Student loans – going overseas (SL 13) – Aug 1998: *A brief guide to the student loan obligations of a borrower who goes overseas. This information is also included in the SL 5 booklet.*

Student loans – how to get one and how to pay one back (SL 5) – 1999: *This booklet is published jointly with the Ministry of Education, to tell students everything they need to know about getting a loan and paying it back.*

Student loans – interest and calculations (SL 12) – Aug 1998: *A brief guide how the interest on a student loan is calculated. This information is also included in the SL 5 booklet.*

Student Loans – making repayments to Inland Revenue (SL 14) – Aug 1998: *A brief guide to repaying your student loan. This information is also included in the SL 5 booklet.*

Tax facts for income-tested beneficiaries (IR 40C) – Aug 1997: *Vital information for anyone who receives an income-tested benefit and also has some other income.*

Taxes and duties (IR 295) – May 1995: *A brief introduction to the various taxes and duties payable in New Zealand.*

Taxpayer obligations, interest and penalties (IR 240) – Apr 1999: *A guide to the laws dealing with interest, offences and penalties.*

Trusts and estates – income tax rules (IR 288) – May 1995: *An explanation of how estates and different types of trusts are taxed in New Zealand.*

Visitor's tax guide (IR 294) – Nov 1995: *A summary of New Zealand's tax laws and an explanation of how they apply to various types of visitors to this country.*

We'll help you foot the bill for your growing family (IR 211) – Jun 1999: *Explains the different kinds of assistance available to families and how to apply.*

Business and employers

ACC residual claims (ACC 450 and ACC 451) – Mar 1999: *These booklets explain the residual claims levy and provides the levy rates for employers and self-employed (respectively).*

Dairy farming (IR 252) – Jul 1998: *A guide to GST and PAYE obligations of dairy farmers.*

Depreciation (IR 260) – Apr 1999: *Explains how to calculate tax deductions for depreciation on assets used to earn assessable income.*

Direct selling (IR 261) – Aug 1996: *Tax information for people who distribute for direct selling organisations.*

Electronic payments to Inland Revenue (IR 583) – Jun 1999: *Explains how employers and other people who make frequent payments to Inland Revenue can have these payments automatically deducted from their bank accounts.*

Employer's guide (IR 335) – Mar 1999: *Explains the tax obligations of anyone who is employing staff, and explains how to meet these obligations. Anyone who registers as an employer with Inland Revenue will receive a copy of this booklet.*

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

First-time employer's guide (IR 333) – Apr 1999: *Explains the tax obligations of being an employer. Written for people who are thinking of taking on staff for the first time.*

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

GST – do you need to register? (IR 365) – May 1999: *A basic introduction to goods and services tax, which will also tell you if you have to register for GST.*

GST guide (IR 375) – May 1999: *An in-depth guide which covers almost every aspect of GST. Everyone who registers for GST gets a copy of this booklet.*

IR 56 taxpayer handbook (IR 356) – Mar 1999: *A booklet for part-time private domestic workers, embassy staff, nannies, overseas company reps and Deep Freeze base workers who make their own PAYE payments.*

ir-File – electronic filing (IR 343) – Mar 1999: *General information about electronic PAYE filing for employers, how to register and step-by-step instructions on how to download and instal ir-File software.*

Making payments (IR 87C) – Nov 1996: *How to fill in the various payment forms to make sure payments are processed quickly and accurately.*

PAYE deduction tables – 2000
- **Weekly and fortnightly (IR 340)**
- **Four-weekly and monthly (IR 341)**

Tables that tell employers the correct amount of PAYE to deduct from their employees' wages from 1 April 1999.

Retiring allowances and redundancy payments (IR 277) – Aug 1997: *An explanation of the tax treatment of these types of payments.*

Smart business (IR 320) – Apr 1999: *An introductory guide to tax obligations and record keeping for businesses and non-profit organisations.*

Taxes and the taxi industry (IR 272) – Feb 1996: *An explanation of how income tax and GST apply to taxi owners, drivers, and owner-operators.*

Resident withholding tax and NRWT

Approved issuer levy (IR 291A) – May 1995: *For taxpayers who pay interest to overseas lenders. Explains how you can pay interest to overseas lenders without having to deduct NRWT.*

Non-resident withholding tax payer's guide (IR 291) – Mar 1995: *A guide for people or institutions who pay interest, dividends or royalties to people who are not resident in New Zealand.*

Resident withholding tax on dividends (IR 284) – Feb 1998: *A guide for companies, telling them how to deduct RWT from the dividends that they pay to their shareholders.*

Resident withholding tax on interest (IR 283) – Jul 1996: *A guide to RWT for people and institutions which pay interest.*

Resident withholding tax on investments (IR 279) – Jun 1996: *An explanation of RWT for people who receive interest or dividends.*

Non-profit bodies

Charitable organisations (IR 255) – May 1993: *Explains what tax exemptions are available to approved charities and donee organisations, and the criteria which an organisation must meet to get an exemption.*

Clubs and societies (IR 254) – Feb 1998: *Explains the tax obligations which a club, society or other non-profit group must meet.*

Education centres (IR 253) – Jun 1994: *Explains the tax obligations of schools and other education centres. Covers everything from kindergartens and kohanga reo to universities and polytechnics.*

Gaming machine duty (IR 680A) – Jun 1997: *An explanation of the duty which must be paid by groups which operate gaming machines.*

Grants and subsidies (IR 249) – Jun 1994: *An guide to the tax obligations of groups which receive a subsidy, either to help pay staff wages, or for some other purpose.*

Company and international issues

Company amalgamations (IR 4AP) – Feb 1995: *Brief guidelines for companies considering amalgamation. Contains an IR 4AM amalgamation declaration form.*

Consolidation (IR 4E) – Mar 1993: *An explanation of the consolidation rules, which allow a group of companies to be treated as a single entity for tax purposes.*

Controlled foreign companies (IR 275) – Nov 1994: *Information for NZ residents with interests in overseas companies (for larger investors, rather than those with minimal overseas investments).*

Foreign dividend withholding payments (IR 274A) – Mar 1995: *Information for NZ companies that receive dividends from overseas companies. This booklet also deals with the attributed repatriation and underlying foreign tax credit rules.*

Foreign investment funds (IR 275B) – Oct 1994: *Information for taxpayers who have overseas investments, but who don't have a controlling interest in the overseas entity.*

Imputation (IR 274) – Dec 1997: *A guide to dividend imputation for New Zealand companies.*

Qualifying companies (IR 435) May 1999: *An explanation of the qualifying company rules, under which a small company with few shareholders can have special tax treatment of dividends, losses and capital gains.*

Child support booklets

A guide for parents who pay child support (IR 170) – May 1999: *Information for parents who live apart from their children.*

Child support – a guide for custodians (IR 171) – Feb 1999: *Information for parents who take care of children and are eligible to receive child support.*

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

Child support administrative reviews – how to apply (CS 69A) – Feb 1998: *How to apply for a review of the amount of child support you receive or pay, if you have special circumstances.*

Child support administrative reviews – how to respond (CS 69B) – Apr 1998: *Information about the administrative review process, and how to respond if you are named in a review application.*

Child support and redundancy (CS 277) – Jul 1998: *An explanation of how becoming redundant can affect a paying parent's child support liability.*

Child support and the Family Court (CS 51) – Apr 1998: *Explains what steps people need to take if they want to go to the Family Court about their child support.*

Child support – estimating your income (IR 151) – Apr 1999: *Explains how to estimate your income so your child support liability reflects your current circumstances.*

Child support – how the formula works (CS 68) – Dec 1998: *Explains the components of the formula and gives up-to-date rates.*

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

Child support – shared care (IR 156) – Jan 1999: *Explains what shared care is, and how it affects the child support assessment.*

Problems with our child support service? (CS 287) – Jul 1997: *Explains how our Customer Service Advisors can help if our usual services haven't resolved your child support problems.*

Due dates reminder

July 1999

5 Large employers: PAYE deductions and deduction schedules for period ended 30 June 1999 due.

7 Provisional tax and/or Student Loan interim repayments: first 2000 instalment due for taxpayers with March balance dates.

Second 2000 instalment due for taxpayers with November balance dates.

Third 1999 instalment due for taxpayers with July balance dates.

1999 income tax returns due to be filed for all non-IR 5 taxpayers with balance dates from 1 October 1997 to 31 March 1999.

20 Large employers: PAYE deductions and deduction schedules for period ended 15 July 1999 due.

Small employers: PAYE deductions and deduction schedules for period ended 30 June 1999 due.

FBT return and payment for quarter ended 30 June 1999 due.

Gaming machine duty return and payment for month ended 30 June 1999 due.

RWT on interest deducted during June 1999 due for monthly payers.

RWT on dividends deducted during June 1999 due.

Non-resident withholding tax (or approved issuer levy) deducted during June 1999 due.

30 GST return and payment for period ended 30 June 1999 due.

August 1999

5 Large employers: PAYE deductions and deduction schedules for period ended 31 July 1999 due.

7 Provisional tax and/or Student Loan interim repayments: first 2000 instalment due for taxpayers with April balance dates.

Second 2000 instalment due for taxpayers with December balance dates.

Third 1999 instalment due for taxpayers with August balance dates.

1999 income tax returns due to be filed for all non-IR 5 taxpayers with April balance dates.

20 Large employers: PAYE deductions and deduction schedules for period ended 15 August 1999 due.

Small employers: PAYE deductions and deduction schedules for period ended 31 July 2000 due.

Gaming machine duty return and payment for month ended 31 July 1999 due.

RWT on interest deducted during July 1999 due for monthly payers.

RWT on dividends deducted during July 1999 due.

Non-resident withholding tax (or approved issuer levy) deducted during July 1999 due.

31 GST return and payment for period ended 31 July 1999 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.

Name _____

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√	***Standard practice statements***	***Comment Deadline***
☐	*Public binding Rulings*	
	PU0009(re-issue) Debt forgiveness in consideration of natural love and affection.	31 July 1999
	Interpretation statements	

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

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The Manager (Field Liaison)

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