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Inland Revenue
Te Tari Taake

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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.

PORTABLE TOILETS – DRAFT GENERAL DEPRECIATION DETERMINATION

Currently, there is no specific general economic depreciation rate for portable toilets. In the past taxpayers have been able to use the default class under the "Cleaning, refuse and recycling" industry category, which sets a depreciation rate of 22% D.V. (15.5% S.L.), based on an estimated useful life of 8 years. For those portable toilets that are let for short-term periods of less than one month, the "Hire equipment (short-term hire of one month or less only)" asset category sets a depreciation rate of 33% D.V. for "Cleaning, refuse and recycling equipment for hire with a general DV rate of 22%", based on an estimated useful life of 5 years.

We have been advised that it is usual for portable toilets to be let for both short and long-term periods, with the same toilets being used for both purposes. Under the current depreciation schedule, only those toilets let exclusively for short-term periods could use the preferential depreciation rate under the "Hire equipment" asset category. We have also been advised that the useful life of portable toilets, whether hired for short or long-term periods is 5 years.

The Commissioner proposes to issue a general depreciation determination that will insert a new asset class of "Portable toilets" into the "Cleaning, refuse and recycling" industry category, with a depreciation rate of 33% D.V. (24% S.L.), based on an estimated useful life of 5 years.

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

GENERAL DEPRECIATION DETERMINATION DEPX

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

1. Application

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

This determination applies to "depreciable property" other than "excluded depreciable property" for the 2000 and subsequent income years.

2. Determination

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

- Inserting into the "Cleaning, refuse and recycling" industry category the general asset class, estimated useful life, and diminishing value and straight-line depreciation rates listed below:

Cleaning, refuse and recycling	Estimated useful life (years)	DV banded dep'n rate (%)	SL equivalent banded dep'n rate (%)
Portable toilets	5	33	24

3. Interpretation

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

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

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

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

ACCRUAL DETERMINATIONS – FEE SETTING

Regulations 3(1) and 11(1) of the Income Tax (Determinations) Regulations 1987 require Inland Revenue to charge for accrual regime determinations made in terms of section 90 of the Tax Administration Act 1994. Under section 90 the Commissioner is empowered to determine certain matters relating to financial arrangements. A taxpayer may wish to apply for a determination to ascertain the tax treatment of a particular financial arrangement.

The criteria for setting these fees are set out in regulations 11(2) and 11(3).

For applications received on or after 1 October 1999 the GST inclusive fees are:

Application fee (non-refundable)	**$310**
Processing fee (per hour or part thereof, exclusive of the first two hours)	**$155**

Regulation 13 allows the Commissioner to waive fees in exceptional circumstances, either in full or in part.

Applications for determinations should be made to:

Assistant General Manager
Adjudication & Rulings
Inland Revenue
National Office
PO Box 2198
WELLINGTON

The information relating to applications is set out in regulation 3(1).

INTERPRETATION STATEMENTS

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

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

EXCLUSION FROM THE TERM "DIVIDENDS" – WHETHER DISTRIBUTION MADE IN LIEU OF DIVIDENDS' PAYMENT

Summary

This interpretation statement considers the application of section CF 3(1)(b) of the Income Tax Act 1994 in relation to the factors to be taken into account in determining whether an acquisition, redemption, or cancellation of shares is made in lieu of the payment of dividends.

Section CF 2 provides a wide definition of the term "dividends". Prima facie, all distributions from a company to its shareholders are dividends. Under section CF 2(1)(g), a dividend includes any amount distributed in respect of the acquisition, redemption, or cancellation of shares in a company or other reduction or return of share capital of a company. However, section CF 3 provides certain exclusions from the definition, including distributions made on the repurchase, redemption, or cancellation of shares in certain situations.

Broadly speaking, the legislation provides a rebuttable presumption that a capital reduction of 15% or more is a return of capital, rather than a dividend. The Commissioner can rebut this presumption if it appears that the company is returning capital in substitution for a dividend. Alternatively, upon application, the Commissioner can notify a company that a 10% or more reduction is not in substitution of a dividend on similar grounds.

Included in the tests of whether an amount distributed to shareholders in the above circumstances is excluded from the term "dividends" under section CF 3(1)(b), is whether the payment is "made in lieu of the payment of dividends". If it is established that the payment is made in lieu of dividends, the exclusion does not apply and the amount will remain a dividend under section CF 2. The Commissioner takes into account a number of factors, set out in section CF 3(1)(b)(iii), in determining whether the "in lieu of dividend" test is met. This item provides some guidance as to how the Commissioner applies his discretion in determining whether these factors apply to a given situation.

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

Issues

Section CF 3(1)(b)(iii) lists the factors to which the Commissioner must have regard in satisfying himself that a repurchase, redemption, or cancellation of shares is not made in lieu of the payment of dividends. These are:

- The nature and amount of dividends paid by the company prior or subsequent to the relevant cancellation; and
- The issue of shares in the company subsequent to the relevant cancellation; and
- The expressed purpose or purposes of the relevant cancellation; and
- Any other relevant factor.

The issue is the nature of the factors and circumstances the Commissioner takes into account in exercising his discretion in situations involving the cancellation of shares.

Background

Law reform introduced by the Companies Act 1993 now makes it easier for a company to repurchase or redeem its own shares. The Act provides that the company must have the express power to do so under its constitution. In essence, the share repurchase provisions are a means of returning capital back to shareholders, which previously required an application to the High Court.

Section 52 of that Act provides that the company must satisfy a solvency test before making any distribution to shareholders. The term "solvency test" is defined in section 4 of the Act, and its effect is to ensure that the company does not distribute amounts greater than its net assets and has sufficient funds available to meet its normal business outgoings.

The company law reform has meant that income tax rules also had to be formulated to cover both share repurchases and share redemptions. A series of tests known as the "brightline" tests were introduced into the Income Tax Act 1994 which, prima facie, allow such repurchases or redemptions on a tax-free basis if specific criteria have been met. In summary, these tests treat the repurchases of small parcels of shares (generally where the repurchase is less than 10% of the market value of all shares) as dividends, and larger parcels as tax-free. This is necessary to prevent companies distributing their earnings to their shareholders by way of tax-free repurchases and not dividends.

It is recognised that substantial repurchases should be treated for tax purposes as a partial liquidation of the company. Where the cancellation is part of a pro rata offer to all shareholders, the capital reduction must be either at least 10%, or at least 15% of all shares in the company. For a reduction that falls between the 10% and 15% thresholds, the company must make application to the Commissioner. The "brightline" test, which applies to shares that are not non-participating redeemable shares, was set at 15% - considered to be approximately three times the typical dividend yield - to provide reasonable scope for a company genuinely reducing the size of its operation to fund a one-off distribution to its shareholders from tax-free reserves.

When taxpayer behaviour defeats the purpose of the new rules, the Commissioner has a residual discretion to treat a distribution on the repurchase of shares as being in lieu of the payment of dividends. Evidence of this would be if the repurchase were made under an arrangement to acquire, redeem, or otherwise cancel shares in lieu of the payment of a dividend. Factors that the Commissioner takes into account in deciding the matter are contained in section CF 3(1)(b)(iii) and include the nature and amount of dividends paid by the company prior to, and subsequent to, the particular cancellation, and whether there is any subsequent issue of shares after the cancellation. In addition, the Commissioner has the discretion to take into account any other relevant factors (section CF 3(1)(b)(iii)(D)). The "in lieu of dividend" test applies regardless of whether the shares are non-participating shares and regardless of whether the brightline tests are satisfied.

Legislation

Section CF 3(1)(b) provides an exclusion from the term "dividends" of any amount distributed on the acquisition, redemption, or cancellation of shares in a company under certain circumstances. It states:

In this Act, and subject to the provisions of this section, the term "dividends", in relation to any company, does not include -

(b) Any amount distributed upon the acquisition, redemption, or other cancellation (in whole but not in part) by the company of any share in the company (referred to in this paragraph as the "relevant cancellation") where -

- (i) If the share is not a non-participating redeemable share, -
  - (A) The relevant cancellation is part of a pro rata cancellation where the company has a fifteen percent capital reduction; or
  - (B) The relevant cancellation is part of a pro rata cancellation where the company has a ten percent capital reduction and, upon application to the Commissioner by the company in such form as the Commissioner may specify, the Commissioner notifies the company in writing that the Commissioner has no reasonable grounds to conclude (having regard to the factors specified in subparagraph (iii)(A) to (D) that either the whole or any part of the relevant cancellation is made in lieu of the payment of dividends; or
  - (C) The relevant cancellation is not part of a pro rata cancellation but the shareholder suffers a fifteen percent interest reduction; or
  - (D) The company is an unlisted trust and the share was issued on such terms that its redemption is subject to subparagraph (iv)(A); or
  - (E) The relevant cancellation is not part of a pro-rata cancellation and the company is an unlisted trust and the share was issued on such terms that its redemption is subject to subparagraph (iv)(B); and
- (ii) The relevant cancellation is not an on-market acquisition; and
- (iii) The Commissioner has given, in respect of the relevant cancellation, the notice referred to in subparagraph (i)(B) or otherwise is satisfied that neither the whole nor any part of the relevant cancellation was made in lieu of the payment of dividends, having regard to -
  - (A) The nature and amount of dividends paid by the company prior or subsequent to the relevant cancellation; and
  - (B) The issue of shares in the company subsequent to the relevant cancellation; and
  - (C) The expressed purpose or purposes of the relevant cancellation; and
  - (D) Any other relevant factor; and

(iv) To the extent that the amount distributed does not exceed -
- (A) In any case where the company is an unlisted trust and the share is issued on such terms that its redemption is subject to this subsubparagraph, the available subscribed capital per share; and
- (B) In any other case, the available subscribed capital per share cancelled:

The definitions of "fifteen percent capital reduction" and "ten percent capital reduction" are contained in section CF 3(14):

"Fifteen percent capital reduction" means, in respect of any company and any pro rata cancellation (referred to in this definition as the "relevant cancellation"), the circumstance where the aggregate amount paid by the company on account of the relevant cancellation (or paid by the company at the same time on account of any other pro rata cancellation of shares other than non-participating redeemable shares) is equal to or greater than 15% of the market value of all shares (not being non-participating redeemable shares) in the company at the time the company first notified shareholders of the proposed relevant cancellation (or, in any case where no advance notice was given, the time of the relevant cancellation):

"Ten percent capital reduction" means, in respect of any company and any pro rata cancellation (referred to in this definition as the "relevant cancellation"), the circumstance where the aggregate amount paid by the company on account of the relevant cancellation (or paid by the company at the same time on account of any other pro rata cancellation of shares other than non-participating redeemable shares) is equal to or greater than 10% of the market value of all shares (not being non-participating redeemable shares) in the company at the time the company first notified shareholders of the proposed relevant cancellation (or, in any case where no advance notice was given, the time of the relevant cancellation):

Section FC 1(1) states:

Where in any debenture issued by a company the rate of interest payable in respect of the debenture is not specifically determined, but is determinable from time to time -

(a) By reference to the dividend payable by the company; or

(b) By reference to the company's profits, however measured, for debentures issued after 8 pm New Zealand Standard Time on 23 October 1986 other than those issued under a binding contract entered into before that time; or

(c) In any other manner, for debentures issued before the time specified in paragraph (b),-

no deduction shall be made, in calculating the assessable income of the company, in respect of any interest payable under the debenture or of any expenditure or loss incurred in connection with the debenture or in borrowing the money secured by or owing under it.

Section FC 2(1) deals with interest on debentures issued in substitution for shares:

Where a company has issued debentures to its shareholders or to any class of its shareholders, and the amount of the debenture or debentures issued to each shareholder of the company or of that class has been determined by reference to the number or to the available subscribed capital per share of, or by reference or otherwise to, the shares in that company or in any other company (whether or not that other company is being or has been liquidated) that were held by or on behalf of the shareholder at the time the debentures were issued or at any earlier time, no deduction shall be allowed to the company, in respect of any interest payable under any debenture so issued or of any expenditure or loss incurred in connection with any such debenture or in borrowing the money secured by or owing under any such debenture.

Section FC 2(2) provides a link to FC 1:

Section FC 1 shall apply with respect to all debentures to which subsection (1) applies and to the interest payable under those debentures, in the same manner as if those debentures and that interest were debentures and interest of the kinds referred to in section FC 1.

The definition of "share" or "shares" is contained in section OB 1 and includes:

(a) Except in section DF 7, includes-
- (i) ...
- (ii) Any debenture to which section FC 1 or FC 2 applies:

Application of the Legislation

The Valabh Committee in its final report *The Taxation of Distributions from Companies* (July 1991) at page 31 discussed the need to distinguish between transactions that used the share cancellation process as a substitute for paying shareholders a dividend, and genuine commercially motivated transactions:

A difficulty in defining and applying an anti-avoidance provision aimed at reductions in capital (or share repurchases) made in substitution for assessable dividends is in drawing a line between genuine commercially motivated transactions and those intended to avoid tax. The extremes between these alternatives are known. For example, where a company normally pays two dividends a year and one of those dividends in terms of approximate date and quantum is not paid but a partial reduction is made, it is clear that the capital reduction is in substitution of a dividend. At the other extreme, if the company sold a substantial part of its business and paid a substantial amount in addition to the normal dividend, it would not be a dividend substitution.

Under section CF 3(1)(b)(iii),the Commissioner has a residual discretion to deem the share cancellation to be a dividend if it appears that the company is returning capital in substitution for dividends. In exercising this discretion, the Commissioner must consider the factors outlined in that provision. A discussion of these factors follows.

Nature and amount of dividends paid by the company prior or subsequent to the relevant cancellation

Prima facie, the nature and amount of dividends paid prior to and after a share repurchase (or redemption) may indicate that amounts paid on repurchase are in lieu of a dividend. This may be the case if it appears that the company has not paid dividends, which would ordinarily be payable, prior to or after the acquisition, but has instead built-up its retained earnings and paid these out on a share acquisition. A low or no dividend policy, or an unexplained change in policy to reduce dividends, together with an increase in retained earnings, may indicate that the company is, or has been, taking such an approach.

Where the Commissioner is asked to give a ruling on a proposed transaction, reliance would be given to knowledge gained before the cancellation in respect of dividends to be paid after the cancellation. That knowledge might include dividends declared but not paid, and knowledge of the directors' intentions and expectations (including knowledge of the company's dividend policy).

The legislation refers to "dividends paid". It does not refer to expectations, purpose, intentions, or policy. The test is not based on the company's dividend policy but is stated explicitly in terms of its practice or history in paying dividends. However, the company's dividend policy may help the Commissioner to determine the practice in issuing dividends. If there is no apparent pattern in the issue of dividends, but the company can show that it has adhered to an explicit policy that refers to objective criteria, the Commissioner may be able to draw conclusions that would not otherwise be available.

Overall, this factor focuses on the company's dividend policy or practice both before and after the share cancellation. Its purpose is to detect any changes or variations in the company's dividend policy that indicate that the share cancellation is replacing a dividend the company would normally pay. Such inferences could be drawn from a combination of an increase in retained earnings and either a low dividend policy, or an unexplained change in policy or practice to reduce dividends.

Issue of shares in the company subsequent to the relevant cancellation

A company may acquire sufficient shares to meet the brightline levels for capital reduction, i.e. the 10% or 15% of market value of shares, (and, by doing so, effect a tax free distribution) and subsequently may reissue shares so that the effective capital reduction is less than the brightlines. If the subsequent reissue is to replace cash which is necessary to meet the company's current operational or capital expenditure, this suggests that the company did not really intend, and was not really in a position, to reduce its capital, and that the funds paid out on repurchase were in lieu of dividends.

If, after a share redemption takes place, a reissue of shares is made to only **some** of the shareholders, there will be an uneven effect on the shareholders, being those that previously held shares but no longer do so, and those that now have more shares. This will not affect the potential application of section CF 3(1)(b) however, as that paragraph does not distinguish between situations according to which shareholders receive reissued shares.

An example of a cancellation of shares and a subsequent reissue is where, shortly after a share repurchase of 15%, a company reissues 10% of its shares. The result of this reissue, (the initial capital reduction of 15% minus the 10% of newly issued shares), results in total capital reduction of 5% which falls below the minimum brightline test of 10%. Such a transaction would indicate that the company has in reality effected a distribution that is more indicative of a dividend as opposed to a bona fide reduction in capital. The length of time between the cancellation and the issue of shares is relevant: the shorter this period is, the more likely the cancellation is made in lieu of the payment of dividends.

If the Commissioner is asked to give a binding ruling on a proposed share repurchase transaction, he is placed in the difficult situation of having to consider the issue of shares by the company **after** the cancellation. The Commissioner then has to rely on knowledge available before the cancellation in respect of share issues planned for after the cancellation. That knowledge might include share issue offers made or received, and any information supplied by the directors and the shareholders regarding their intentions or expectations related to share issues. The Commissioner might also wish to make an assumption in the ruling about future share issues.

Expressed purpose or purposes of the relevant cancellation

This factor focuses on why the company is seeking to cancel shares. When the company can show a genuine commercial reason for cancelling the shares, this will indicate the cancellation is unlikely to be a dividend. The provision does not require the Commissioner to accept statements by or on behalf of the company that do not reflect the genuine intention of the company. The more intuitive and compelling the reason for the cancellation of the shares, the stronger this factor will be in reaching the overall decision. The existence of a genuine commercial motive for the transaction should assist in indicating that the distribution is not in lieu of dividends.

For example the expressed purpose of a repurchase and cancellation may be a necessary step in the reorganisation of the ownership and corporate structure of a group. It could be directed towards placing the overall strategic control of the group in the hands of its principals and certain senior employees, rather than outside shareholders. These are bona fide commercial reasons for a share cancellation.

Another purpose of a cancellation may be that the company has surplus capital, notwithstanding a high dividend policy, and wishes to alter its debt:equity ratio to more closely align it with other companies in the same industry (in market value terms) and to increase its earnings per share. In such a case the company will borrow the cash to fund the share buyback, thereby helping it achieve its desired debt:equity ratio. This purpose provides sound commercial reasons for the cancellation and would support a view that the repurchase is not in lieu of a dividend.

Other valid commercial reasons for reducing capital would include:

- Reducing funding costs by replacing its equity funding with cheaper debt funding, and by reducing the administration costs associated with a large and diverse shareholding.
- Reducing its cash balance to improve balance sheet performance and reduce its vulnerability to take-over.

These reasons would of course need to be supported by evidence of the company's requirements, costs of funding, industry norms, market rates, and so on.

Any other relevant factor

The Valabh Committee Final Report *"The Taxation of Distributions from Companies"* (July 1991) and the discussion document *"Tax Implications of Company Law Reform"* (December 1993) indicated that the following factors may be relevant as to whether a return of capital is in lieu of dividends:

- Is the capital reduction part of the down-sizing of the company? If so, this would be an indication the cancellation is not in lieu of dividends.
- Has the company been retaining earnings and then distributing them without any accompanying reduction of the business? A distribution arising from a cancellation of shares in this case would more than likely be in lieu of dividends.
- Has there been a sale of part of the business, accompanied by the return of a sizeable amount to the shareholders in addition to a dividend? If so, this would point to the cancellation not being in lieu of a dividend.
- Is the capital return an unusual one-off event? If it is, this too would suggest that the cancellation is not a disguised dividend. Conversely, if there have been previous capital reductions, this may lead to the conclusion that the reductions are in lieu of dividends.
- Will the cancellation leave the shareholders' interests largely unchanged, or will the shareholders' interests decline significantly with the capital reduction, i.e. the size of shareholder capital across the board will be significantly less? A substantial change would be grounds for presuming that the cancellation has a purpose other than, or in addition to, a distribution of funds. A minimal change could indicate that the payment resulting from the cancellation was in lieu of a dividend.

An example of one of these factors is where a company (likely to be a closely-held company) accumulates earnings until they represent 15 percent or more of the market value of the company. The company then makes a distribution, ostensibly as a result of a down-sizing operation, but without reducing any of its core business. Such a distribution would be in lieu of dividends. Similarly, successive disproportionate reductions that leave the respective interests of shareholders largely unchanged, could also be in lieu of dividends.

Another example is that of a company purchasing all a shareholder's shares thus resulting in the exit of that shareholder from the company. This could be the company's first share repurchase, and, to that extent, would be an "unusual event". This suggests that the payment is not made in lieu of any dividend, but rather to facilitate a shareholder's exit.

FC 1 and FC 2 debentures

An issue is whether the redemption of debentures that fall within the provisions of sections FC 1 and FC 2 should be subjected to the in lieu of dividend criteria in section CF 3(1)(b)(iii).

Under section FC 1, if a debenture is issued where the rate of interest is not specified but is ordinarily based either on the dividend payable by the company or the profits of the company, no deduction is allowed for the interest. Under section FC 2(1), if a company issues debentures to its shareholders based on the number of shares the shareholders have in the company, again no deduction is allowed for the interest payable in respect of those debentures.

These debentures (like section FC 1 debentures) fall within the definition of "shares" under section OB 1. The debentures are, in effect, issued in substitution for shares. Where a company cancels or redeems these debentures, either in whole or in part, the Act treats this as if it was cancelling or redeeming ordinary shares. The redemption or cancellation of these debentures is therefore subject to the provisions of section CF 3(1)(b). Whether or not the repayments in respect of these debentures are in lieu of dividends will be determined on the basis of all four factors noted in this paragraph. The terms and conditions of repayment are matters the Commissioner will take into account to the extent that they are relevant to the factors in CF 3(1)(b) in determining whether the redemption or cancellation is in lieu of dividends.

Example 1

As at 31 March 1997 Company A had share capital of $100,000, being 100,000 shares of $1, and accumulated profits of $20,000. Its shareholders planned to extract the $20,000 accumulated profits as dividends. However, because of a previous change of shareholding, Company A did not have sufficient imputation credits available to pay fully imputed dividends. Accordingly, the shareholders returned $20,000 share capital tax free, by redeeming 20,000 shares. Is the subsequent amount paid to shareholders excluded from the term "dividends" under section CF 3(1)(b)?

The amount is **not** excluded. Under section CF 3(1)(b)(iii), the exemption will apply if the Commissioner "is satisfied that neither the whole nor any part of the relevant cancellation was made in lieu of the payment of dividends ...". This provision is aimed at returns of capital which, in normal commercial terms, would have been paid as dividends. In the example the redemption of shares is made in lieu of dividends and the exemption does not therefore apply.

Example 2

On 31 March 1997 Company B makes a capital distribution of $5M by cancelling 5,000,000 shares paid up to $1 each. Its total share capital is $30M. The company advises that its policy in respect of dividends is to pay 80% of profit after providing for interest, taxation, and the funding of asset replacement to maintain operating assets at an **appropriate** level. No definition of "appropriate" is given. This policy is not expected to alter. For the last two years, 1995 and 1996, it has paid dividends amounting to $1.5M and $3.5M respectively, representing 15% and 35% percent of profits in those two years. The company has not issued further shares since the cancellation. It advises that the purpose of the cancellation was to increase its debt:equity ratio to 30% debt and 70% equity. It has not down-sized its business. The retained earnings of the company amount to $10M. The question is whether the amount paid to shareholders will be excluded from the term "dividends" under section CF 3(1)(b).

The first test as to the nature and amount of dividends the company issues is an objective one which looks to its practice in paying dividends. In the absence of a pattern in issuing dividends, the company would need to show that it has adhered to an explicit policy that refers to objective criteria. In the example there is no apparent pattern of dividend distribution. Under examination, the company's dividend policy is apparently based on subjective criteria. It is not possible to draw any inference from the amount of past or future dividends paid where the amount of payment is determined after providing for *inter alia* "funding of asset replacement required to maintain the assets at an **appropriate** level". Therefore, consideration of the nature and amount of dividends prior to and subsequent to the cancellation does not give any indication as to whether the cancellation will be made in lieu of dividends.

The company has not issued further shares subsequent to the cancellation - a factor that assists the company's case that the distribution to shareholders resulting from the cancellation is not in lieu of dividends.

The company advises that the purpose of the cancellation was to increase its debt:equity ratio. However, other factors such as maintenance of its current level of business operations, and its retained earnings being in excess of the proposed amount to be distributed to shareholders, lead towards the conclusion that the cancellation is in lieu of dividends.

In this example, on the evidence produced it would be difficult to satisfy the Commissioner that the distribution resulting from the cancellation of shares is not in lieu of dividends.

Example 3

Company C, a wool exporting company, has restructured its ownership to reflect a move away from having a mix of supplier and non-supplier shareholders. One of the company shareholders, Company D, a company that does not supply a product to Company C, purchased all the shares that the other non-supplier shareholders held in Company C. Company C then repurchased all of Company D's shares. Company C's shareholding then consisted solely of companies from which it purchased products. Company C has accumulated losses. In past years the company has paid out dividends when it has been able, and has a policy of paying dividends in the future. It advises that the share repurchase has not affected its ability to pay out dividends subsequently. The company also advises it has not been necessary to issue further shares to replace the capital returned to the shareholder in the repurchase, and evidence shows this to be true. The Commissioner now has to decide whether or not the repurchase of Company D's shares is in lieu of a dividend under section CF 3(1)(b).

From the information supplied it does not appear that the proposed redemption was made "in lieu of a dividend", having regard to the company's dividend policy. The company has paid dividends in the recent past (when it was able to do so). The company also has accumulated losses. Accordingly, there can be no suggestion that the company has been accumulating earnings that would normally be paid out as dividends. The company has not needed to issue further shares after the repurchase. This suggests that the company is in a position to pay out the shareholder on the repurchase of shares, thus helping to refute any suggestion that the repurchase is in lieu of dividends.

The repurchase was part of a wider arrangement involving a change in ownership of the company, reflecting a desire to change the ownership from a mix of supplier and non-supplier shareholders to ownership by supplier shareholders. For this reason, the fact that the repurchase was to facilitate the exit of a major shareholder (which in itself is an unusual one-off event), leads to the conclusion that the repurchase was not in lieu of a dividend.

Example 4

Company A decides to consolidate its business by selling assets surplus to requirements. The company distributes the capital profits to its shareholders by way of a pro-rata cancellation of more than 15% of its shares. Company B, which owns assets of the type used in the core business of company A, sells these assets to company A in exchange for an issue of shares.

These actions would appear to amount to a straight cancellation of shares and a subsequent reissue to recoup capital - thus appearing to constitute a distribution to shareholders in lieu of dividends. The fact that the reissue of shares was not to all the shareholders is not a relevant consideration. The section does not require the Commissioner to address the shareholders' position directly. The Commissioner is concerned with the initial transaction, i.e., the cancellation of shares and the resulting distribution to shareholders. A later reissue of shares provides an indication that the company was not in a position to reduce its capital and that the funds paid out were in lieu of dividends.

A cancellation of shares and subsequent reissue must be considered in light of all the facts. For example, the period of time between the cancellation and the reissue may be relevant - the shorter the time, the greater the chance of the reissue being known prior to the cancellation. If it is known that a later reissue was required soon after the date of cancellation, then this would be a strong indicator on its own that the distribution was in lieu of dividends.

Essentially, whether a distribution is in lieu of dividends requires the same approach in all situations - the Commissioner cannot look at just one factor in isolation - all four factors would have to be considered before a determination could be made that the distribution was or was not in lieu of dividends.

One of the factors that could be relevant here is the expressed purpose or purposes of the cancellation. In this case, if the company has genuine commercial reasons for the share cancellation and the subsequent reissue of shares and none of the other section CF 3(1)(b) factors applied, then this would provide support for the conclusion that the distribution was not in lieu of dividends.

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.

CAR PARKS PROVIDED BY EMPLOYERS – FRINGE BENEFIT TAX EXEMPTION

PUBLIC RULING - BR Pub 99/6

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

Taxation Law

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

This Ruling applies in respect of section CI 1(h) and section CI 1(q).

The Arrangement to which this Ruling applies

The Arrangement is the making available by an employer to an employee of a car park that is on land or in a building owned or leased by the employer, and there is an exclusive right to occupy the property, and a legal estate or interest in that property. This includes space in a public car park where the space is subject to a lease between the employer and the proprietor of the car park.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- The car park provided by an employer to an employee is excluded from the definition of "fringe benefit" in section CI 1(h) by section CI 1(q), and the employer is not liable to fringe benefit tax in these circumstances.

The period for which this Ruling applies

This Ruling will apply for the period from 1 November 1999 to 31 March 2002.

This Ruling is signed by me on the 12th day of August 1999.

Martin Smith
General Manager (Adjudication & Rulings)

COMMENTARY ON PUBLIC RULING BR Pub 99/6

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusion reached in Public Ruling BR Pub 99/6 ("the Ruling").

Background

A question exists as to whether the provision of a car park by an employer to an employee gives rise to a fringe benefit tax (FBT) liability. The Ruling confirms that an employer-provided car park is not subject to FBT if the car park is provided on land or in a building that the employer owns or leases, and there is an exclusive right to occupy the property and a legal estate or interest in that property. (The term "exclusive right" in the Ruling is to be understood as referring not only to a single tenant/lessee situation, but also to the right of several lessees under the same lease agreement to exclude persons other than themselves.) Included is a space in a public car park where that space is subject to such a lease between the employer and the proprietor of the car park. This is because the car park is considered to be part of the employer's premises. Further information on FBT may be found in Inland Revenue's *Fringe benefit tax guide*, IR 409. The statement on page 33 of that guide on staff car parks should be read in the light of the Ruling and this commentary.

Legislation

Section CI 1(h) defines a fringe benefit to include:

> Any benefit of any other kind whatever, received or enjoyed by the employee in the quarter or (where fringe benefit tax is payable on an income year basis under section ND 4) income year, -
>
> being, as the case may be, ..., or a benefit that is used, enjoyed, or received, whether directly or indirectly, in relation to, in the course of, or by virtue of the employment of the employee (whether that employment will occur, is occurring, or has occurred) and which is provided or granted by the employer of the employee; ...

Section CI 1(q) excludes from the definition of "fringe benefit" under section CI 1(h):

> Any benefit (not being a benefit which consists of the use or enjoyment of free, discounted, or subsidised travel, accommodation, or clothing) that is provided by the employer of the employee on the premises of the employer, not being premises that are occupied by the employee of the employer for residential purposes (or that, at any time when the employee is required to perform duties for the employer on premises, not being residential premises of the employee, other than those of the employer, or by any other person on those other premises), where the benefit is enjoyed by the employee on those premises (or, as the case may be, on those other premises).

Application of the Legislation

Under section CI 1(h), a benefit of "any other kind whatever" received by an employee directly or indirectly in relation to or by virtue of the employee's employment, is subject to the FBT regime.

The granting of a car park by an employer to an employee is a benefit under section CI 1(h) and is prima facie liable for FBT. While Parliament could have excluded all car parks from the FBT regime, it has not done so. However, section CI 1(q) excludes (with certain exceptions) from the definition of "fringe benefit" a benefit that is provided "by the employer of the employee on the premises of the employer" (the "on premises exemption"). Accordingly, it is the phrase "the premises of the employer" that must be considered, and the extent of the exclusion ascertained by reference to those words. As the following discussion reveals, not all car parks are exempt, and a line has to be drawn between those that are and those that are not.

As "premises of the employer" is not defined in the Act, the question arises as to whether those words are restricted to the place in which the employer carries on business, i.e. "business premises", or whether they are unrestricted in meaning and include all premises.

The exemption provided in the Act is not for car parks generally, but for car parks provided on the employer's premises. This exclusion was provided for fringe benefits because of the complications of administration and valuation that accompany "on premises" benefits. Factors that would have to be addressed are whether the tax should be based on the nominal capacity of the parking area or the actual utilisation of the benefit provided, the value to be given sealed and unsealed parks, etc. So it was never intended that car parks provided off the premises by way of a licence from a car park proprietor would be exempt from FBT. The benefit in such a case would be simply the cost of the park, but the valuation of a car park provided on the employer's premises would be more difficult.

While it could be said that some leased car parks (those provided by an independent car park proprietor) would be easily valued, in many cases parks on land leased by an employer would present the same problems as parks on land the employer owns. Accordingly, one would expect the on premises exemption to cover leased parks as well.

"Premises" is defined in *The New Shorter Oxford English Dictionary*, (1993 Edition) as, "a house or building with its grounds etc. ... ."

The word "of" has many meanings, and the same dictionary defines "of" in the sense of possession as:

> **22** Belonging to (a person or thing) as something that he, she, or it has or possesses, or as a quality or attribute; having a specified relationship to (a person).

The term "premises" has been discussed in a number of cases. In *Lethbridge v Lethbridge* (1861) 30 LJ Ch 388 it was said at page 393:

> There is no doubt, ... that the word admits of a limited as well as an enlarged sense, and that the context and surrounding circumstances must determine whether it was used in an enlarged or limited sense.

Over a century later in the case of *Maunsell v Olins* [1975] AC 373; [1975] 1 All ER 16, Viscount Dilhorne expressed the same idea in this way at pages 383 and 19 respectively:

> "Premises" is an ordinary word of the English language which takes colour and content from the context in which it is used. ... It has, in my opinion, no recognised and established primary meaning.

The word was discussed by Edwards J in *In re Alloway* [1916] NZLR 433 at page 443 in relation to the Chattels Transfer Act 1908 where he said:

> The word "premises" is here used in contradistinction to the word "lands", and it seems to me to be plain that it is used in its popular sense, of which many illustrations are to be found in *Stroud's Judicial Dictionary*. In that sense the word means any place occupied or exclusively used by any person for any purpose. The words "the 'premises' of a man engaged in business" signify the place in which he carries on his business. Such premises may be wholly buildings, as in the case of many shopkeepers; or wholly land, as in the case of a timber-yard; or partly buildings and partly land, as in the case of a timber-yard used in conjunction with a large joinery business; ... .

In *Re Simersall; Blackwell v Bray* (1992) 35 FCR 586 at p 591, it was said:

> The term "of" in [the relevant statute] is apt to embrace a connection or association falling short of absolute ownership.

Considering the definition of the word "of" first, the above indicates that the key in this usage of the word is possession or ownership. Therefore, in respect of premises, the word "of" indicates that to qualify as "the premises of the employer" there must be a right of ownership or possession. This may be satisfied if the premises are owned, rented or leased by the employer, since in the case of a lease the lessee obtains exclusive possession. A mere licence (that is, where the employer has permission from some third party to allow it or its employees to enter and occupy land for the purpose of car parking) would not meet this test of ownership or a possessory interest, as a licensee would have no such legal rights, but merely a right to use the premises. It may be difficult to decide in some cases whether there is a lease or a licence, and the nomenclature used by the parties is not decisive. The two factors that need to be considered are whether the legal right of exclusive possession has been given, and the intention of the parties to be inferred from the circumstances and their conduct; *Butterworths Land Law in New Zealand* by Hinde, McMorland and Sim, (Butterworths 1997) at pages 431 - 435.

The creation and nature of a licence is explained in *Halsbury's Laws of England*, Fourth Edition Reissue (Butterworths, London 1994) Vol. 27(1) at paragraphs 9 and 10 in the following way:

> A licence is normally created where a person is granted the right to use premises without becoming entitled to exclusive possession of them, or where exceptional circumstances exist which negative the presumption of the grant of a tenancy. If the agreement is merely for the use of the property in a certain way and on certain terms while the property remains in the owner's possession and control, the agreement operates as a licence, even though the agreement may employ words appropriate to a lease. ... A mere licence does not create any estate or interest in the property to which it relates; it only makes an act lawful which otherwise would be unlawful.

So the word "of" in the phrase "the premises of the employer" in section CI 1(q) introduces the requirement that the employer must either own or lease the premises. That is, the employer must have an estate or interest in the property and not merely a right to use it. If he or she does not own the premises in question, there would have to be a lease agreement for that employer to claim the benefit of the exemption provided by section CI 1(q). The phrase "the premises of the employer" in paragraph (q) is not the same as the phrase "grounds over which the employer has some rights".

As far as the interpretation of the word "premises" is concerned, the Commissioner's view is that, in the context of parking facilities and the FBT legislation, "premises" should be interpreted broadly to include land, buildings, and parts of buildings. Therefore, a car park will form part of the premises of the employer where the land or building on or in which it is situated is owned or leased by the employer, and there is an exclusive right to occupy the property, as well as a legal estate or interest in it.

Furthermore, the fact that the employer is not carrying on business on the premises owned or leased does not prevent an employer-provided car park from being excluded from the definition of "fringe benefit" in section CI 1(h). This means that an area of land owned or leased by the employer that is available for employee parking, although it is located away from the employer's business premises, would qualify for the exemption. The land need not be adjacent to the business premises.

If the car park is in a public parking facility and the employer arranges and pays the proprietor to make available certain parks for the employer's employees, generally speaking the car parks will be benefits that are subject to FBT. This is because in these circumstances, the employer will have a mere licence (that is to say, permission for it and its employees to enter the property for the purpose of parking while the property remains in the owner's possession and control), rather than a more formal agreement or lease that would entitle the employer to an interest in or exclusive possession of the parking facility or any part of it. Accordingly, it could not be said that the spaces or parks provided would be "the premises of the employer".

This conclusion is consistent with *Esso Australia Limited v FCT* 98 ATC 4,953 a decision of the Federal Court of Australia. While that case considered whether certain childcare facilities were part of the narrower (and defined) term "business premises ... of the employer" for Australian FBT purposes and the outcome is not relevant in this context, at page 4,958 the judge (Merkel J) said:

> It seems to me that, ... for the relevant business premises to be those *of* an employer, the employer must have a right to possession of the premises, at least to the extent necessary to enable the conduct thereon of the relevant recreational or child care facility.

It is important to note that there was a lease in existence in *Esso*, and the licence situation was not discussed. Indeed at page 4,958 of the judgment, Merkel J acknowledged that (even with a lease) the more employers that shared the particular premises, the harder it would be to say that they were premises *of* a particular employer. Accordingly, it is still considered that there is a distinction to be made between premises leased for the purposes of car parking, and premises upon which a person merely has a licence to enter for the purpose of parking a car. Where no specific park is made available, but that person simply parks at any spot available from day to day, the distinction would be even greater.

When an employer has a lease agreement, the question will depend on the precise terms of the agreement. If a specific car park space were held under the lease, the exemption would apply. On the other hand, if there is no lease or specific spaces are not allocated under a lease agreement, it is not considered that such car parks are "premises of the employer".

Note: In some cases it may well be that the employer is simply acting on behalf of the employee in arranging and paying for the car park, e.g. the employee arranges his or her own parking but the employer pays the owner of the car park directly. In this situation, if the employer simply pays the parking fees on the employee's behalf, the sums paid are monetary remuneration of the employee.

There could conceivably be situations where, although the employer both arranges and pays for the car park, the employer is clearly acting as the employee's intermediary or agent. The payments by the employer to the car park owner would then come within section EB 1 as being amounts that, although "not ... actually paid to or received by" the employee, are nevertheless "dealt with in the [employee's] interest or on the [employee's] behalf". In those situations, the parking fees paid to the car park owner would be monetary remuneration of the employee, and taxable accordingly.

Comments on technical submissions received

Comments received from parties external to Inland Revenue raised objections that the Ruling would be unfair, it would impose further compliance costs on businesses, and would be contrary to Parliament's intention.

These matters have been given serious consideration. The plain meaning of the words "the premises of the employer" would have to be ignored in order to give them a wider interpretation that would extend to premises for which the employer has a licence. While acknowledging that the same practical benefit is received by an employee whether the car park is leased or licensed, the better view of the law, given the words used, is that this expression could not fairly have a construction placed upon it that would include car parks subject to a licence as well as leased car parks. While unfairness and added compliance costs are factors to be taken into account, it is not considered that they outweigh the correctness of this conclusion.

While it may be said that Parliament's intention is unclear, Parliament could have provided a specific exemption for car parks. It has not done so and instead has chosen to make an exemption available for all benefits in general (except travel, accommodation, and clothing) provided on employers' premises. That being the case, the Commissioner has to apply the test laid down - "the premises of the employer" test - and not some other test. For example the exemption could have been restricted to premises owned by the employer. The test laid down in section CI 1(q) is clearly wider than that, but not specifically wide enough to exempt *all* car parks. The ordinary meaning of the words used must be interpreted, and that has led to the conclusion that licences are not covered by the exemption. Alternatively, possible to interpret the phrase as meaning business premises, but if that is what Parliament meant, it could have said so. Inland Revenue has made a concession in this respect, its publications stating that business premises are not what is considered to be meant by the word "premises".

The *Esso* decision has been put forward as supporting the view that licensed car parks would qualify as premises of the employer. However, the *Esso* case concerned leased premises and the Court said that for the relevant business premises to be those *of* an employer there would need to be a right to possession (at least to the extent necessary to conduct the relevant child care facility). A licence simply does not confer possession, and so the approach taken in this Ruling does not conflict with the *Esso* case, which is not considered to go as far as commenting on licensed premises.

Example 1

During the year ended 31 March 2000, an employer provides some of her employees with car parks on land across the road from the property in which she carries on her business. The employer is the lessee of that land pursuant to a enforceable and written lease agreement.

The Commissioner considers that "premises of the employer" includes land leased by the employer. Therefore, the car parks provided by the employer to the employees are excluded from the definition of "fringe benefit" by section CI 1(q). No fringe benefit arises. The employer does not have to carry on her business on the leased land for the exclusion in section CI 1(q) to apply.

Example 2

During the year ended 31 March 2000, an employer arranges parking at a commercial car park for three of her employees. No particular spaces are designated for them, but the car park owner has an area reserved for pre-sold parking that is limited to the number of such parkers so that there are always three parks available for these employees.

The Commissioner considers that "the premises of the employer" does not include the car park or any part of it. It does not form part of the employer's premises as the car parks are not owned by the employer, and the car park owner has not parted with possession, but still retains control of the park. Another distinguishing feature is the lack of specifically allocated parks. The requisite ownership or possessory interest is not, therefore, present so that the car park can be called the "premises of the employer". Accordingly, the provision of places at the car park by the employer to the employees is subject to FBT under section CI 1(h). The provision of the car parks is not excluded from the definition of "fringe benefit" under section CI 1(q).

Example 3

As in *Example 2*, the employer arranges parking at the commercial car park for the employees, but the employer is allotted a particular area in the car park (spaces 8 - 10) and the car park proprietor bills the employer direct. The car park is not owned by the employer and no part of it is subject to a rental or lease agreement between the employer and the proprietor of the car park (although the employer occasionally refers to the charges made for the use of the car park as "rent").

Although the employer could say that the ability to exclude others from the designated spaces is significant, this is nevertheless a licence arrangement (regardless of the use of the word "rent") as the employer does not have an estate or possessory interest in the car park or any part of it, only a personal permission for herself and her employees to enter the land for a stipulated purpose. The occupation of space in fulfilment of that purpose is not intended to negate the owner's exclusive possession of the car park or even of the designated spaces as would be the case if there were a lease agreement. The car parks are not "premises of the employer": she merely has rights to use them. Because the owner of the car park remains in possession and retains general control over the premises, the arrangement is simply a contractual licence, outside the FBT exemption in section CI 1(q). Consequently, the employer is liable for FBT on the taxable value of these fringe benefits.

Example 4

A company, having many employees who use the facilities provided by a nearby commercial car park, decides that it would like to lease the whole of the top floor of the car park. The available area is less than that of the other floors and would suit the requirements of its staff. The owner of the commercial car park agrees to grant a lease to the company, and installs a card access gate to that floor so that only the company's employees may use the top floor. The written lease agreement provides that the car park owner will perform custodial duties and generally maintain the top floor to the standard of the other areas of the car park.

The Commissioner considers that in these circumstances "the premises of the employer" extend to and include the top floor leased from the car park proprietor, and no fringe benefit liability arises by virtue of section CI 1(q).

PRODUCT RULING - BR PRD 99/9

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

Name of the Person who applied for the Ruling

This Ruling applies to International Pacific College.

Taxation Law

All legislative references are to the Goods and Services Act 1985 unless otherwise stated.

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

The Arrangement to which this Ruling applies

The Arrangement is the supply of tuition services to a person who is not resident in New Zealand pursuant to a contract which provides for that non-resident person to pay the tuition fees in respect of an international student at International Pacific College ("the College"). Further details of the Arrangement are set out in the paragraphs below.

1. The College is a charitable body incorporated in New Zealand under the Incorporated Societies Act 1908 to promote, establish and conduct education programmes for international students in a fully residential environment.

2. The College is part of the Japanese based Educational Foundation Group ("EFG") which provides educational services to students.

3. The majority of the College's students are Japanese, although a small number of students from other countries also attend the College. The College provides tuition services to foreign students on a fee-paying basis. This Ruling is only concerned with tuition fees.

Process of enrolment and payment of fees for a new international student

4. EFG, as agent for the College, undertakes a recruitment programme and conducts information forums in Japan for prospective students to study at the College in New Zealand. An application form for an entrance exam is required to be completed by the prospective student and signed by the parent.

5. Entrance examinations are undertaken, and both the student and the parent are interviewed as part of the entrance selection process.

6. The results of the student's entrance examination are then provided to parents. A standard form letter confirming acceptance is then issued to formally confirm the contractual relationship between the College and the parents for a full four-year period.

7. The parents are required to sign a "Conditions of Acceptance" form. This form is discussed below.

Documentation in respect of application, enrolment and payment for a new international student

8. The following documentation is relevant.
   - Registration form for information forum.
   - Application for entrance exam.
   - Assessment sheet for student and parent interview at entrance exam.
   - Standard form letter of acceptance.
   - Standard form "Conditions of Acceptance".
   - Fees' notification.

9. The explanation of each of these documents is as follows:

Registration questionnaire for information forum

10. This document contains the name, address, and contact details of both the prospective student and his or her parents, and the employment and/or schooling history of the prospective student.

Application for entrance exam

11. This form contains details of the prospective student's name, address, nationality and educational background, and the name, age, and status of each family member. It also contains details relating to the prospective student's current health, hobbies and interests, and his or her vocational aspirations. Both the prospective student and a parent must sign the form.

Assessment sheet for student and parent interview at entrance exam

12. This document records the outcome of interviews with the parents and prospective students by way of assessment according to particular factors.

Standard form letter of acceptance, fee letter, and "Conditions of Acceptance" form

13. These documents are evidence of the formation of a binding, unconditional contract for a period of four years between the College and the person or persons who have agreed to pay the fees.

14. The "Conditions of Acceptance" form requires the person(s) who will pay the fees to sign the form. The person(s) must state whether they are the:
    - Father and mother
    - Father
    - Mother
    - Other person

15. The "Conditions of Acceptance" form also requires the person who has undertaken to pay the fees to answer questions to determine that person's tax residence status and other relevant matters. Based on the information provided by the person, the College will be able to come to a conclusion about that person's tax residence status and other matters that require consideration to determine the correct GST outcome.

Fees' notification

16. A letter setting out the fees is issued at the beginning of the year and again in August for the second half of the accommodation fees. Each letter constitutes an invoice for the purposes of the Act.

Succeeding year information returns

17. The following documentation is relevant:
    - Standard fee letter for succeeding years ("the invoice").
    - Information return form.

18. The tuition fees are invoiced at the beginning of the academic year. The standard fee letter is accompanied by an information return form that asks similar questions to those in the "Conditions of Acceptance" form referred to above. The information sought includes the number of college days non-resident parents plan to spend in New Zealand and also confirmation of the number of actual college days spent in New Zealand during the previous year. The parent is required to complete, sign, and return this form, together with the fee payment, to the College.

Assumption made by the Commissioner

This Ruling is based on the following assumption:

a) The tuition fees charged in respect of the students are solely for tuition services provided by the College.

Conditions stipulated by the Commissioner

This Ruling is based on the following conditions:

a) The non-resident parent, guardian, or other person who has contracted with the College, is not inside New Zealand at any time that any of the tuition services are performed.

How the Taxation Law applies to the Arrangement

Subject in all respects to the assumption and condition above, the Taxation Law applies to the Arrangement as follows:

- The tuition fee charged in respect of an international student for the supply of tuition services is a zero-rated supply for GST purposes in accordance with section 11(2)(e) where the tuition services are contractually supplied by the College to a parent, guardian, or other person who is not a "resident" in terms of section 2(1), and who is outside "New Zealand", as defined in section 2(1), at the time the tuition services are performed.

The period or income year for which this Ruling applies

This Ruling will apply for the period 19 October 1998 until 19 October 2001.

This Ruling is signed by me on the 29th day of June 1999.

Martin Smith
General Manager (Adjudication & Rulings)

LEGAL DECISIONS - CASE NOTES

This section of the TIB sets out brief notes of recent tax decisions made by the Taxation Review Authority, the High Court, the Court of Appeal and the Privy Council.

We've given full references to each case, including the citation details where it has already been reported. Details of the relevant Act and section will help you to quickly identify the legislation at issue. Short case summaries and keywords deliver the bare essentials for busy readers. The notes also outline the principal facts and grounds for the decision. Where possible, we have indicated if an appeal will be forthcoming.

These case reviews do not set out Inland Revenue policy, nor do they represent our attitude to the decision. These are purely brief factual reviews of decisions for the general interest of our readers.

WHETHER GST PAYABLE BY A COMPANY IN LIQUIDATION ON RECOVERY OF VOIDABLE TRANSACTIONS

Case:	B S Montgomerie as Liquidator of Pasadena Holdings Ltd (Formerly Tisco Services Ltd) v CIR
Decision date:	2 August 1999
Act:	Goods and Services Tax Act 1985
Keywords:	Insolvency, voidable transaction, liquidation, GST adjustment

Summary

Justice Williams found in favour of the Commissioner in regards to partial recoveries and for the Applicant in full recoveries.

Facts

Mr Montgomerie is the liquidator of Pasadena Holdings Ltd. This action is an application for a direction of the Court as to whether GST is payable by a company in liquidation ("the company") on recoveries from voidable transactions. There were no facts nor tax in dispute, rather a question of law as to the interaction (if any) between the Companies Act 1993 and the GST Act vis-à-vis voidable transactions.

The scenarios presented for the court's consideration fell into two categories:

- Where a transaction is set aside pursuant to liquidators' powers under ss 292-296 of the Companies Act, and the supplier of goods and/or services is obliged to make a full repayment of monies to the liquidator.
- Where, in the exercise of the above powers, the liquidator enters into a compromise with a supplier and recovers less than a full repayment.

Mr Montgomerie stated that there were conflicting opinions amongst liquidators as to how GST was to be returned on such reversed transactions, if at all. The Court acknowledged that there appeared to be no precedent directly on this point.

Decision

Referring to the Court of Appeal's judgment in *CIR v NZ Refining Co Ltd* (1997) 18 NZTC 13,187, Williams J held that GST is a tax on transactions and a nexus must be demonstrated between supply and consideration. Section 25(1)(b) applies where there has been an alteration to previously agreed consideration, therefore the focus is on the original supply, not the recovery. His Honour held that partial recovery amounted to an 'alteration' of the original consideration, but applying principles of statutory interpretation, the same could not be said of recovery in full.

Regarding full recoveries, his Honour held that his finding was consistent with s 26 of the GST Act which requires the supplier to make a GST adjustment for a bad debt which has been written off. His Honour focused on the symmetry of tax treatment between the supplier and the Company. He also noted:

> "As against that, it needs to be acknowledged that an unfortunate inconsistency arises in the treatment of GST according as to whether voidable transaction recoveries are complete or partial. But that arises out of the way in which s 25(1)(b) is phrased and the necessity for a strict interpretation to be accorded to taxing statutes. When parliament enacted the voidable transaction recovery regime it did not appear to have turned its mind to the impact of that regime on the Goods and Services Tax Act 1986."

WHETHER LATE PAYMENT CHARGE ON INSURANCE PREMIUMS IS INTEREST INCOME OR PREMIUM INCOME

Case:	Colonial Mutual Life Assurance Society Ltd v CIR
Decision date:	12 August 1999
Act:	Income Tax Act 1976
Keywords:	Interest income or premium income

Summary

Justice Hammond found in favour of the Commissioner confirming that the extra charge was interest income and the Commissioner's treatment was correct.

Facts

The taxpayer issued "bundled" life assurance policies. When the premiums on those policies were not paid on time a charge was made to the policy-holder in addition to the basic premiums.

For the years 1987 to 1990, the Commissioner took the view that the extra charge was investment income as it was charged on a notional loan from the company to defaulting policyholders. The taxpayer argued it was premium income. This meant it would be treated differently under the then existing legislation, in a manner more favourable to the taxpayer.

Decision

Justice Hammond considered himself bound by an early Court of Appeal decision (*Cmr of Taxes v The AMP Society* (1902) 22 NZLR 445) on whether the extra charge is interest income or premium income. His Honour found there was no material difference in the law between 1902 and 1999 and he could not ignore the earlier decision. On that basis the extra charge was interest income.

In an earlier decision involving CML this issue had been decided the same way (see *CML v CIR* (1994) 16 NZTC 11,341 at 11,351).

However, in dicta to the actual decision Hammond J doubted whether the 1902 decision was correct, preferring the dissent of Stout CJ in that case - there was in reality no loan made.

But His Honour concluded that, for accounting purposes, the "positive" interest rate generates income CML would not have otherwise had and was thus taxable (regardless of the earlier case). He said:

> "...it [the interest] included something above what was required merely to "restore" CML, and its policy holders, to their rightful position. To put this another way, this interest would represent an increase in the amount over and above that owing by the insured, and would be "revenue" earned by the life office."

WHETHER OBJECTORS AN UNINCORPORATED BODY FOR THE PURPOSES OF GST REGISTRATION

Case:	TRA Number 97/87 Decision Number 017/99
Decision date:	11 August 1999
Keywords:	Unincorporated body of persons, liability to register for GST

Facts

A family trust was established on 19 August 1982. A farm was owned by a farmer (half share) and his two sisters (one quarter share each). In 1983 the two sisters sold their shares in the farm to the trustees of the farmer's family trust. The farmer and the trustees carried on in partnership in the business of sheep and cattle farmers on the farm pursuant to a Deed of Partnership dated 4 July 1984.

The farm was not partnership property under the terms of the partnership but was placed at the use of the partnership under a twenty-year term of the partnership. Profits were shared between the partners in relation to the value of the assets they placed at the use of the partnership. In 1985 the farmer entered into a matrimonial property agreement with his wife. He transferred to her half of his half share in the farm and half of his stake in the partnership.

In 1986 the farming partnership was registered for GST and in 1995 the farmer and his wife replaced the trustees of the family trust. In September 1995 the farmer and his wife both sold their undivided quarter shares of the farm to their son (as tenants in common) and the trust also sold its undivided half share to the son. Settlement was effected as at 1 August 1995 on the basis of the purchaser taking over the liabilities of the vendors under mortgages on the land and an acknowledgement of debt for the balance of the price.

The objectors did not include the proceeds of the sale in the GST return for the period ending 30 September 1995, which they filed in their capacity as partners in the partnership. The farming partnership was dissolved as at 1 August 1995 and the son took over the farming business from that date.

On 18 December 1995 Inland Revenue advised the objector's agent that the objectors were considered to be an unincorporated body carrying on a taxable activity of land rental. Inland Revenue considered that that the placing of the farm at the use of the partnership from 1 August 1983 resulted in deemed registration so that the sale of the farm to the son in August 1995 was a taxable supply attracting GST of $233,750.00. The objectors objected to this assessment on the basis that they were not an unincorporated body.

Decision

Judge Barber held that in terms of *Case P70* (1990) 14 NZTC 4,469, an unincorporated body existed in the present case as there was a degree of comity or association between the landowners which transcended the fact that they were the joint owners of that land.

His Honour regarded the landowners association, with regard to the use of their farmland and to their ultimately deriving profit from it, as a type of joint venture or even a separate partnership from the farming partnership. The landowners were not passive with regard to their land ownership. They made the land available to the partnership on terms whereby they determined land use.

Judge Barber concluded that the landowners should be registered in the present case and confirmed the Commissioner's GST assessment.

STANDARD PRACTICE STATEMENTS

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

TEMPORARY SHORTFALL – PERMANENT REVERSAL INV-231

Summary

This SPS replaces the Standard Practice Statement INV-230 which was issued in the Tax Information Bulletin, Volume Ten, No.5, May 1998. Standard Practice Statement INV-231 is effective from the date of publication.

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

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

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

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

Application Date

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

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

Background

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

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

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

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

Legislation

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

Subsection (3) defines a temporary shortfall as follows:

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

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

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

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

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

Practice applicable from 1 May 1998

The Commissioner's new interpretation of a temporary shortfall

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

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

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

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

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

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

In order to qualify for the temporary shortfall reduction, Inland Revenue would have to be satisfied that the sale would have been returned in a later return period. This will involve making enquiries of the taxpayer and checking the internal systems, bank statements, etc. If the sale is recorded in the system that the taxpayer normally prepares the tax return from, Inland Revenue could safely assume that the sale would have been returned in the next return period. In some situations consideration of the taxpayer's systems may indicate that the sale would have been returned in an even later return period. In both of these cases, Inland Revenue would allow the temporary shortfall reduction of any shortfall penalty warranted.

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

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

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

Michael Rapson
Manager, Technical Standards

Examples

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

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

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

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

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

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

GST output tax not returned
As part of his taxable activity, a taxpayer entered into an unconditional agreement to sell real property.

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

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

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

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

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

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

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

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

REMISSION OF PENALTIES AND INTEREST RDC 2.1

Introduction

Legislation introduced in 1997 consolidated the rules for remissions of penalties and interest. The legislation applies to all taxes and duties, but not to student loan and child support repayments. The legislation was amended in 1998 to include remission of the non-electronic filing penalty.

When considering these remission provisions the Commissioner considers it important to have in mind fair treatment for both the taxpayer requesting the remission as well as all other taxpayers. A lenient remission practice penalises complying taxpayers and may ultimately affect voluntary compliance. However, allowing an unfair penalty to stand will also impact on voluntary compliance.

This standard practice statement sets out the relevant legislation, practical issues and the Commissioner's practice.

All legislative references in this statement are to the Tax Administration Act 1994, unless otherwise stated.

Application date

This Standard Practice Statement replaces Standard Practice Statement RDC 2 originally published in TIB Vol 9 No. 13 December 1997. This amended Standard Practice Statement applies to remission requests received on or after 6 September 1999.

Summary

1. Penalties exist to provide fairness to the tax system. Interest compensates the taxpayer or the Commissioner for use of money over time.

2. Remission provisions are needed to allow the Commissioner to accommodate circumstances in which a penalty is not appropriate. The procedures Inland Revenue uses should ensure taxpayers have been justly treated, regardless of the outcome. Inland Revenue will weigh the particular circumstances that exist in each individual case against the standard practice. The circumstances of the taxpayer will be taken into account.

3. The legislation will be applied in a manner that is fair to compliant taxpayers. Inland Revenue recognises that penalising a compliant taxpayer for a small non-compliance is counterproductive and may actually reduce voluntary compliance.

4. Application for remission must be made in writing.

5. Late filing penalty, non-electronic filing penalty, and late payment penalty will be remitted if the Commissioner is satisfied that the non-compliance has been caused by:
   - an event or circumstance that provides reasonable justification for the omission
   - genuine oversight and confusion or a one off situation
   - incorrect advice given by Inland Revenue.

6. The only situation identified to date where interest will be remitted (in whole or in part) is where an Inland Revenue officer has given incorrect advice to the taxpayer which has directly caused a return or payment to be made late or a schedule to be filed non-electronically, and the taxpayer can substantiate to Inland Revenue's satisfaction that they were given the incorrect advice.

7. Remission applications will be considered only when the return has been filed and/or the tax has been paid.

8. Sections 183A and 183D do not permit remission to be granted for financial reasons.

Application for remission

All applications must be made in writing. There are two main grounds for remission:

- Remission may occur if an event or circumstance provides the taxpayer with reasonable justification for not meeting their obligations.
- Remission may occur if it is consistent with the collection of highest net revenue over time. Interest remissions can only be considered under this ground.

Shortfall penalties cannot be remitted under sections 183A and 183D.

Remission for reasonable cause

Legislation - Section 183A - Sub-section (1) has been replaced by a new sub-section (1) and (1A), that apply to penalties that arise on or after 1 April 1999.

(1) This section applies to a late filing penalty, a non-electronic filing penalty, a late payment penalty and imputation penalty tax imposed by section 140B, and a dividend withholding payment penalty tax imposed by section 140C.

(1A) The Commissioner may remit the penalty if the Commissioner is satisfied that -
- (a) A penalty to which this section applies arises as a result of an event or circumstance beyond the control of the taxpayer; and
- (b) As a consequence of that event or circumstance the taxpayer has reasonable justification or excuse for not furnishing the tax return or an employer monthly schedule, or not furnishing an employer monthly schedule in a prescribed electronic format, or not paying the tax on time; and
- (c) The taxpayer corrected the failure to comply as soon as practicable.

(2) Without limiting the Commissioner's discretion under subsection (1), an event or circumstance may include -
- (a) an accident or a disaster; or
- (b) illness or emotional or mental distress.

(3) An event or circumstance does not include -
- (a) An act or omission of an agent of a taxpayer, unless the Commissioner is satisfied that the act or omission was caused by an event or circumstance beyond the control of the agent -
  - (i) That could not have been anticipated; and
  - (ii) The effect of which could not have been avoided by compliance with accepted standards of business organisation and professional conduct; or
- (b) A taxpayer's financial position.

Practical issues

- Remissions under this section apply to late filing penalty, non-electronic filing penalty, late payment penalty, imputation penalty, or any dividend withholding payment penalty tax.
- The request must be in writing and the taxpayer may be required to produce relevant information. Generally Inland Revenue will only request additional information when there is insufficient information available in the original application and further information is necessary to determine if the case meets the "reasonable cause" criteria.
- There is no right to dispute the Commissioner's decision.

Standard Practice

Remission will only occur if the taxpayer is able to provide reasonable justification for the late filing, non-electronic filing, or late payment.

The term "reasonable" must be applied to the event or circumstance. This is an objective test, which requires that it be reasonable for a person in the taxpayer's position not to have complied.

Application of Practice
In deciding whether remission is appropriate the Commissioner will consider:

1. Has the penalty been correctly charged?
2. Has the taxpayer paid the tax (or filed the return) in question?
3. Why did the taxpayer pay (or file) late, or not file electronically?
4. Was the non-compliance caused by an event or circumstance that was -
   - an accident or a disaster?
   - illness or emotional or mental distress?

   When considering the above-mentioned events or circumstances the Commissioner will use the following definitions:
   - accident - an event that is without apparent cause or is unexpected
   - disaster - sudden or great misfortune or a calamity
   - illness - state of being ill
   - emotional distress - disturbance of the mind, mental sensation or state
   - mental distress - of the mind, done by the mind, affected with mental disorder.
5. Has this reason been used before? Where appropriate, have measures been put in place by the taxpayer to ensure that this situation does not recur in the future?
6. Was the tax paid or return filed as soon as "practicable" (as soon as it can be done, and as soon as is feasible and realistic)? This will depend on each case, specifically was the default corrected as soon as possible after the event or circumstance passed?
7. Was the non-compliance an act or omission of the taxpayer's agent? Did an event or circumstance beyond the control of the agent cause it? Could the default have been avoided by compliance with accepted standards of business organisation and professional conduct?
8. Any other information that the Commissioner considers relevant in assessing the application.

Examples

Emotional or Mental Distress (late filing penalty)
Taxpayer's return was due on 7 July. The return was near completion and the taxpayer's previous compliance history was exemplary. However, leading up to the due date his daughter became seriously ill and was hospitalised. Her condition steadily deteriorated and the family spent a great deal of time at the hospital where she was in intensive care until the first week in September.

During this time a reminder notice had been issued advising the taxpayer that a late filing penalty would be charged if his current year's income tax return was not filed within 30 days. He ignored the notice but filed the overdue return in the middle of October, along with documentation verifying his daughter's illness/hospitalisation, after the penalty had been charged.

In these circumstances, the taxpayer filed the return three months after the due date, but given the "events and circumstances" this would be considered a "practicable" time frame.

Circumstances Beyond the Taxpayer's Control (non-electronic filing penalty)
An employer is set up for, and has been sending, electronic monthly schedules for the last six months. A fire destroys the work premises on the date before it was planned to transmit the current month's schedule. As a back-up to the computer system, the employer has a printed copy of the file stored off-site. The employer decides to copy these details onto a paper-based schedule so that the schedule and payment would reach Inland Revenue on time. Any non-electronic filing penalty would be remitted as the event was "beyond the control" of the taxpayer.

Circumstance Beyond Agent's Control (late payment penalty)
An agent was entrusted to pay a client's income tax by the due date of 7 February, as the taxpayer would be overseas at the due date. The cheque was made out for the correct amount, signed and post-dated. The cheque was given to the agent and placed in the office safe. The night before 7 February the office was burgled and the safe blown up - the safe's contents were destroyed. The client's agent produced supporting documentation. This is considered to be an event beyond the agent's control.

Remission consistent with collection of highest net revenue over time

Legislation - Section 183D - Sub-section (1) has been amended to include paragraph (aa); it applies to penalties that arise on or after 1 April 1999.

(1) The Commissioner may remit -
- (a) A late filing penalty; and
- (aa) A non-electronic filing penalty; and
- (b) A late payment penalty; and
- (c) Interest under Part VII -

payable by a taxpayer if the Commissioner is satisfied that the remission is consistent with the Commissioner's duty to collect over time the highest net revenue that is practicable within the law.

(2) In the application of this section, the Commissioner must have regard to the importance of the late payment penalty, the late filing penalty and interest under Part VII in promoting compliance especially voluntary compliance, by all taxpayers with the Inland Revenue Acts.

(3) The Commissioner must not consider a taxpayer's financial position when applying this section.

Practical issues

- Remissions under this section apply to late filing penalty, non-electronic filing penalty, late payment penalty, imputation penalty, dividend withholding payment penalty tax, and interest payable under Part VII. There is no requirement to remit all of the penalties and interest. Each case will be considered on its merits.
- The request must be in writing and the taxpayer may be required to produce relevant information. Generally Inland Revenue will only request additional information when there is insufficient information in the original application and further information is necessary to substantiate the assertions made by the taxpayer, to be able to make an informed decision.
- There is no right to dispute the Commissioner's decision.

Standard Practice

The Commissioner is required by law to collect over time as much revenue as possible in a timely manner, but with underlying emphasis on voluntary compliance by all taxpayers. The Commissioner recognises that pursuing the collection of penalties in some circumstances will not meet his legal duty.

Those circumstances are where a penalty is charged because of:

- a genuine error
- a "one-off" situation
- wrong advice given by an officer of Inland Revenue which has directly resulted in the non-compliance.

The only situation identified to date where interest will be remitted is where an Inland Revenue officer has given incorrect advice to the taxpayer, and that advice has directly resulted in the non-compliance.

Section 183D expressly prevents a taxpayer's financial circumstances being taken into account. The hardship provisions deal with such situations.

Remissions under section 183D apply to recent events. It was not intended that this section be used to remit penalties remaining from longstanding arrears when the taxpayer has financial difficulties and eventually can only pay the core tax or the core tax plus minimal penalties. These cases are dealt with under the hardship provisions.

Application of Practice

In deciding whether remission is appropriate the Commissioner will consider:

1. Has the penalty or interest been correctly charged?
2. Has the taxpayer paid the tax (or filed the return) in question?
3. Why did the taxpayer pay (or file) late, or not file electronically?
4. Was the non-compliance because of a genuine oversight or a one-off situation? Remitting a penalty for a "reliable" taxpayer who did not comply due to a genuine oversight or "one-off" situation recognises that penalising a compliant taxpayer for a small failure to comply is counter-productive and may actually reduce voluntary compliance.

   Requests for remission because of a genuine oversight or a one-off situation apply to penalties only. The Commissioner will not remit interest in these cases as interest is compensation to the Revenue for use of the money over time.

   Interest charged because of a default by a third party does not fall into this category. In this situation the Commissioner considers the taxpayer should look to the third party for compensation.

5. Has Inland Revenue given incorrect advice to the taxpayer, which has resulted in the non-compliance? If an officer of Inland Revenue has given the wrong advice, the imposition of the penalty may adversely affect future compliance by the taxpayer or other taxpayers. This is due to the adverse impact that imposing a penalty would have on a taxpayer's perceptions of the integrity of the system eg where the taxpayer has been given the incorrect date, or amount, for payment and can substantiate to Inland Revenue's satisfaction that they were given the incorrect advice. The tax must be paid in full as soon as the error is established.

   Section 183D is the only provision under which interest can be remitted. Interest will be remitted if Inland Revenue has given a taxpayer incorrect advice which caused a return or payment to be made late and the taxpayer can substantiate to Inland Revenue's satisfaction that they were given the incorrect advice. Under this section, an interest remission will be made in whole or in part. The tax must be paid as soon as the error is established.

   Has Inland Revenue contributed to the problem with excessive delay (such as computer processing problems)? If interest has been accruing on an account that would have been cleared, but for problems caused by computer processing, and the taxpayer has made a conscious effort to pay interest that they calculated as accruing, and the calculation was incorrect, then Inland Revenue may consider an interest remission in part. The tax must be paid as soon as the delay is resolved.

6. Any other information that the Commissioner considers relevant in assessing the application.

Examples

One-off situation (late filing penalty and late payment penalty)
An employer has a computer payroll package set up to prepare the employer monthly schedule for ir-filing. A serious virus is detected on the 4th August when the schedule is due for transmission on the 5th. The software developer is called but the problem is not fixed until the 7th when the schedule was prepared and transmitted. On the same day the remittance slip and payment were also sent. The late filing and late payment penalties would be remitted, as this would be a situation beyond the taxpayer's control.

Genuine Oversight (late payment penalty)
A new office person had been hired by an employer as a wages clerk. The new person's duties included preparing the wages, maintaining the wage records and preparing the employer monthly schedules and remittances.

The new person arrived in early March and found the wage records in a terrible mess. The person completed and balanced the employer monthly schedule and forwarded it to Inland Revenue by 20 April, and had intended to enclose the monthly remittance for March in the same envelope. Unfortunately the remittance and the cheque were caught up in some papers and were not discovered until 24th April. The remittance and cheque were promptly delivered to the nearest Inland Revenue office with supporting documentation and an accompanying letter requesting remission. Remission of the late payment penalty would be granted under section 183D as a genuine oversight.

Incorrect advice (late payment penalty)
A small business person registered for GST and was a six-monthly payer. However as business improved the person elected to file GST returns two-monthly. The person sought the advice from the nearest Inland Revenue office but unfortunately confusion arose over the date the next return was due to be filed, resulting in the imposition of a late payment penalty. Remission of the late payment penalty would be granted under section 183D due to incorrect information being given by Inland Revenue.

Incorrect Advice (interest)
A taxpayer is advised of an incorrect date for PAYE and incurs a late payment penalty and interest. As the late payment penalty and interest were caused by Inland Revenue error; both the late payment penalty and interest would be remitted. However the taxpayer would be expected to provide evidence to support the contention that the incorrect information was given by Inland Revenue.

Incorrect Advice (partial remission of interest)
A taxpayer rang Inland Revenue to find out what interest was accruing on their 1998 income tax account, as they had just received a Statement of Account showing some interest payable, but the due date for the actual income tax was shown as due 7 February 1999. They were advised that interest was not accruing so the taxpayer didn't make payment immediately. Subsequently the taxpayer was charged further interest. Remission was applied for on the grounds that they would have paid immediately had they known of the ongoing liability. Remission of interest was granted in part - the interest that had accrued until the time the taxpayer telephoned Inland Revenue was still payable by the taxpayer. However the taxpayer would be expected to provide evidence to support the contention that the incorrect information was given by Inland Revenue.

Automatic cancellation/remission

There are two provisions for automatic cancellation of penalties and remission of interest:

1. Section 183B - Cancellation of late payment penalties under instalment arrangement. Broadly, if a taxpayer meets all obligations under an instalment arrangement all incremental penalties incurred after the date that the instalment arrangement is entered into are cancelled at the successful completion of the instalment arrangement.

2. Section 183E - Remission of interest if unpaid tax remitted. Where the underlying tax is remitted the interest is also remitted.

The Commissioner will also reverse interest when a retrospective change to legislation caused the position taken by a taxpayer to become incorrect after it was taken. In this situation a new due date for payment would be made, and the interest would be cancelled.

Difference between remission, cancellation and reversal

Remission: occurs when the tax, penalty or interest is correctly charged at the time but a decision has been made to relieve the taxpayer of the liability to pay.

Cancellation: occurs when the tax, penalty or interest was correctly charged at the time but a provision of the legislation relieves the taxpayer from the obligation to pay, such as the successful completion of an instalment arrangement.

Reversal: the tax, penalty or interest should not have been charged in the first place.

This Standard Practice Statement was signed by me on 31st August 1999.

Michael Rapson
Manager, Technical Standards

QUESTIONS WE'VE BEEN ASKED

This section of the TIB sets out the answers to some day-to-day questions that people have asked. We have published these as they may be of general interest to readers.

These items are based on letters we've received. A general similarity to items in this package will not necessarily lead to the same tax result. Each case will depend on its own facts.

BANKRUPT'S ABILITY TO CARRY FORWARD ACCUMULATED LOSSES

Section IE 1, Income Tax Act 1994 – Net losses may be offset against future net income

We have been asked whether a taxpayer is entitled to carry forward pre-bankruptcy losses where the loss arises from the taxpayer paying the debts owing (as opposed to the debts being remitted).

Tax Information Bulletin Volume Nine, No. 9 (September 1997), at page 20, included an item under the heading *"Losses released on discharge from bankruptcy - inability to carried forward"*. The item concerned an enquiry on the ability of a bankrupt to carry forward income tax losses that had arisen as a result of debts incurred in a previous year. The bankrupt was released from payment of these debts during the bankruptcy process, and as a result had not made any payment towards the debts that made up the losses. She was not entitled to carry the losses forward to offset against post bankruptcy income, as she had been released from the obligation to pay the debts. Because she had made no payment of the debts, the amount of the debts could not be taken into account in calculating the losses available to carry forward.

This item considers the situation where the bankrupt has paid the debts.

A taxpayer was made bankrupt as a result of a farming business affected by severe flooding. Up to the time of the floods, the farming business had operated reasonably successfully and all business debts to the end of the previous income year had been **paid in full**. However, due to large depreciation claims, accumulated income tax losses were available to be carried forward at the time the farmer was adjudged bankrupt.

At a meeting of creditors it was agreed that the Official Assignee (the "Assignee") would continue to operate the business, as there was every prospect of the farm trading successfully once it had recovered from the floods. The farmer obtained work in a nearby town and derived salary and wages for the period of the bankruptcy. The farmer has asked about his income tax obligations and whether he is entitled to carry forward the pre-bankruptcy accumulated losses.

In the situation described above, where the Assignee is carrying on the former business of the bankrupt, there are two "taxpayers":

- The bankrupt, and
- The Assignee, as trustee for the benefit of the creditors, deriving income from the farming business.

The income tax responsibilities of each follow.

The bankrupt

The bankrupt will be required to file two income tax returns for the year in which he was adjudged bankrupt.

Under section 44(1)(f) of the Tax Administration Act 1994, the first return will cover the period from the beginning of the income year to the date the farmer was adjudged bankrupt. This return is an "interim" return that enables Inland Revenue to lodge a proof of debt with the Assignee for any tax owing at the date of adjudication. From the income derived during this period, the farmer is entitled to deduct the pre-bankruptcy losses against any farming profit earned during the period to date of bankruptcy and other income (such as salary and wages) derived during that period. See Subpart IE of the Income Tax Act 1994 (the ITA). If there is an overpayment of income tax resulting from credits of PAYE tax deductions or provisional tax paid, the refund will pass to the Assignee.

At the end of the income year in which the farmer is adjudged bankrupt, he must file a return of income for the **full** income year.

This second return will include any income or (loss) already declared in the earlier return of income to the date of bankruptcy, but not any income or loss resulting from the farming business now carried on by the Assignee. Any adjustments necessary to take account of PAYE credits already refunded to the Assignee as a result of the "interim" return of income will be made when the tax assessment for the full year is made.

Under subpart IE of the ITA, the farmer will be able to offset against that full year's income the accumulated pre-bankruptcy losses to the extent of the income derived. Any remaining losses can be carried forward to future years.

Any of the pre-bankruptcy losses remaining after the bankruptcy is discharged can be used by the farmer to offset against future income derived.

The Official Assignee as trustee

Under section 42 of the Insolvency Act 1967, when a person is adjudged bankrupt all property of the bankrupt vests in the Assignee. This property includes the farm business assets, but not the accumulated losses as these are not "property" as envisaged by that Act. The Assignee carries on the farming business as trustee for the creditors. As trustee, the Assignee is a new taxpayer and will be liable to income tax on any gross income derived from the business. As section IE 1(1)(a) of the ITA only permits losses to be carried forward by *"the taxpayer"*, the Assignee, as another taxpayer, cannot utilise the farmer's pre-bankruptcy losses against any income derived as trustee of the farming business.

Under section HH 4 of the ITA the Assignee, as trustee, is required to furnish income tax returns for each income year, or part thereof, during the bankruptcy period while carrying on the former business of the bankrupt. Income tax is payable on any trustee income derived during the period. Any losses incurred by the trustee can be carried forward from year to year to offset against subsequent trustee income. However, any accumulated "trustee losses" remaining at the end of the bankruptcy period are not available to the farmer to offset against his post-bankruptcy income.

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) - Jun 1999: 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) - Jul 1999: 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) - Aug 1999: 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) - Jun 1999: 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 1999: 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) - Jun 1999: 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 - a general guide (IR 175) - Aug 1999: Explains the administrative review process and the grounds for applying.

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) - Jun 1999: An explanation of how becoming redundant can affect a paying parent's child support liability.

Child support and the Family Court (CS 51) - May 1999: 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 (IR 150) - Jun 1999: 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? (IR 153) - Jul 1999: Explains how our Customer Service Advisors can help if our usual services haven't resolved your child support problems.

DUE DATES

October 1999

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

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

Second 2000 instalment due for taxpayers with February balance dates.

Third 2000 instalment due for taxpayers with October balance dates.

1999 end of year payments due (income tax, Student Loans, ACC premiums) for taxpayers with November balance dates.

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

QCET payment due for companies with November balance dates, if election is to be effective from the 2000 year.

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

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

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

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

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

RWT on interest deducted 1 April 1999 to 30 September 1999 due for six-monthly payers.

RWT on dividends deducted during September 1999 due.

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

29 GST return and payment for period ended 30 September 1999 due.

November 1999

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

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

Second 2000 instalment due for taxpayers with March balance dates.

Third 2000 instalment due for taxpayers with November balance dates.

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

1999 end of year payments due (income tax, Student Loans, ACC premiums) for taxpayers with December balance dates.

QCET payment due for companies with December balance dates, if election is to be effective from the 2000 year.

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

Small employers: PAYE deductions and deduction schedules for period ended 31 October 1999 due.

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

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

RWT on dividends deducted during October 1999 due.

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

30 GST return and payment for period ended 31 October 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 ______________________________

Address ______________________________

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√	*Interpretation statements*	*Comment Deadline*
☐	**IS0044** Financial planning fees - income tax deductibility.	31 October 1999

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

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

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The Manager (Field Liaison)

Adjudication & Rulings
National Office
Inland Revenue Department
P O Box 2198
WELLINGTON

Inland Revenue
Te Tari Taake

Tax Information Bulletin

Mailing list update form

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(Please tick)

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- You don't want to receive the TIB anymore and want your name from the mailing list—attach TIB mailing label or fill in details below.

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Name of company

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