TAX INFORMATION BULLETIN

Volume Eleven, No 9 October 1999

Contents

ISSN 0114-7161

Inland Revenue
Te Tari Taake

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

Standard practice statements

Legal decisions - case notes

General interest items

Regular features

GET YOUR TIB SOONER BY INTERNET

This Tax Information Bulletin is also available on the Internet, in two different formats:

Online TIB (HTML format)

- This is the better format if you want to read the TIB on-screen (single column layout).
- Any references to related TIB articles or other material on our website are hyperlinked, allowing you to jump straight to the related article. This is particularly useful when there are subsequent updates to an article you're reading, because we'll retrospectively add links to the earlier article.
- Individual TIB articles will print satisfactorily, but this is not the better format if you want to print out a whole TIB.
- All TIBs from January 1997 onwards (Volume Nine, No.1) are available in this format.

Online TIB articles appear on our website as soon as they're finalised – even before the whole TIB for the month is finalised at mid-month. This means you can read the first of any month's TIB articles on our website in the last two weeks of the previous month.

Printable TIB (PDF format)

- This is the better format if you want to print out the whole TIB to use as a paper copy – the printout looks the same as this paper version.
- You'll need Adobe's Acrobat Reader to use this format – available free from their website at http://www.adobe.com
- Double-column layout means this version is better as a printed copy – not as easy to read on-screen.
- All TIBs from July 1989 (the start of the TIB) are available in this format.

The printable TIB appears on our website at mid-month, at the same time as we send the paper copy to the printers. This means you can get a printable TIB from our website about two weeks before we can post you a paper copy.

Where to find us

Our website is at **http://www.ird.govt.nz**

It also includes other Inland Revenue information which you may find useful, including any draft binding rulings and interpretation statements that are available, and many of our information booklets.

If you find that you prefer the TIB from our website and no longer need a paper copy, please let us know so we can take you off our mailing list. You can e-mail us from our website.

NEW LEGISLATION

Taxation (Remedial Matters) Act and Taxation (Annual Rates of Income Tax 1900-2000) Act

Legislation set out in the Taxation (Annual Rates and Remedial Matters) Bill was introduced into Parliament on 20 May 1999 and enacted on 8 September 1999. It confirms the income tax rates for 1999-2000 and introduces several revenue protection and remedial measures.

Key features of the new legislation relate to GST on "exported" services that are supplied and consumed in New Zealand, and the deductibility of film-related expenditure for tax purposes. The latter was included in the bill after introduction, as were several new remedial amendments.

Enactment of the legislation has resulted in amendments primarily to the Income Tax Act 1994, the Tax Administration Act 1994 and the Goods and Services Tax Act 1985.

When enacted the legislation was divided into two Acts:

- Taxation (Remedial Matters) Act [No.98]
- Taxation (Annual Rates of Income Tax 1999-2000) Act [No.99]

The new legislation is described in detail in this *Tax Information Bulletin.*

POLICY ISSUES

DEDUCTIBILITY OF FILM-RELATED EXPENDITURE

Sections EO 4A, GD 12, OB 1 of the Income Tax Act 1994

Introduction

Section EO 4A has been amended to ensure that all film-related expenditure is under that section potentially subject to the claw back of deductions for expenditure to the extent that the expenditure is effectively reimbursed to the investor. Section EO 4A has also been amended to treat loss attributing qualifying companies and their shareholders as associated persons.

Background

Section EO 4A was enacted earlier this year by the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 to counter certain arrangements entered into by investors involving expenditure on films. Section EO 4A, as originally enacted, applied to expenditure that was deductible under the film expenditure rules in sections EO 3 and EO 4 and clawed back deductions to the extent that the expenditure was effectively reimbursed to the investor (usually through the sale of shares in a related company).

After the enactment of section EO 4A the Government became aware of a tax-driven arrangement involving a film that circumvented this provision. The arrangement involved the effective reimbursement of film-related expenditure and was intended to provide tax benefits to high income individuals through their investment in partnerships in loss attributing qualifying companies. Section EO 4A, as originally enacted, did not apply to the arrangement, primarily because it involved expenditure that did not come within the film expenditure rules in sections EO 3 and EO 4. The Government was concerned that other arrangements involving effective reimbursement of film-related expenditure could use this method to circumvent section EO 4A.

Key features

Section EO 4A has been amended to ensure that it can potentially apply to all film-related expenditure whether or not that expenditure comes within the film expenditure rules in sections EO 3 and EO 4. The amendment brings within section EO 4A expenditure relating to a film but which was not previously subject to the section. This is achieved by section EO 4A stating that it applies to expenditure that would otherwise be deductible under the Act if the expenditure is for a right in, or in relation to, a film. For this purpose "right" is defined to mean a right to an amount that is dependent on or calculated by reference to income from the sale, use, rental or other exploitation of a film.

Section EO 4A has also been amended to provide that for the purpose of that section loss attributing qualifying companies and their shareholders are treated as associated persons.

The amendments include a savings provision which provides that section EO 4A does not apply to a person who has incurred substantial expenditure on a New Zealand film before 7 July 1999 if certain tests of commerciality and certain notification requirements are met.

More specifically, the savings provision provides that section EO 4A does not apply to a person who has entered into an arrangement for the financing of a film on or before 30 June 2001 if:

- at least $1,000,000 of expenditure has been incurred before 7 July 1999 under contracts for the supply of goods or services in New Zealand in relation to the film; and
- the film has not been completed before 7 July 1999; and
- any person who has entered into such a contract has notified the Commissioner of Inland Revenue before 1 November 1999 that these requirements in relation to the film have been satisfied. (Notices should be addressed to National Manager, Corporates, Inland Revenue Department, P O Box 2198, Wellington.)

In addition, the following requirements need to be satisfied before the savings provision applies:

- the film is a New Zealand film or a provisional certificate has been issued for the film by the Film Commission; and
- the recipient of any payments for intangible rights is subject to New Zealand tax on those payments or is a resident in a grey list country (that is, a country or territory specified in Schedule 3, Part A of the Income Tax Act 1994); and
- total expenditure on the film does not exceed 140% of the physical production cost of the film; and
- the investor has an expectation of profit based on reasonable commercial assumptions.

Section GD 12, an anti-avoidance provision applying to non-arm's length transactions involving films, has been amended in a similar manner to section EO 4A to ensure that it can potentially apply to all film-related production expenditure.

Application date

The amendments apply on and after 7 July 1999.

DIVIDENDS FROM SHARES HELD ON REVENUE ACCOUNT

Section FC 3(1) of the Income Tax Act 1994

Introduction

The coverage of section FC 3 has been widened to include:

- all revenue account shareholders; and
- associated companies of the shareholder.

These changes have been made for base maintenance reasons.

Background

Section FC 3 can apply when a company owns shares that it intends to sell. The section is designed to ensure that the exempt dividend provisions cannot be used to avoid the tax that should be paid on disposal of the shares. This can be illustrated as follows:

Scenario 1
Parent Co buys all the shares in Target Co for $100 with the intention of selling them. Those shares are eventually sold for $110; the $10 gain would be taxable.

Scenario 2
Again, Parent Co buys all the shares in Target Co for $100 with the intention of selling them. But this time Parent Co causes Target Co to pay it a dividend of $30 and Target Co is then sold for $80. In the absence of section FC 3, Parent Co would have derived an exempt dividend of $30 (by virtue of the section CB 10 intercorporate dividend exemption) and suffered, for tax purposes, a tax loss of $20 on the transaction. This is notwithstanding the fact that the same net gain of $10 is made as in scenario 1.

Section FC 3 provides that the $30 dividend is income from the 'sale' of the shares - thus ensuring the net gain of $10 is taxable.

Other aspects of section FC 3 are:

- The section applies only to dividends that are paid out of pre-acquisition reserves because these represent a return of part of the purchase price. In contrast, dividends paid out of post-acquisition reserves are a return on the amount invested.
- The shares do not need to be sold for an adjustment to be made.
- To ensure that there is no double taxation, the intention is that the adjustment is reduced by any of the dividend amounts that are taxable.

The changes

A taxpayer may hold shares, the proceeds of which are gross income when disposed of, even if that shareholder does not engage in the business of dealing in shares or has not acquired the shares for the purpose of selling them. The shareholder may, for example, be a "controlled petroleum mining entity" and would still be holding the shares as revenue property. The changes to FC 3(1) make it clear that all revenue account situations are potentially covered. The changes also extend to dividends paid to persons associated with the shareholder (through a new section CF 2(13A)).

Application date

The changes apply on and after 21 May 1999.

Possible further changes

As pointed out by submissions, further work on section FC 3 seems appropriate to simplify and clarify its wording.

CONDUIT TAXATION

Sections FH 5, FH 7, FH 8(5), KH 1, KH 2, ME 12, MG 8(5), MG 14, MI 2, MI 5, MI 14 - MI 22, NH 7 and OB 1 of the Income Tax Act 1994; sections 29 and 30A of the Tax Administration Act 1994

Introduction

Extensive amendments have been made to integrate consolidated groups into the conduit tax rules. A number of remedial amendments have also been made, to address other deficiencies identified in the rules.

Background

The consolidated group rules, enacted in 1992, allow a wholly-owned group of companies to be treated as a single company for tax purposes. The rules simplify the tax calculations for corporate groups and allow them to improve their efficiency by rationalising large and complex structures.

Conduit tax reform was enacted in March 1998. Before the reform, New Zealand's controlled foreign company and foreign investment fund rules had the unintended effect of taxing income derived on behalf of non-residents from outside New Zealand, at 33% on an accrual basis. Conduit reform effectively switched off the New Zealand tax on this income. In doing this, a significant disincentive to conduit investment was removed. New Zealand does, however, continue to impose non-resident withholding tax of 15% on any distributions of conduit income to non-residents.

When conduit reform was enacted, it was not considered that there would be sufficient affected companies to justify introducing the extensive additional rules necessary if consolidated groups were to be fully integrated into the reform. This turned out not to be the case, so amendments have been made to integrate consolidated groups into the conduit rules.

To effect the integration of consolidated groups into the conduit rules, new sections MI 14 to MI 22 have been enacted, and consequential amendments made to sections ME 12, MG 14, MI 5 and OB 1 (definition of "conduit tax relief account company"). These amendments are broadly patterned on the existing rules for consolidated group dividend withholding payment accounts.

Amendments have also been made to address a number of other conduit remedial issues:

- An amendment to section FH 5 corrects a cross-reference error.
- Amendments to sections FH 7 and KH 1(2) address deficiencies in the formulae for determining respectively the amount of excessive interest expense allocated to New Zealand companies and the amount of conduit relief. If a company is able to offset branch equivalent tax account debits from another group member, the previous formulae inappropriately took that offset into account a number of times, even though it can be credited

against an income tax liability only once.

- An amendment to section FH 8(5) ensures that an inadequate debit does not arise to a conduit tax relief account if excessive interest expense allocated to New Zealand is applied against a company's dividend withholding payment liability. When excessive interest is applied to a company's dividend withholding payment liability, some conduit relief previously given to the company is clawed back. The company's conduit tax relief account is debited to reflect this claw-back, but the previous rules did not debit a sufficient amount in some circumstances.
- Amendments to sections KH 1(1), NH 7(1) and OB 1 (definition of "conduit tax relief account company") ensure that when a company has ceased to be a conduit tax relief company, it will not be entitled to conduit relief on subsequent income tax and dividend withholding payment liabilities.
- Amendments to sections KH 2(2) and NH 7(3) allow a listed company to use any commercially justifiable date on which it determines its non-resident shareholders as a measurement date. New sections KH 2(2A) and NH 7(3A) are compliance cost saving measures, which require 100% subsidiaries of listed companies to use the measurement date determined for their listed parent.
- An amendment to section MG 8(5) ensures that an allocation deficit debit does not arise for life insurance companies that have elected to use the conduit rules. These companies are prohibited by section MG 7(1) from transferring credits from their imputation credit account to their policyholder credit account, so any transfer from their dividend withholding payment account to their policyholder credit account would under the previous rules have triggered an inappropriate allocation deficit debit.
- An amendment to section MI 2(4) effects the policy intent that companies electing into the conduit rules would continue to be subject to the rules in subsequent years, without having to make a subsequent election. New subsections (5A) and (6A) clarify the effective date for the revocation of an election, and tie in with the amendments being made to sections KH 1(1) and NH 7(1).
- An amendment to section MI 5(2)(b) ensures that the descriptive term used for an entry in a conduit tax relief account is consistent with its description in subsection (1).
- New section NH 7(2)(c) ensures that a newly incorporated company is not inadvertently denied conduit relief on foreign-sourced dividends derived in its first two years of operation.
- Amendments to section 29 of the Tax Administration Act 1994 correct terminology and insert a cross-reference to section 30A. An amendment to section 30A removes the need to include the amount of conduit tax relief credit on shareholder dividend statements.

The amendments to the conduit rules have retrospective effect to commencement of the conduit rules (the 1998-99 income year, 1998-99 imputation year, or dividends paid on or after 1 April 1998). Because the rules have only been in place for one year, it was considered cleaner to give the amendments retrospective effect than to address transitional effects that might otherwise arise. Retrospective application is also expected to favour taxpayers, as the amendments correct anomalies that are generally disadvantageous to them. For consolidated groups in particular, retrospective application will ensure there is no confusion about how the conduit rules might otherwise apply to the group for the 1998-99 year.

Key features

New sections MI 14 to MI 22 have been enacted, enabling a consolidated group to maintain a conduit tax relief account.

Consequential amendments have been made, to ensure the new rules interface correctly with other provisions in the Act affecting conduit taxation.

Amendments have also been made to address a number of remedial issues identified in a review of the conduit rules.

Application date

The amendments apply retrospectively from the 1998-99 income year, the year from which the conduit tax rules first applied.

NEW ZEALAND RASPBERRY MARKETING COUNCIL

Section GE 1 Income Tax Act 1994, and section 75D Estate and Gift Duty Act 1968.

Introduction

The New Zealand Raspberry Marketing Council, its committees and the Raspberry Marketing Export authority are to be wound up. The process for their winding up is contained in the Raspberry Marketing Authorities (Dissolution) Regulations 1999. The amendments to the Income Tax Act and the Estate and Gift Duties Act give certainty to the tax consequences flowing out of this winding up process.

Background

The New Zealand Raspberry Marketing Council, the Raspberry Marketing Export Authority and the four district marketing committees are each to be wound up as part of the Government's producer board reform. The process for winding up these entities is contained in the Raspberry Marketing Authorities (Dissolution) Regulations 1999. The Raspberry Marketing Regulations 1979 are to be revoked.

Key features

There will be no income tax or gift duty consequences to the New Zealand Raspberry Marketing Council and its committees, and to the shareholders of the council and committees as a result of the introduction of the regulations providing for the dissolution process. The regulations are intended to confirm the shareholders' entitlement to the assets of the council and committees on dissolution so there should be no tax cost.

There will be no income tax or gift duty consequences to the Nelson Raspberry Marketing Committee and its members as a result of the vesting of Cold Storage Nelson Limited shares by the Nelson Raspberry Marketing Committee in a new company, Rubus Investments Nelson Ltd. The subsequent distribution of the new company's shares to Nelson Raspberry Marketing Committee members will be treated for tax purposes as a distribution of those shares by the Nelson Raspberry Marketing Committee to its shareholders on winding up. This will clarify the current law on distributions by the producer board on wind up.

The distribution to shareholders of the Raspberry Marketing Council and the four committees on their winding up will be treated for income tax purposes as a distribution by a company to its shareholders on winding up.

Application date

The amendments apply from the date the Raspberry Marketing Regulations 1999 were made, 12 July 1999.

QUALIFYING COMPANY ELECTION TAX ON AMALGAMATIONS

Section HG 11(1A), (1B) and (3A), Income Tax Act 1994

Introduction

Qualifying company election tax (QCET) is now payable if a non-qualifying company amalgamates with a qualifying company and the qualifying company is the company which continues in existence after the amalgamation. Also, net losses of the non-qualifying company cannot be carried forward to the amalgamated company.

Background

A non-qualifying company that becomes a qualifying company is required to pay QCET on its retained earnings. The company can then distribute the retained earnings tax-free.

Previously, if a non-qualifying company amalgamated with a qualifying company, with the non-qualifying company going out of existence and the qualifying company continuing as the amalgamated company, no QCET was payable on the non-qualifying company's retained earnings, but the amalgamated company was then able to distribute the retained earnings tax-free. The result was that the retained earnings of a non-qualifying company could be distributed without any tax being paid at all. The amalgamated company was also entitled to the benefit of any net losses of the non-qualifying company.

This result was never intended and was a deficiency in the law. The amendment ensures that retained earnings of a company cannot be distributed without appropriate tax being paid and that net losses of the non-qualifying company cannot be carried forward.

Key features

New subsections (1A) and (1B) have been inserted in section HG 11 of the Income Tax Act 1994. Subsection (1A) imposes QCET if a non-qualifying company amalgamates with a qualifying company and the qualifying company is the company which continues in existence after the amalgamation, and subsection (1B) directs how the QCET is to be calculated. The obligation to pay is placed on the amalgamated company.

A new subsection (3A) also ensures that net losses of the non-qualifying company cannot be carried forward to the amalgamated company.

Application date

The amendment applies on and after 21 May 1999.

CHARITABLE TRUSTS

(Section KC 5(1)of the Income Tax Act 1994)

The Karunai Illam Trust has been granted charitable donee status from the 2000-01 income year.

Donations made to the Trust will entitled individual taxpayers to a rebate of 33 1/3 percent of the amount donated. The maximum rebate for all donations is $500 per annum. A company (other than a closely held company) will be entitled to a deduction from its net income up to the amount prescribed by section DJ 4.

CONSOLIDATED GROUP DIVIDEND WITHHOLDING PAYMENT ACCOUNT

Section MG 16A of the Income Tax Act 1994

Introduction

The amendment ensures that the anti-avoidance rules for inappropriate dividend withholding payment credit allocations also applies to consolidated groups.

Background

When a company has a debit balance in its dividend withholding payment account at the end of an imputation year (meaning it has credited its shareholders with more dividend withholding payment credits than it has paid), a 10% penalty arises on that debit balance. The same principle should apply to a debit balance in a consolidated group's dividend withholding payment account.

Previously, however, there was no provision in the Act to impose a penalty on a debit balance in a consolidated group's dividend withholding payment account. An amendment has been made, therefore, to ensure consolidated groups are sanctioned if they have a debit balance in their dividend withholding payment account at the end of an imputation year.

Key features

New section MG 16A contains operative provisions to apply the anti-avoidance rules for inappropriate dividend withholding payment credit allocations to consolidated groups.

Application date

The amendment applies to the 1999-2000 and subsequent imputation years.

JOINT BANK ACCOUNTS BETWEEN RESIDENTS AND NON-RESIDENTS

Sections NG 2(1) and NG 10(1A) of the Income Tax Act 1994

Introduction

An amendment removes doubt over whether a party paying interest on an account held jointly by residents and non-residents should deduct resident withholding tax or non-resident withholding tax.

Background

When interest income is derived jointly by residents and non-residents, the payer is often not readily able to identify the respective beneficial entitlement of each recipient. This can create compliance difficulties for payers seeking to determine the correct amount of tax to withhold. It also creates administrative difficulties, as residents that have been subjected to the lower non-resident withholding rate have no incentive to advise Inland Revenue and account for the under-deducted tax.

An amendment has been made to remove doubt over the withholding rate that should apply. Its effect is as follows:

- New section NG 2(1)(ab) has the effect of imposing non-resident withholding tax on interest derived jointly by residents and non-residents at the rate of resident withholding tax. However, if the payer is not required to deduct resident withholding tax, they are not relieved from the obligation to deduct non-resident withholding tax from the interest attributable to the non-resident.
- Treaty relief is still available, but only on application to Inland Revenue for a refund of over-deducted tax. The existing provision of treaty relief at source has been removed for affected joint accounts, through new section NG 10(1A). Relief will not be available other than under a treaty.
- Subject to treaty relief, NRWT deducted under the new rules will remain a final tax on the non-resident, even though the rate of tax will be higher than what it is at present.

In most cases, the amendment will lead to an over-deduction of tax on that portion of interest to which a non-resident is beneficially entitled. This is the intended effect of the amendment - it ensures that residents cannot have withholding tax under-deducted on their interest income by being treated as non-residents. If non-residents are unhappy with this treatment, they are entitled to operate their investments separately from resident persons, in which case the normal withholding rates will apply.

Key features

Section NG 2(1)(ab) introduces a new rate of withholding tax for interest derived jointly by resident and non-resident persons.

New section NG 10(1A) precludes the treaty withholding rate on interest from being applied at source to interest derived jointly by resident and non-resident persons.

Application date

The amendment applies to interest paid from 8 September 1999.

AVAILABLE SUBSCRIBED CAPITAL

Section OB 1 of the Income Tax Act 1994

Introduction

The definition of "available subscribed capital" has been amended to correct a deficiency in the definition. The deficiency allowed the tax free conversion into available subscribed capital of reserves that are normally taxable on their distribution to shareholders.

Background

Available subscribed capital is the amount that a company can distribute to its shareholders tax-free in a repurchase of the company's shares (if certain "bright line" tests have been met) or on its winding up. The concept of available subscribed capital is similar to the traditional company law concept of "paid up capital".

It is contrary to policy to allow reserves that are normally taxable when distributed to shareholders to become available subscribed capital without a tax cost.

Key features

The amendment to section OB 1 is designed to ensure that companies cannot make tax-free conversions into available subscribed capital reserves that would ordinarily be taxable when distributed to shareholders. Available subscribed capital will exclude consideration received by a company for the issue of its shares if that consideration is in the form of giving up or varying existing ownership rights or interests in the company. If available subscribed capital for those rights already exists it will be preserved.

Application date

This amendment applies from 20 May 1999.

CROWN ENTITIES AND THE ASSOCIATED PERSONS TESTS

Sections OD 3(3), OD 4(3), OD 7 and OD 8 of the Income Tax Act 1994; sections 67, 214E and 245B of the Income Tax Act 1976

Introduction

Crown entities adhere to the commercial practice of treating each other on an arm's length basis. However, the tax laws do not fully preclude the associated persons tests from applying to certain Crown entities. The amendments ensure that these associated persons tests do not inappropriately apply to the following special corporate entities that are owned by the Crown: state-owned enterprises, crown research institutes, hospitals and health services and crown health enterprises. Subsidiaries of these special corporate entities are also dealt with.

Background

The Income Tax Act 1994 contain several tests for determining whether parties to a transaction are associated persons. The concept of associated persons is intended to combat tax avoidance or tax minimisation in specific situations. It targets parties who are not necessarily dealing on an arm's length basis.

Several tests measure "association" under the various associated persons rules in sections OD 7 and OD 8.

The voting interest and market value interest tests cannot cause special corporate entities owned by the Crown to be associated with each other. However, the "income interest" test and arguably the "control by any other means whatsoever" test could cause these entities to be incorrectly regarded as "associated".

The amendments ensure that the associated persons test are properly targeted insofar as they affect special corporate entities owned by Crown and subsidiaries of such special corporate entities. This confirms the Government's policy of competitive neutrality between Crown entities.

Key features

Sections OD 7 and OD 8 define the associated persons tests. Amendments to these sections ensure that special corporate entities owned by the Crown and companies that form a group of companies with such special corporate entities are exempt from the ambit of the sections.

In the 1976 Act, sections 67, 214E and 245B are amended so that associated persons tests do not apply to special corporate entities owned by the Crown and companies that form a group of companies with such special corporate entities.

Application date

The amendments to the Income Tax Act 1994 will have application back to the 1995-96 income year.

The amendments to the Income Tax Act 1976 will have application back to 1 July 1994.

The amendments do not apply where a different position has been taken in a tax return that has been filed before the bill was introduced (20 May 1999).

NOTIONAL SINGLE PERSONS SHAREHOLDER AND GROUP COMPANIES

Sections OD 3(3) and OD 4(3) of the Income Tax Act 1994; sections 8C and 8D of the Income Tax Act 1976

Introduction

The legislation has been clarified to ensure that voting and market value interests in the subsidiaries of a special corporate entity are attributed to the 'notional single person' shareholder.

Background

Sections OD 3(3)(a) and OD 4(3)(a) provide that all voting and market value interests in a special corporate entity are held by a notional single person shareholder. Previously, the notional single person was deemed to hold such interests in the special corporate entity and no interests in any other company.

Sections OD 3(3)(d) and OD 4(3)(d) contain the corporate 'look through' rule. Subsidiaries of a company are required to 'look through' its parent company for the purposes of tracing its shareholders. The shareholders of the parent company are deemed to be the shareholders of the subsidiaries.

However, the subsidiaries of special corporate entities had to trace to the actual shareholders and were precluded from undertaking shareholder tracing to the notional single person created under OD 3(3)(a) and OD 4(3)(a).

Sections OD 3(3)(a) and OD 4(3)(a) have now been amended to allow the application of the shareholder tracing rule under OD 3(3)(d) and OD 4(3)(d) to the subsidiaries of special corporate entities.

Key features

The notional single person shareholder is now deemed to own voting and market value interests of a special corporate entity as well as all interests that arise under sections OD 3(3)(d) and OD 4(3)(d). These amendments allow subsidiaries of special corporate entities to undertake shareholder tracing to the notional single person shareholder.

Similar amendments have been made to sections 8C(3)(a)(ii) and 8D(3)(a)(ii) of the Income Tax Act 1976 to ensure that the notional single person shareholder of special corporate entities are also deemed to hold interests in the subsidiaries of such special corporate entity.

Application date

The amendments to the Income Tax Act 1994 will apply from to the 1995-96 income year, when the Act came into effect.

The amendments to the Income Tax Act 1976 will apply from the 1992-93 income year.

Confirmation of Annual Income Tax Rates for 1999-2000

The income tax rates for the 1999-00 income year have been confirmed as follows:

Policyholder income	33 cents for every $1 of schedular taxable income
Maori authorities	25 cents for every $1 of taxable income
Undistributed rents, royalties and interest of the Maori Trustee	25 cents for every $1 of taxable income
Companies	33 cents for every $1 of taxable income
Trustee income (including that of trustees of superannuation funds)	33 cents for every $1 of taxable income
Trustees of group investment funds	33 cents for every $1 of schedular taxable in respect of category A income
Taxable distributions from non-qualifying trusts	45 cents for every $1 of taxable distribution
Other taxpayers (including individuals) Income not exceeding $38,000	19.5 cents for every $1 of taxable income
Income exceeding $38,000	33 cents for every $1 of taxable income
Specified superannuation contribution withholding tax	33 cents for every $1 of the contribution

The rates apply for the 1999-00-income year.

GST – TREATMENT OF EXPORTED SERVICES

Sections 10 and 11(2) of the Goods and Services Tax Act 1985

Introduction

Services that are performed in New Zealand for a private consumer but have been contracted for by a non-resident, who is outside New Zealand, are no longer eligible for zero-rating. The amendment aims to protect the integrity of the tax base by ensuring that the consumption of services in New Zealand is subject to GST.

Background

In March 1999 the Government released the tax policy discussion document *GST: A Review,* which outlined proposals for changes to GST resulting from a review of the Goods and Services Tax (GST) Act 1985. One of the proposals in the discussion document was that the GST Act should be amended to exclude from the zero-rating provisions the supply of services that are contracted for by a non-resident who is outside New Zealand but are consumed in New Zealand.

In these cases, the non-resident, who is outside New Zealand, pays for the services but another person receives the performance of the services in New Zealand. Examples of such services include the education of non-resident students at New Zealand schools or universities under contract with the student's non-resident parent(s), and the provision of accommodation and other services in New Zealand to non-resident tourists under a contract with a non-resident tour promoter.

The policy intent of GST is to tax the domestic consumption of services, even though a non-resident has purchased them. However, following on from the Court of Appeal decision in *Wilson & Horton v Commissioner of Inland Revenue*,[1] these services may have been zero-rated.

Key features

New section 11(2A) ensures that GST is charged on the supply of services that are consumed in New Zealand but are contracted for by a non-resident who is outside New Zealand. It provides that section 11(2)(e) does not zero-rate services supplied to a non-resident if another person (including an employee or company director of the non-resident) receives the performance of those services in New Zealand.

If it is reasonably foreseeable that the services relate to the making of taxable or exempt supplies by registered persons in New Zealand those services are excluded from the new provision.

Other amendments clarify the law in this area.

The application of section 11(2)(d), which zero-rates services physically performed outside New Zealand, has been expanded to specifically zero-rate the arrangement of such services.

New section 11(2B) defines the phrase "outside New Zealand" in relation to section 11(2)(e) and (fa). For the purpose of these provisions a non-resident company or unincorporated body that has a minor presence in New Zealand, or whose presence is unrelated to the supply of services, will remain "outside New Zealand".

New sections 10(16A) and 10(17A) will apply for the purposes of new section 11(2A) if the supply involves the provision of a token, stamp or voucher. The value of supply will be recognised as arising at the time the token, stamp or voucher is acquired, rather than at the time it is redeemed.

Application date

The amendments apply on and after 20 May 1999.

Detailed analysis

Taxing consumption in New Zealand

New section 11(2A) excludes from zero-rating the supply of services that are consumed in New Zealand but are contracted for by a non-resident who is outside New Zealand. It provides that section 11(2)(e) does not zero-rate services supplied to a non-resident if another person (including an employee or company director of the non-resident) receives the performance of those services in New Zealand.

The provision will not apply if it is reasonably foreseeable that the supply of the services is related to the making of taxable or exempt supplies by registered persons.

If section 11(2A) had applied to prevent zero-rating where the resident for whom the services were performed was a registered person making taxable supplies, the result would have been that full GST was charged to the non-resident and that cost could have been passed on to the resident.
However, neither the non-resident nor the resident would have been entitled to an input tax credit for that GST cost. The resident business would therefore pass the full GST cost on in making a taxable supply. This would be inconsistent with the policy intent of taxing only the value added.

[1] (1995) 17 NZTC 12,325

The incentive, in the absence of a tax on imported services, for registered persons making exempt supplies to acquire services from offshore was recognised in the discussion document *GST: A Review*. However, that is an issue that Government is seeking to address in its longer-term review of imported services.

The amendment is therefore directed primarily towards ensuring private consumers pay GST on the domestic consumption of services.

"Outside New Zealand"

The application of the phrase "outside New Zealand" in section 11(2)(e) and (fa) is relatively straightforward in respect of supplies to non-resident individuals. An individual is either in New Zealand or is not. However, it is more difficult in respect of non-resident companies and unincorporated bodies.

New section 11(2B) provides a definition of the phrase "outside New Zealand" in respect of non-resident companies and unincorporated bodies. This definition will allow supplies under sections 11(2)(e) and (fa) to be zero-rated if the presence in New Zealand of the non-resident company or unincorporated body is minor, or not effectively connected with the supply.

Minor presence

What constitutes a minor presence will be very much determined by the facts of the particular case. "Minor" is a relative expression. What is minor is therefore a question of degree and should be regarded as relative to the size or volume of the supplies.

Effectively connected

The test of "effectively connected" is also a question of fact. The relationship of the supply with the presence in New Zealand must be more than remotely connected but can be more than one step removed from the presence. The phrase is therefore broader than the phrase "directly in connection with". If the presence is attributable to the supply in question then it is very likely that the presence will be effectively connected with that supply.

Example 1

Singaporean parents want their child to receive a year's education in New Zealand. The parents contract with a New Zealand school to supply the tuition.

Section 11(2A) excludes the supply of the tuition under the contract between the New Zealand school and the Singaporean parents from being zero-rated under section 11(2)(e). This is because it is reasonably foreseeable that another person (the child) will receive the performance of the tuition in New Zealand.

Example 2

A non-resident tour operator pre-purchases accommodation from New Zealand hotels and incorporates them into travel packages for tours of New Zealand. The travel packages are then sold to non-resident tourists.

Section 11(2A) excludes the supply of accommodation under the contracts between the New Zealand hotels and the non-resident tour operator from being zero-rated under section 11(2)(e). This is because it is reasonably foreseeable that another person (the non-resident tourist) will receive the performance of the accommodation services in New Zealand.

Example 3

A director of a United States company is present in New Zealand for a short period to facilitate a statutory audit by a New Zealand chartered accountancy firm of a New Zealand subsidiary of the company. At the conclusion of the audit the director is presented with an audit report.

The GST treatment of the services supplied by the accountancy firm will to some extent depend on who receives the performance of the services. In this case, as it was the United States parent rather than the New Zealand subsidiary that engaged the audit services the services should be zero-rated under section 11(2)(e). Section 11(2A) does not apply as the performance of the services is received by the United States company only.

The remaining question is whether the presence of the director means that the United States company is still "outside New Zealand" under section 11(2)(e). The presence of the director would qualify as a minor presence in terms of section 11(2B) and therefore the United States company would be treated as being "outside New Zealand" under section 11(2)(e).

Example 4

A senior manager of an Australian company is present for a short period in New Zealand to recruit on behalf of the company people with experience in horticulture. The company uses a New Zealand recruitment firm to assist with this process.

The services supplied by the recruitment firm are zero-rated as the performance of the services is received by the Australian company only and not the manager. Therefore section 11(2A) would not be applicable.

As the interviews are spread over a number of days the Australian company has arranged accommodation for the manager.

Although the contract to supply the room is between the hotel and the Australian company, the performance of the services (provision of the accommodation) is received by the manager. Section 11(2A) will therefore exclude the supply of accommodation from being zero-rated under section 11(2)(e).

Example 5

A New Zealand travel agent is asked by a New Zealand resident to arrange a fourteen-day holiday in Los Angeles. The travel agent receives a fee from a Los Angeles hotel for arranging the New Zealand resident's stay in that hotel.

The fee the travel agent receives from the Los Angeles hotel relates to services (the provision of accommodation) that are physically performed outside New Zealand by a non-resident. The travel agent may zero-rate the fees for arranging this service under the amended section 11(2)(d).

Example 6

A New Zealand advertising firm is asked by an Australian company to prepare a media campaign for a new product that the company wants to release first in Australia and then in New Zealand. The New Zealand firm is responsible for coming up with ideas and implementation of the campaign.

As the services are supplied to a non-resident who is outside New Zealand they may be zero-rated under section 11(2)(e). If a staff member of the non-resident company came to New Zealand for a short period to facilitate the implementation of the media campaign this should not affect the zero-rating of the services because the presence of a the staff member would generally be considered to constitute a minor presence in terms of section 11(2B).

Section 11(2A) does not affect previous statements concerning the GST treatment of advertising services:

- *GST - Advertising space and advertising time sold to non-residents* Public Ruling - BR Pub 96/10 Tax Information Bulletin Vol. 8 No. 8.
- *Advertising agencies: placement and creative services supplied to non-residents* Questions we've been asked, Tax Information Bulletin Vol. 11 No. 1.

Further, the amendments are not intended to change the GST treatment of the particular fact situation in the *Wilson & Horton* case as determined by the Court of Appeal.

Example 7

A New Zealand telecommunications company has a number of contracts with other telecommunication companies in other jurisdictions to connect to New Zealand calls originating offshore.

Section 11(2A) will not apply to prevent the connection service provided by the New Zealand telecommunications company to the overseas telecommunications company from being zero-rated under section 11(2)(e). This is because the connection service supplied by the New Zealand telecommunications company is received by the overseas telecommunications company only, not by the person in New Zealand receiving the call.

REMEDIAL ISSUES

TRADING STOCK – EXCEPTED FINANCIAL ARRANGEMENTS

Section EE 14(2) of the Income Tax Act 1994

Introduction

The rule requiring companies transferring excepted financial arrangements that are trading stock or revenue account property within a wholly-owned group to transfer them at cost now applies only to companies that are New Zealand resident. The amendment corrects an oversight in the recently enacted trading stock legislation.

Background

Under the new trading stock rules, excepted financial arrangements are to be valued at cost. To prevent wholly-owned groups of companies circumventing the rules by transferring excepted financial arrangements within a group, section EE 14 was enacted. The section states that if an excepted financial arrangement that has a market value less than cost is sold or disposed of within a wholly-owned group of companies, the transfer is deemed to take place at cost.

If a member of the group is a non-resident company, there is potential for a double deduction of a loss. The non-resident company can claim a loss overseas on a transfer of excepted financial arrangements to a New Zealand member of a group. The New Zealand resident member may also be able to deduct a loss once the excepted financial arrangements are transferred at market value outside the group.

The amendment is intended to prevent potential losses being deducted twice.

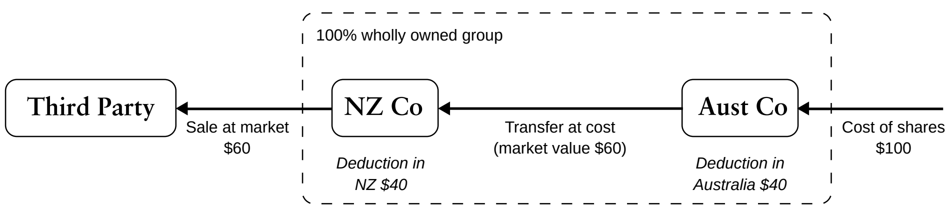
Key features

Section EE 14(2) has been amended to restrict its application to New Zealand resident companies. If excepted financial arrangements are entering or leaving the New Zealand tax base, transactions should take place at market value.

Application date

The amendment applies to the sale, disposal or distribution of excepted financial arrangements on and after 20 May 1999 (the date of introduction into Parliament of the tax bill containing the amendment).

Example



TRADING STOCK - DEFINITION OF "FINANCIAL STATEMENTS"

Section OB 1 of the Income Tax Act 1994

Introduction

The definition of "financial statements" has been amended so that it applies to financial statements prepared by all taxpayers. The amendment corrects an unintended effect of the definition in the Financial Reporting Act 1993.

Background

The trading stock rules were intended in part to require taxpayers to comply at the same level for tax purposes with what had been done for financial reporting purposes. This was achieved by generally requiring taxpayers to adopt the same valuation methods that apply to financial statements. The definition of "financial statements" has the same meaning as in the Financial Reporting Act 1993. This definition is confined to an "entity", which is defined to mean a company or an issuer. Therefore others are not required to apply the same standards they apply to their financial statements. This effect was unintended, and is addressed by the amendment.

Key features

The definition of "financial statements" in section OB 1 has been amended so that it applies to the financial statements of all taxpayers, not just entities as defined in the Financial Reporting Act 1993.

Application date

The amendment applies to the 1999-2000 and subsequent income years.

TRADING STOCK – DEFINITION OF"ASSOCIATED PERSONS"

Section OB 1 of the Income Tax Act 1994

Introduction

The associated persons rules which apply to determine whether a taxpayer is a "small taxpayer" have been amended. The amendment associates taxpayers only when companies have at least 50 percent common ownership or a taxpayer has at least 50 percent ownership of a company. Narrowing the scope of the definition makes the trading stock rules more workable for small businesses.

Background

"Small taxpayers" have simplified requirements for the valuation of trading stock to reduce compliance costs. An associated persons test is used to aggregate the income of associated taxpayers to determine whether a taxpayer's business exceeds the $3,000,000 threshold allowed for small taxpayers. The associated persons test in section OD 7 of the Income Tax Act was previously used. The test is too wide as it includes relatives (to the fourth degree) and persons having a 25 percent interest in a company. Narrowing the definition will reduce compliance costs for taxpayers.

Key features

The amendment changes the associated persons test in the definition of "small taxpayer" in the Income Tax Act 1994 from section OD 7 to section OD 8(1)(a) and (b). Taxpayers will be associated only when companies have at least 50 percent common ownership, or a taxpayer has at least 50 percent ownership of a company.

Application date

The amendment applies from the 1998-99 and subsequent income years. The application date is the same as the date from which the trading stock rules took effect. Using this application date prevents any potentially harsh applications of the rules to those small taxpayers who would be excluded from the definition of "small taxpayers" were the amendment not enacted.

TAXATION OF FINANCIAL ARRANGEMENTS

Sections EH 26(3), EH 31, EH 48(2), EH 48(3)(a), EH 50(1A), EO 2A, FC 8A, FC 8C, FC 8F, FC 8H, FC 10(6A) and OB 1 of the Income Tax Act 1994

Introduction

The new legislation fine-tunes the amendments recently made to the rules governing the taxation of financial arrangements.

Background

The rules that govern the taxation of financial arrangements were recently reformed by the enactment of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999. The amendments made in the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 are discussed in *Tax Information Bulletin: Volume Eleven, No. 6 (July 1999)*. The amendments in this Act merely fine-tune the earlier changes.

Key features

Section EH 26(3)

Section EH 26(3) determines the value for which property is treated as being transferred under other provisions of the Act by referring to the paragraphs of section EH 48(3). The paragraphs are applied in alphabetical order. It has been made clear that the paragraphs are applied in alphabetical order until a paragraph applies.

Section EH 31

Under section EH 31 a cash basis person may elect to use a spreading method to calculate income or expenditure in respect of the financial arrangements to which they are a party. The election must be made for all financial arrangements the person is a party to at the time of the election and any financial arrangements entered into in subsequent years. The person must continue to use the spreading method for those financial arrangements until the financial arrangements mature.

New sections EH 31(6) and (7) have been inserted to provide for revocation of the election to use a spreading method. Taxpayers revoke their election by giving notice to the Commissioner (section EH 31(7)). Once notice has been given the revocation applies to financial arrangements entered into in the year following the income year in which the notice is given.

Definition of consideration

Section EH 48(2)

"Consideration" is defined in section EH 48. If consideration includes property or services the value of the property or services is determined under sections EH 48(2) and (3). It was unclear whether the definition of consideration applied to the consideration paid to the person or the consideration paid by the person, or to both.

It has been clarified that if the consideration includes property or services, the regardless of whether the consideration is paid to the person or paid by the person, the value of the property or services is determined under section EH 48(2) and (3).

In addition, section EH 48(2) could be read in two ways. The first is "For an original party to any agreement for the sale and purchase of property or services or a specified option, not being ... a finance lease or a hire purchase agreement ...". The second way is "For an original party to any agreement for the sale and purchase of property or services or a specified option, ... a finance lease or a hire purchase agreement ...". The second interpretation is correct, and the section has been clarified to reflect this.

Section EH 48(3)(a)

As drafted, section EH 48(3)(a) referred to the lowest price "the parties would have agreed, on the date the agreement was entered into or the specified option was granted, if payment was required in full at the time the first right in the contracted property was transferred or the services provided".

This paragraph would never have applied because payment "was not required in full at the time the first right" was transferred. The section has been amended to refer to the lowest price that would have been paid had payment been made in full at that time.

Non-residents becoming resident

The Taxation (Accrual Rules and Other Remedial Matters) Act 1999 divided the accrual rules into two divisions. Division 1 applies to financial arrangements entered into before 20 May 1999. Division 2 applies to financial arrangements entered into on or after 20 May 1999 and to financial arrangements entered into before 20 May if the taxpayer has made the transitional adjustment under section EH 17.

Under Division 1, if a person who was non-resident becomes a resident of New Zealand the person is treated as acquiring the financial arrangement on the date the person become resident for an arm's length value on that date (section EH 16(2)(b)).

A provision similar to section EH 16(2)(b) was omitted in error from Division 2. Section EH 50(1A) has been inserted in Division 2 and provides that if a non-resident becomes resident after 20 May 1999 and the person is a party to financial arrangements the person is treated as having acquired those financial arrangements at the time the person becomes resident for arm's length consideration.

Section EO 2A
Section EO 2A provides that a lessee "is allowed a deduction for expenditure incurred in making lease payments under an operating lease". Section EO 2A should set out how the deduction is calculated rather than providing the grounds for the deduction. The deduction should be subject to the normal deductibility tests.

Finance lease rules

Section FC 8A
Under section FC 8A a lease is treated as a sale of the lease asset from the lessor to the lessee at the beginning of the lease. The lessor is also treated as advancing a loan to the lessee which the lessee uses to purchase the lease asset. As the legislation was drafted, the loan from the lessor was for the lessor's disposition value, and the lessee uses the loan to purchase the lease asset for the lessee's acquisition cost. The lessee's acquisition costs include installation fees incurred by the lessee, so the loan may have only partially funded the acquisition of the lease asset.

Section FC 8A has been amended so that the leasing of an asset is treated as a sale of the asset from the lessor to the lessee, the lessor is also treated as giving the lessee a loan, and the lessee is treated as using the loan to purchase the lease asset. The value of the loan for the lessor is the lessor's disposition value and for the lessee the lessee's acquisition cost.

Section FC 8C
Section FC 8C deals with early terminations of leases. If a lease terminates early, and the lease asset is returned to the lessor, the lease asset is treated as being sold to the lessor "for the amount by which the outstanding balance of the loan on the date of termination is more than the amount the lessee paid to be released from his or her obligations under the lease". Under section FC 8C(2) if the amount paid by the lessee to be released from the loan exceeds the outstanding balance, the excess is gross income of the lessor. As the income would arise under the accrual rules, section FC 8C(2) was not necessary and has been repealed.

Sections FC 8F and FC 10(6A)
The words "for the purpose of this Act" at the beginning of sections FC 8F and FC 10(6A) were redundant and therefore removed.

Section FC 8H
Sections FC 8H and FC 8I allow for a person to make an adjustment if they determine part way through a lease that their lease is a finance lease. The adjustment is made in the income year they determine that their lease is a finance lease.

It was not clear that the adjustment should only be made if, as a result of the extension of the lease, the total lease term becomes a period longer than 75 percent of the lease asset's estimated useful life. This has been clarified in the legislation.

Definition of "lease term"
The definition of "lease term" in section OB 1 referred to paragraph (d) of the definition of "lease". The reference was incorrect and has been corrected to refer to paragraph (f).

Application date

These amendments apply on and after 20 May 1999 (the date of enactment of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999).

TRANSFER PRICING

Section GD 13(5) of the Income Tax Act 1994

Introduction

An amendment has been made to confirm that that the transfer pricing rules do not apply to interest-free loans made to taxable New Zealand residents.

Background

The transfer pricing rules allow an arm's length price to be substituted for a taxpayer's transfer price, if the taxpayer's price has the effect of depleting the New Zealand tax base.

Section GD 13(4) allows the transfer pricing rules to apply to transactions when a non-resident makes a supply to New Zealand for inadequate consideration. Commonly, this would result in additional non-resident withholding tax being imposed. In many cases, however, the additional tax revenue would be more than offset by the tax benefit to the New Zealand recipient when it takes a deduction on the increased transfer price. If the overall effect of applying the transfer pricing rules would be a loss of revenue, section GD 13(5) prevents the transfer pricing rules applying.

It was suggested that the interface with the thin capitalisation rules could result in the transfer pricing rules applying to an interest-free loan, on the basis that if an arm's length amount of interest were to be substituted by section GD 13(4), the thin capitalisation rules could then apply to deny a deduction for the increased interest expense. In that case, the extra non-resident withholding tax revenue on the substituted interest amount would exceed the tax value of the increased interest deduction (nil), so the transfer pricing rules would be applied (technically, section GD 13(5) would not apply to preclude section GD 13(4) operating to substitute an alternative interest amount).

This was not the intended effect of the rules. A retrospective amendment has, therefore, been made to confirm that the transfer pricing rules do not apply to these loans.

Key features

An amendment to section GD 13(5) confirms that the transfer pricing rules do not apply to interest-free loans made to taxable New Zealand residents.

Application date

The amendment applies retrospectively from the 1996-97 income year, the year for which the current transfer pricing rules first applied.

TAX SIMPLIFICATION

Sections KD 4, KD 5, NC 8, NC 9, NC 12, OB 1 of the Income Tax Act 1994; sections 33A, 36CA, 38, 41A, 80B, 80C, 80E, 80F, 80G, 139AA, 184A and 184B) of the Tax Administration Act 1994

Introduction

The recently introduced measures removing the need for salary and wage earners to file income tax returns have been fine-tuned. The amendments arise from the work Inland Revenue is undertaking to implement these simplification measures, minor policy improvements, and the need to correct errors in earlier legislation.

Background

The no-filing simplification initiatives were enacted in the Taxation (Simplification and other Remedial Matters) Act 1998. They involved simplifying the income tax requirements for wage and salary earners and removing the need for many to file returns of income. Their introduction required significant amendments to the PAYE rules, the rules around filing tax returns, and the introduction of income statements.

Key features

The Government has identified several areas in the recent tax simplification legislation where amendments were required. The amendments fall into the following categories:

- *Non-filing requirements.* Improvements to the specification of those not required to file a tax return, those who have to receive an income statement or have to receive a tax return.
- *Income statement issuing process.* A number of minor amendments are made to the rules surrounding the issuing of income statements. The most significant is to allow the Commissioner to issue income statements based on the information at hand rather than the Commissioner having to wait for all information before issuing a statement.
- *Claiming of rebates.* These measures ensure that the legislation is consistent with the new process for claiming housekeeper and donation rebates. The most significant amendment is to the core provisions of the Income Tax Act 1994 to confirm that claiming these rebates will take place on a separate rebate claim form rather than as part of the return of income, as happened in the past.
- *PAYE amendments.* These measures make a number of tidy-ups to the PAYE rules. The most significant amendment is providing a six-month period of grace during which a new large employer may file other than electronically.
- *Family Assistance.* These measures ensure that the legislation is consistent with the new process for administering family assistance. The new process involves one-off registration for claimants rather than the current annual registration process.
- *Refunding of tax.* An amendment is made to the provision requiring the Commissioner to direct credit refunds of tax to allow for a phased introduction of this measure as both taxpayers and Inland Revenue establish appropriate systems.

Non-filing requirements

A number of amendments fine-tune the filing rules.

Section 33A(1)(b) of the Tax Administration Act is amended to specify that taxpayers that receive $200 or less of income to which the PAYE rules are incorrectly applied are not required to file returns of income or be issued with income statements.
This makes the legislation consistent with the policy

intent that the $200 threshold that relates to the issue of an income statement applies to salary and wages that have had tax incorrectly deducted (for instance, because of the use of an incorrect tax code).

Section 33A(1)(b)(ii) is repealed. This provision stated that persons were entitled not to file if they earned less than $200 of interest and complied with their resident withholding tax obligations. Given the requirement that those with income exceeding $38,000 are required to receive an income statement if the lower 19.5% withholding rate applied, this provision was unnecessary.

Section 33A(2) of the Tax Administration Act is amended to ensure that taxpayers who receive interest or dividend income from outside New Zealand, and if that income has had no withholding tax deducted, must file returns of income. This subsection is also amended to require a return to be filed by a person receiving interest or dividends that do not have a New Zealand source if withholding tax has been deducted at source and the total of those interest and dividends exceeds $200.

Two other amendments are made to section 33A(2), which sets out cases when a tax return is required to be filed. The subsection is amended:

- to replace the reference to "absentees" with "non-residents". This amendment is required because of a previous amendment to section KC 1(2) of the Income Tax Act 1994 in the Taxation (Accruals Rules and other Remedial Matters) Act 1999. That change amended a reference to "absentees" to "non-residents" for the purposes of calculating entitlement to the low-income rebate.
- to ensure that taxpayers who wish to have their tax affairs squared-up part way through an income year, because they are leaving New Zealand, must file returns of income rather than request income statements. This is because the Commissioner may not possess all the relevant information at the time taxpayers wish to have their affairs squared-up. In this case return filing is a more efficient way to quickly square-up a taxpayer's affairs.

Section 33A (5) of the Tax Administration Act 1994 is amended to confirm that this subsection applies to "natural persons" rather than persons generally. This is consistent with the policy intent that income statements should go only to natural persons and not, for example, companies.

A minor amendment is also made to section 38 of the Tax Administration Act to remove an unnecessary cross reference.

Income statement process

Section 80B (1) is intended to provide that natural persons who incorrectly receive an income statement must inform the Commissioner of this error. However, these is an ambiguity as to the inclusion of interest or dividends which is corrected by removing a reference to interest or dividends having being received.

Section 80C is amended to provide that a person who has received resident withholding income which may have been incorrectly deducted is not required to request an income statement. This prevents taxpayers who may have been unaware of a failure by an interest payer becoming liable to request the issue of an income statement when the failure may not be obvious to the taxpayer receiving the interest.

Section 80E is amended to allow the Commissioner to issue an income statement on the basis of the details that the Commissioner holds at the time the income statement is issued. This amendment is made to ensure that the Commissioner is not prevented from issuing an income statement where information is still outstanding, say, from one employer in relation to PAYE details. The section is also amended to specifically include family assistance information, with the Commissioner having the authority to place that information on income statement of a separate form.

Section 80F is amended so that the Commissioner is not required to issue a further corrected income statement to a taxpayer who received an income statement in error. Previously, one would have been required to be issued in accordance with section 80D. This ensures that a taxpayer that would otherwise not receive an income statement but does through error is not required to receive a corrected income statement. This situation may arise if, for instance, a taxpayer mistakenly uses another taxpayer's IRD number.

These amendments apply for the 1999-2000 and subsequent income years.

Housekeeper and donation rebate amendments

A number of amendments are made to the provisions relating to the housekeeper and donation rebates.

The first of these removes the housekeeper and donation rebates from the definition of "allowable rebates" so that section BC 8 of the Income Tax Act 1994 is consistent with the new process of administering housekeeper and donation rebates. This amendment applies for the 1999-2000 income year.

Section BC 8 describes the process of calculating a taxpayer's income tax liability and states that allowable rebates must be subtracted from a taxpayer's unadjusted income tax liability to determine the adjusted tax liability. The new process involves removing these two rebates from the calculation required to determine a taxpayer's tax liability.

An amendment is made to section 41A(3) of the Tax Administration Act 1994 to allow eligibility for housekeeper and donation rebates to be calculated using the income taxpayers receive in the year in which they made a payment or donation. The legislation currently states that the previous year's income must be used. Since this legislation was enacted Inland Revenue has developed systems to allow current year income to be used.

New section 41A(6) confirms that housekeeper and donation rebates cannot be claimed before the end of the income year in which they were made and that taxpayers with early balance dates are not able to claim before 1 April following their balance date.

This amendment removes an ambiguity as to whether taxpayers can claim these rebates during the income year in which they make a payment or donation. It applies for the 1999-2000 and subsequent years.

PAYE amendments

Section NC 12A of the Income Tax Act 1994 gives the Commissioner authority to require an employer to change an employee's tax code if the employee is using an incorrect code. Before amendment the new code ceased to apply from either the end of the income year or from a date specified by the Commissioner. At that time the employer reverted to applying the original incorrect code. This measure applies to tax deductions made on or after 1 April 1999.

Since the enactment of this provision Inland Revenue has developed a process to check the accuracy of tax codes every month, meaning the automatic end-of-year expiry is unnecessary. Section NC 12A has been amended so that a tax code set by the Commissioner remains valid until an employee informs the employer that another tax code is appropriate. If the new code proposed by the employee is invalid the Commissioner will correct that code. This measure applies to tax deductions made on or after 1 April 1999.

Various remedial amendments are made to correct incorrect PAYE tax codes within the Income Tax Act 1994. These amendments are required to remove references to the old PAYE tax codes. A drafting omission in section NC 8(1) of the Income Tax Act 1994 is corrected. A reference to the "Sec" tax code is changed to a reference to "S". These amendments apply for the 1999-2000 and subsequent years. A similar amendment is made to section NC 9 to change a reference to the "T" code to "ML". Again this measure applies for the 1999-2000 and subsequent years.

A new section 36CA of the Tax Administration Act 1994 is inserted to provide that employers who start up businesses and are covered by the electronic filing requirements for PAYE can, nevertheless, file non-electronically for a period of six months. This provision provides a grace period during which new employers can organise electronic filing of PAYE. This measure applies to employer monthly schedules due on or after 1 April 1999.

A minor amendment to improve wording is made to section 139AA of the Tax Administration Act 1994. This section imposes a penalty on an employer who is required to file an employer monthly schedule in a prescribed electronic format and fails to do so.

Family assistance amendments

A number of amendments are made to ensure that the legislation is consistent with the new policy of a one-off family assistance registration.

An amendment is made to section KD 4(2) to remove references to tax deduction certificates because the amended PAYE system based on employer monthly schedules does not involve the issuing of tax deduction certificates. Section KD 4(3) is also consequentially repealed. This measure applies from the date of enactment.

A new section KD 4(2A) requires that a family assistance credit of tax may only be paid in respect of a child if the Commissioner is provided with the tax file number of the child for whom the credit is claimed. Currently, those claiming family assistance are required to provide references to birth certificates or other evidence acceptable to the Commissioner. A similar amendment is made to section KD 5(3). These measure apply from the 2000-2001 income year.

Section KD 4(5) is amended to remove the requirement that the statement of the net income of a person issued a certificate of entitlement must include the income details of any other spouse during the income year. This will now be requested directly from that spouse. This measure applies from the date of enactment.

A new section KD5 (2A) gives the Commissioner the authority to pay a credit of tax following the end of an income year until the Commissioner withdraws a certificate of entitlement. This measure is remove the need for yearly re-application if the Commissioner considers the person is still entitled to Family Assistance. This measure applies from the 2000-2001 income year.

The current section KD 7(2) is replaced with a new section requiring the Commissioner to notify a person of the amount of family assistance they received as part of the issuing of an income statement. The requirement of a 20 April notification in other cases is not amended. This amendment applies to the 1999-2000 income year.

Refunding of tax

An amendment is made to section 184A, which requires the direct crediting of refunds of tax, to allow for a phased introduction of this measure. This will enable both taxpayers and Inland Revenue to establish appropriate systems, reducing the compliance costs associated with this measure. A new section 184B is introduced which allows the Governor-General, by Order in Council, to specify the type of tax section 184A applies.

This provision applies from the date of enactment.

USE OF MONEY INTEREST AND SHORT OR LATE PAID PROVISIONAL TAX

Section MB 7 of the Income Tax Act 1994 and section 120K of the Tax Administration Act 1994.

Introduction

A number of amendments are made to the provisional tax rules. Although most amendments are minor, one corrects an error in recent amendment aimed at preventing use of money interest being charged on provisional tax.

Background

These measures amend the use of money interest rules as they apply to provisional tax.

Key features

A section 120K(4B) of the Tax Administration Act 1994 was inserted during the select committee stage of the Taxation (Remedial Provisions) Bill 1997 in response to a concern from a taxpayer that use of money interest could be imposed on safe-harboured taxpayers to the extent that they have paid less tax than required by the provisional tax formula at a due date.

This could occur because the generic use of money interest rule provides that if a taxpayer pays less tax than required at a due date, use of money interest on that underpayment begins from that due date. The generic rule had the effect of overriding the safe-harbour from use of money interest applying to natural provisional taxpayers with residual income tax of less than $30,000.

Although the intention of section 120K(4B) was to prevent use of money interest being imposed on late-paid or short-paid provisional tax paid by a safe-harboured taxpayer, the provision did not achieve this. It actually prevents interest being charged or paid before the terminal tax date.

A new provision has been inserted to correct the original problem with a savings provision to prevent taxpayers who relied on the incorrectly drafted provision in determining their provisional tax. To qualify for this savings provisional taxpayer must have, before 23 August 1999:

(a) Notified the Commissioner in writing that the taxpayer was applying these provisions as they applied before this amendment.

(b) Filed a return of income on that basis. For this criteria to be met the Commissioner would expect there to be explicit evidence of the taxpayer having turned his or her mind to the matter and having made an explicit decision.

Section 120K (4A)(c) has been amended by replacing a reference to section MB 5(11) with a reference to section MB5A. This measure applies from the date of enactment.

A minor amendment has also made to the provisional tax rules involving consolidated groups through replacement of section MB 7(2). A reference was made to the now repealed section MB 3(2). This repealed provision required taxpayers to estimate their residual income tax if their residual income tax exceeds $300,000. The reference has been removed and the wording of the subsection has been clarified. This measure also applies from the date of enactment.

TAX EXEMPTION OF PORTABLE NZ SUPERANNUATION

Section OB 1 of the Income Tax Act 1994 and section 2 of the Income Tax Act 1976

Introduction

The amendments ensure that payments of portable NZ superannuation and portable veteran's pension to:

- persons residing in the Cook Island, Niue and Tokelau under section 17B of the Social Welfare (Transitional Provisions) Act 1990 during the period 30 June 1993 to 30 September 1999; and
- to persons residing in certain Pacific countries[2] under section 17BA of the Social Welfare (Transitional Provisions) Act 1990 from 1 October 1999;

are exempt from income tax.

Background

Under the Income Tax Act, the payment of portable NZ superannuation and portable veteran's pension paid or payable under section 17 or 19 of the Social Welfare (Transitional Provisions) Act 1990 has been exempt from income tax. This rule has applied since 1 April 1990.

From 30 June 1993, the payment of portable NZ superannuation and portable veteran's pension was extended to persons residing in the Cook Islands, Niue and Tokelau under section 17B of the Social Welfare (Transitional Provisions) Act 1990. However, the Income Tax Act was not consequentially amended to ensure that such payments were exempt from tax.

From 1 October 1999, the payment of portable NZ superannuation and portable veteran's pension was further extended to persons residing in certain Pacific countries under section 17BA of the Social Welfare (Transitional Provisions) Act 1990.

Key features

The amendments ensure that payments of portable NZ superannuation and portable veteran's pension to:

- persons residing in the Cook Island, Niue and Tokelau under section 17B of the Social Welfare (Transitional Provisions) Act 1990 during the period 30 June 1993 to 30 September 1999; and
- to persons residing in certain Pacific countries under section 17BA of the Social Welfare (Transitional Provisions) Act 1990 from 1 October 1999;

are exempt from income tax.

Application date

The amendments relating to payments made under section 17B of the Social Welfare (Transitional Provisions) Act 1990 apply from 30 June 1993 to 30 September 1999.

The amendments relating to payments made under section 17BA of the Social Welfare (Transitional Provisions) Act 1990 apply from 1 October 1999.

[2] The Pacific countries are American Samoa, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Guam, Kiribati, Marshall Islands Nauru, New Caledonia, Niue, Northern Mariana Islands, Palau, Papua New Guinea, Pitcairn Island, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu and Wallis and Futuna, unless New Zealand has a social security reciprocal agreement with the country under section 19 of the Social Welfare (Transitional Provisions) Act 1990 relating to the portability of NZ superannuation and the veteran's pension.

USE OF MONEY INTEREST ON FOREIGN INVESTOR TAX CREDITS

Section 120PA of the Tax Administration Act 1994

Introduction

An amendment affirms the policy intent that use of money interest calculations should not be adjusted to reflect foreign investor tax credits carried back and applied from future income years.

Background

The foreign investor tax credit rules limit the New Zealand tax impost on non-residents' earnings from equity investment to 33%. The rules allow a company to pay supplementary dividends to its non-resident shareholders, based on company tax paid. The company is then entitled to apply a foreign investor tax credit for an equivalent amount against its income tax liability.

To ensure that companies are not placed at a significant cash flow disadvantage when funding a supplementary dividend, foreign investor tax credits are readily refundable through a carry-back rule, allowing credits to be applied against the four preceding income years. Because this rule is, however, merely a mechanism to allow a refund to be issued, and does not provide the Commissioner with the use of any funds in the earlier years, it is inappropriate for interest to be credited on any foreign investor tax credit refunded in this manner.

When the foreign investor tax credit rules were extended to direct investment, in 1995, use of money interest was expressly precluded for carried back credits. However, the recently enacted compliance and penalty legislation inadvertently omitted a similar provision with effect from the 1997-98 income year. A retrospective amendment has been made to correct this oversight.

Key features

New section 120PA has been added to explicitly provide that foreign investor tax credits carried back and applied from future income years do not affect the interest calculations in the earlier income year.

Application date

The amendment will apply to foreign investor tax credits applied to the 1997-98 and subsequent income years.

EFFECTIVE DATES FOR USE OF MONEY INTEREST RULES

Sections 128(5) and (6) and sections 138I (4) and (5) of the Tax Administration Act 1994

Introduction

The amendments ensure that the use of money interest rules, introduced as part of the compliance and penalty legislation, apply to calculate interest on deferrable and non-deferrable tax in relation to a dispute on after 1 April 1997, irrespective of whether the objection or challenge relates to an income year before the 1997-98 income year. In addition, the amendments provide that if the objection or challenge relates to the 1996-97 or an earlier income year, interest is calculated from the date the period of deferral starts.

Background

The Taxation (Accrual Rules and Other Remedial Matters) Act 1999 gave effect to these measures. Owing to an error in the legislation, however, the original provisions did not apply for the 1996-97 income year or from 1 April 1997.

Key features

The addition of sections 128(4) and 138I(4) ensures that the use of money rules, introduced as part of the compliance and penalty legislation, apply from 1 April 1997 to calculate interest on deferrable and non-deferrable tax in relation to a dispute. This is irrespective of whether the dispute relates to an income year before the 1997-98 income year.

Also, sections 128(5) and 138I(5) provide that if a dispute relates to the 1996-97 or an earlier income year and begins on or after 1 April 1997, the use of money interest rules will apply from the beginning of that dispute rather than the original due date.

Application date

The amendments apply from 1 April 1997.

GST AND BENEFITS UNDER ACCIDENT INSURANCE POLICIES

Section 3(2) of the Goods and Services Tax Act 1985

Introduction

The minimal life insurance component of accident insurance policies provided under the Accident Insurance Act 1998 is now treated as a taxable supply for GST purposes.

Background

Under the recent accident compensation reforms employers must provide their employees with accident insurance. The accident insurance contracts contain both a general insurance component, which is taxable, and a minimal life insurance component, which, before this amendment, was exempt. The life insurance component of accident insurance contracts includes, for example, the entitlement to weekly compensation payments for a surviving spouse.

This means that insurers and employers would have been required to make apportionments between the taxable and exempt portions of the contracts for GST purposes, incurring compliance costs to ensure a technically correct GST treatment.

Key feature

The definition of "life insurance contract" in section 3(2) of the GST Act has been amended to exclude the benefits required to be provided in accident insurance policies by Schedule 1, Part 5 of the Accident Insurance Act 1998 (which relates to entitlements arising from fatal injuries).

Application date

The amendment applies on and after 1 April 1999.

MINOR REMEDIAL AMENDMENTS

A number of minor corrections to definitions and cross-references have also been enacted. For example, in section OB 1 of the Income Tax Act 1994, the definition of "airport operator" is amended by substituting "Minister of Transport" for "Minister of Civil Aviation and Meteorological Services". Similarly, and also in section OB 1, the definition of "consideration" is amended by correcting the reference to "section FE 6 (b)(i)" to section FE 6 (6)(b)(i)".

TAXATION OF FINANCIAL ARRANGEMENTS: CORRECTION

Tax Information Bulletin Volume Eleven, No.6 (July 1999) described the amendments made to the taxation of financial arrangements in the Taxation (Accrual Rules and Other Remedial Matters) Act 1999.

On page 5, in the first paragraph under the heading "Natural love and affection", the reference to section EH 53 should instead be to section EH 52.

Three of the examples used in the article also contain minor errors. Given the length and complexity of the examples, we are replacing them here in full. We apologise for any inconvenience this may have caused readers.

Example
Natural love and affection example (pages 20 21)

In year 1 a father establishes a family trust to benefit his two daughters. The trust deed gives the trustee the power to appoint other beneficiaries - including non-qualifying beneficiaries.

In year 1 the father transfers the family home to the trust for its market value of $50,000. A debt is created between the trust and the father for $50,000. The father forgives the debt progressively in years 1 and 2.

In each of the years 1 - 7 he makes regular cash gifts of $25,000 to the trust. In year 5 the trustee exercises the power of appointment, appoints the father's family company as a beneficiary and distributes $40,000 to the company. The trustee also distributes $25,000 to each of the daughters in the same year. In year 7 the trustee distributes $20,000 to the family company and $20,000 to each of the daughters.

Year	Debt forgiveness to trust	Other distributions to trust	Distributions to qualifying beneficiaries	Distributions to non-qualifying beneficiaries	Trust's assets and funds at year-end
1	$25,000	$25,000 (cash gift from settlor)	$0	$0	$25,000 equity in the house $25,000 cash
2	$25,000	$25,000 (cash gift from settlor)	$0	$0	$50,000 – house $50,000 cash
3	$0	$25,000 (cash gift from settlor)	$0	$0	$50,000 – house $75,000 cash
4	$0	$25,000 (cash gift from settlor)	$0	$0	$50,000 – house $100,000 cash
5	$0	$25,000 (cash gift from settlor)	$50,000	$40,000	$50,000 – house $35,000 cash
6	$0	$25,000 (cash gift from settlor)	$0	$0	$50,000 – house $60,000 cash
7	$0	$25,000 (cash gift from settlor)	$40,000	$20,000	$50,000 – house $25,000 cash

The father establishes the trust primarily to benefit his daughters. Thus the $50,000 debt that he forgives to the trust in years 1 and 2 is treated as if it is paid under the accrual rules and is, therefore, not taxable to the trust.

The distributions to the daughters in years 5 and 7 are distributions to qualifying beneficiaries, so are not taxable under the new rules.

The distribution of $40,000 to the family company in year 5 is taxable to the trust in its entirety.
This is because the family company is a non-qualifying beneficiary and the trust has received the benefit of $50,000 debt forgiveness in years 1 and 2.

The distribution of $20,000 to the family company in year 7 is taxable to the extent of $10,000. This is because only $10,000 of the $50,000 past debt forgiveness has not already been taken into account in calculating taxable distributions under these provisions.

Examples – Finance leases

Example 1 (page 25)

On 1 April 2000 a person leases a floodlight system, the lease is for three years, and the Commissioner has determined that the estimated useful life of the floodlight system is also three years. The lessee's acquisition cost is $100,000 (neither the lessee nor the lessor incurred any costs in preparing or installing the lease asset for use). The lease payments are payable annually in one instalment of $32,000. The lessor and the lessee have agreed a guaranteed residual value of $30,000. Their balance dates are both 31 March.

Lessee

Interest spread on a YTM basis:

31 March 2001	11,069.01
31 March 2002	8,752.16
	19,821.17

Base price adjustment

consideration – income + expenditure + amounts remitted

consideration = $100,000 (the loan) – (($32,000 x 3 years) (the lease payments) + $30,000 (the return of the lease asset – valued at the GRV under section FC 8B(3)(a)))
= –$26,000

income = 0

expenditure = $11,069.01 + $8,752.16 (interest on a YTM basis as set out above)
= $19,821.17

amounts remitted = 0

The result of the base price adjustment is -$6,178.83 (negative, therefore expenditure).

Depreciation on lease asset

Tax book value $100,000

Depreciation at 50% diminishing value

31 March 2001	$50,000
31 March 2002	$25,000
Tax book value	$25,000
Treated as sold for	$30,000
Gain on sale	$5,000

Overall summary

Expenditure for year 1	Interest	11,069.01
	Depreciation	50,000.00
		61,069.01
Expenditure for year 2	Interest	8,752.16
	Depreciation	25,000.00
		33,752.16
Expenditure for year 3	BPA	6,178.83
		101,000.00
Less gain on sale		5,000.00
		96,000.00

Lessor

Base price adjustment

consideration – income + expenditure + amounts remitted

consideration = (($32,000 x 3 years) (the lease payments) + $30,000 (the return of the lease asset – under section FC 8B(3)(a))) – $100,000 (the loan)
= $26,000

income = $11,069.01 + $8,752.16 (interest on a YTM basis as set out above)
= $19,821.17

expenditure = 0

amounts remitted = 0

The result of the base price adjustment is $6,178.83 (positive, therefore income).

Overall summary

Income for year 1	Interest	11,069.01
Income for year 2	Interest	8,752.16
Income for year 3	BPA	6,178.83
Principal repayment		100,000.00
		126,000.00

Example 2 (page 26)

A variation on example 1 — the lease agreement requires that when the lease asset is returned to the lessor at the end of the lease the lessor has to sell it. If the proceeds of the sale are more than $30,000 the lessor will return the excess to the lessee and if the sale proceeds are less than $30,000 the lessee will make up any shortfall. At the end of the lease the lessor sells the floodlight system for $24,000 and the lessee pays the lessor $6,000.

Lessee

Interest spread on a YTM basis:

31 March 2001	11,069.01
31 March 2002	8,752.16
	19,821.17

Base price adjustment

consideration – income + expenditure + amounts remitted

consideration = $100,000 (the loan) – (($32,000 x 3 years) (the lease payments) + $24,000 (the return of the lease asset – valued as the GRV less the GRV payment under section FC 8D(1)(b))+ $6,000 (the GRV payment)
= –$26,000

income = 0

expenditure = $11,069.01 + $8,752.16 (interest on a YTM basis as set out above)
= $19,821.17

amounts remitted = 0

The result of the base price adjustment is -$6,178.83 (negative, therefore expenditure).

Depreciation on lease asset

Tax book value	$25,000
Treated as sold for	$24,000
Loss on sale	$1,000

Overall summary

Expenditure for year 1	Interest	11,069.01
	Depreciation	50,000.00
		61,069.01
Expenditure for year 2	Interest	8,752.16
	Depreciation	25,000.00
		33,752.16
Expenditure for year 3	BPA	6,178.83
	Loss on sale	1,000.00
		102,000.00

Lessor

Base price adjustment

consideration – income + expenditure + amounts remitted

consideration = (($32,000 x 3 years) (the lease payments) + $24,000 (the return of the lease asset – valued as the GRV less the GRV payment under section FC 8D(1)(b))+ $6,000 (the GRV payment))
– $100,000 (the loan)
= $26,000

income = $11,069.01 + $8,752.16 (interest on a YTM basis as set out above)
= $19,821.17

expenditure = 0

amounts remitted = 0

The result of the base price adjustment is $6,178.83 (positive, therefore income).

Overall summary

Income for year 1	Interest	11,069.01
Income for year 2	Interest	8,752.16
Income for year 3	BPA	6,178.83
Principal repayment		100,000.00
		126,000.00

LEGISLATION AND DETERMINATIONS

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

FOREIGN CURRENCY AMOUNTS – CONVERSION TO NZ CURRENCY

The tables in this item list exchange rates acceptable to Inland Revenue for converting foreign currency amounts to New Zealand currency under the controlled foreign company (CFC) and foreign investment fund (FIF) rules for the 6 months ending 30 September 1999.

The conversion rates for the first six months of each income year are published in the Tax Information Bulletin following the end of the September quarter, and the rates for the full 12 months rates at the end of each income year.

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

Table A

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

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

Key

X
Y

x is the exchange rate on the 15th day of the month, or if no exchange rates were quoted on that day, on the next day on which they were quoted.

y is the average of the mid-month exchange rates for that month and the previous 11 months.

Example 1

A CFC resident in Hong Kong has an accounting period ending on 30 September 1999. Branch equivalent income for the period 1 October 1998 to 30 September 1999 is 200,000 Hong Kong dollars (HKD).

HKD 200,000 ÷ 4.1542 = NZ$48,144.05

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

Example 2

A taxpayer with a 31 March balance date purchases shares in a Philippines company (which is a FIF) for 350,000 pesos on 7 September 1999. Using the comparative value or deemed rate of return methods, the cost is converted as follows:

PHP 350,000 ÷ 20.8739 = NZ$16,767.35

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

Example 3

A CFC resident in Singapore was formed on 21 April 1999 and has a balance date of 30 September 1999. During this period, branch equivalent income of 500,000 Singapore dollars was derived.

(i) Calculating the average monthly exchange rate for the complete months May-September 1999:

(0.9496 + 0.9195 + 0.8833 + 0.8872 + 0.8911) ÷ 5 = 0.9061

(ii) Conversion to New Zealand currency:

SGD 500,000 ÷ 0.9061 = NZ$551,815.47

Table B

Table B lists the end of month exchange rates acceptable to Inland Revenue for the 6 month period ending 30 September 1999. Use this table for converting foreign currency amounts to New Zealand dollars for:

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

Example 4

A New Zealand resident with a balance date of 30 September 1999 held an interest in an FIF resident in Thailand. The market value of the FIF interest at 30 September 1999 (item "a" of the comparative value formula) was 500,000 Thailand baht (THB).

THB 500,000 ÷ 21.1619 = NZ$23,627.37

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

Table A: Mid-Month and 12 month cumulative average exchange rate

Currency	Foreign Currency		15 Apr 99 12 month	17 May 99 12 month	15 Jun 99 12 month	15 Jul 99 12 month	16 Aug 99 12 month	15 Sep 99 12 month
United States	Dollar	USD	0.5401	0.5556	0.5383	0.5215	0.5307	0.5285
			0.5281	0.5298	0.5330	0.5328	0.5351	0.5362
United Kingdom	Pound	GBP	0.3348	0.3428	0.3348	0.3334	0.3303	0.3287
			0.3202	0.3214	0.3238	0.3249	0.3265	0.3283
Australia	Dollar	AUD	0.8506	0.8373	0.8105	0.7921	0.8122	0.8102
			0.8481	0.8470	0.8437	0.8396	0.8368	0.8321
Austria	Schilling	ATS	6.8741	7.1625	7.1005	7.0213	6.9018	7.0220
			6.4578	6.4978	6.5605	6.5915	6.6366	6.7081
Bahrain	Dollar	BHD	0.2032	0.2092	0.2026	0.1966	0.1998	0.1990
			0.1986	0.1992	0.2004	0.2003	0.2012	0.2016
Belgium	Franc	BEF	20.1399	20.9767	20.8033	20.5767	20.2198	20.5750
			18.8971	19.0121	19.1994	19.2935	19.4247	19.6349
Canada	Dollar	CAD	0.8059	0.8121	0.7853	0.7714	0.7835	0.7794
			0.7955	0.7986	0.8030	0.8027	0.8045	0.8049
China	Yuan	CNY	4.4704	4.5977	4.4517	4.3170	4.3943	4.3789
			4.3685	4.3834	4.4097	4.4083	4.4276	4.4370
Denmark	Krone	DKK	3.7127	3.8677	3.8294	3.7946	3.7296	3.7938
			3.4884	3.5089	3.5423	3.5590	3.5822	3.6207
European	Community Unit	XEU	0.4998	0.5206	0.5163	0.5107	0.5017	0.5103
			0.4666	0.4698	0.4748	0.4775	0.4811	0.4866
Fiji	Dollar	FJD	1.0652	1.0740	1.0468	1.0294	1.0400	1.0276
			1.0506	1.0511	1.0527	1.0500	1.0501	1.0486
Finland	Markka	FIM	2.9733	3.0952	3.0695	3.0357	2.9826	3.0331
			2.7878	2.8052	2.8331	2.8470	2.8662	2.8968
France	Franc	FRF	3.2784	3.4150	3.3867	3.3494	3.2907	3.3466
			3.0765	3.0953	3.1259	3.1412	3.1624	3.1968
French Polynesia	Franc	XPF	59.5148	62.1400	61.5367	60.8083	59.6742	60.6918
			55.7951	56.1518	56.7164	57.0009	57.3881	58.0107
Germany	Deutschemark	DEM	0.9776	1.0184	1.0100	0.9989	0.9814	0.9987
			0.9175	0.9231	0.9321	0.9367	0.9429	0.9533
Greece	Drachma	GRD	161.4908	168.2283	166.1383	165.2517	163.2360	165.8227
			153.7891	154.1166	155.1970	155.9422	156.8397	158.1947
Hong Kong	Dollar	HKD	4.1822	4.3028	4.1733	4.0448	4.1183	4.1025
			4.0891	4.1022	4.1275	4.1266	4.1450	4.1542
India	Rupee	INR	22.9816	23.6543	23.1143	22.5069	22.9443	22.9177
			22.2369	22.4267	22.6082	22.6330	22.7532	22.8379

Currency	Foreign Currency in NZ $		15 Apr 99 12 month	17 May 99 12 month	15 Jun 99 12 month	15 Jul 99 12 month	16 Aug 99 12 month	15 Sep 99 12 month
Indonesia	Rupiah	IDR	4,616.59	4,380.45	4,036.72	3,514.51	4,186.07	4,176.25
			5,362.67	5,255.79	4,996.01	4,652.34	4,472.70	4,334.90
Ireland	Pound	IEP	0.3935	0.4097	0.4064	0.4031	0.3952	0.4014
			0.3670	0.3696	0.3737	0.3761	0.3790	0.3833
Italy	Lira	ITL	967.56	1,008.01	999.44	988.44	971.26	987.66
			906.07	911.98	921.38	926.23	932.77	943.12
Japan	Yen	JPY	64.0697	68.1567	64.8800	62.8833	61.5074	55.9460
			66.6724	66.3874	65.7836	64.9172	63.9135	62.8830
Korea		KOR	653.8750	671.3150	629.9600	616.3950	638.6550	630.3350
			674.2275	673.9627	667.7995	662.6345	660.6363	653.5458
Kuwait	Dollar	KWD	0.1644	0.1696	0.1656	0.1602	0.1617	0.1607
			0.1605	0.1610	0.1620	0.1620	0.1625	0.1629
Malaysia	Ringgit	MYR	2.0569	2.1135	2.0477	1.9816	2.0173	2.0101
			2.0443	2.0536	2.0568	2.0422	2.0347	2.0389
Netherlands	Guilder	NLG	1.1013	1.1473	1.1378	1.1252	1.1055	1.1243
			1.0336	1.0398	1.0501	1.0552	1.0623	1.0739
Norway	Krone	NOK	4.1659	4.2616	4.2261	4.1626	4.1388	4.1815
			4.0199	4.0427	4.0767	4.0891	4.1130	4.1373
Pakistan	Rupee	PKR	27.2981	28.1905	27.7744	26.8821	27.1739	27.2676
			26.5564	26.9383	27.4097	27.6282	27.7576	27.7360
Papua New Guinea	Kina	PGK	1.2696	1.3796	1.6413	1.3381	1.4282	1.5507
			1.1619	1.1867	1.2384	1.2546	1.2721	1.3006
Philippines	Peso	PHP	20.5175	20.8425	20.2710	19.8246	20.6802	20.9308
			21.2435	21.2230	21.2363	21.0780	20.9885	20.8739
Portugal	Escudo	PTE	100.1692	104.3650	103.4867	102.5250	100.5678	102.2634
			94.0720	94.6434	95.5908	96.0761	96.7265	97.7671
Singapore	Dollar	SGD	0.9161	0.9496	0.9195	0.8833	0.8872	0.8911
			0.8900	0.8955	0.8996	0.8995	0.9003	0.9004
Solomon Islands	Dollar	SBD	2.5741	2.6641	2.5958	2.5006	2.5657	2.5938
			2.5048	2.5215	2.5511	2.5524	2.5672	2.5778
South Africa	Rand	ZAR	3.2788	3.4440	3.2652	3.1933	3.2345	3.2060
			3.1160	3.1765	3.2279	3.2332	3.2392	3.2389
Spain	Peseta	ESP	83.1275	86.6050	85.8800	84.9300	83.4591	84.8663
			77.8655	78.3596	79.1528	79.5624	80.1441	81.0342
Sri Lanka	Rupee	LKR	37.3559	38.9725	37.9625	37.2500	37.7723	37.6989
			35.1972	35.6254	36.0917	36.3521	36.7388	37.0738
Sweden	Krona	SEK	4.4544	4.6529	4.5672	4.4747	4.4095	4.3906
			4.2165	4.2608	4.3087	4.3302	4.3547	4.3834
Switzerland	Franc	CHF	0.8023	0.8344	0.8233	0.8202	0.8036	0.8186
			0.7555	0.7589	0.7652	0.7672	0.7709	0.7790
Taiwan	Dollar	TAI	17.7000	18.1950	17.4700	16.8250	16.9850	16.7450
			17.5855	17.6409	17.6445	17.5432	17.4967	17.4088
Thailand	Baht	THB	20.2090	20.6067	19.8350	19.1983	20.0007	20.6420
			20.3606	20.3667	20.2142	20.0169	19.9519	19.9226
Tonga	Pa'anga	TOP	0.8565	0.8583	0.8442	0.8322	0.8450	0.8382
			0.8202	0.8272	0.8354	0.8392	0.8449	0.8470
Vanuatu	Vatu	VUV	69.8592	70.8950	68.8875	67.5700	67.8349	67.1597
			67.7180	68.0318	68.3450	68.3144	68.5722	68.5594
Western Samoa	Tala	WST	1.5977	1.6401	1.6046	1.5697	1.5861	1.6612
			1.5585	1.5675	1.5772	1.5806	1.5855	1.5951

Table B: End of month exchange rates

Currency	Foreign Currency to NZ $		30 Apr 99	31 May 99	30 Jun 99	30 Jul 99	31 Aug 99	30 Sep 99
United States	Dollar	USD	0.5570	0.5367	0.5293	0.5289	0.5131	0.5160
United Kingdom	Pound	GBP	0.3459	0.3349	0.3363	0.3268	0.3229	0.3137
Australia	Dollar	AUD	0.8438	0.8217	0.8056	0.8132	0.8108	0.7910
Austria	Schilling	ATS	7.2225	7.0725	7.0474	6.7811	6.7400	6.6587
Bahrain	Dollar	BHD	0.2098	0.2021	0.1992	0.1992	0.1932	0.1943
Belgium	Franc	BEF	21.1643	20.7068	20.6467	19.8605	19.7416	19.5209
Canada	Dollar	CAD	0.8155	0.7892	0.7813	0.7958	0.7643	0.7552
China	Yuan	CNY	4.6090	4.4390	4.3919	4.3812	4.2471	4.2758
Denmark	Krone	DKK	3.9015	3.8219	3.8039	3.6654	3.6400	3.5992
European Community	Unit	XEU	0.5251	0.5138	0.5123	0.4928	0.4899	0.4819
Fiji	Dollar	FJD	1.0815	1.0585	1.0419	1.0406	1.0195	1.0059
Finland	Markka	FIM	3.1222	3.0564	3.0460	2.9303	2.9124	2.8790
France	Franc	FRF	3.4474	3.3711	3.3609	3.2332	3.2134	3.1773
French Polynesia	Franc	XPF	62.5160	61.1771	61.0317	58.6296	58.2493	57.6452
Germany	Deutschemark	DEM	1.0272	1.0056	1.0022	0.9641	0.9583	0.9474
Greece	Drachma	GRD	170.8231	166.3732	165.5483	159.7648	159.4599	158.7656
Hong Kong	Dollar	HKD	4.3137	4.1618	4.1041	4.1035	3.9818	4.0071
India	Rupee	INR	23.7526	22.9486	22.9033	22.8252	22.2222	22.4043
Indonesia	Rupiah	IDR	4,518.24	4,259.58	3,548.63	3,612.63	3,901.27	4,301.83
Ireland	Pound	IEP	0.4134	0.4047	0.4042	0.3875	0.3863	0.3824
Italy	Lira	ITL	1,016.71	995.29	991.75	954.24	948.39	937.71
Japan	Yen	JPY	66.2538	65.2397	64.0483	61.0192	57.0318	55.1512
Korea	Won	KOR	654.8150	636.5300	613.7700	636.7300	606.4650	628.6200
Kuwait	Dollar	KWD	0.1699	0.1641	0.1621	0.1612	0.1563	0.1565
Malaysia	Ringgit	MYR	2.1176	2.0401	2.0158	2.0113	1.9496	1.9628
Netherlands	Guilder	NLG	1.1573	1.1328	1.1291	1.0862	1.0795	1.0674
Norway	Krone	NOK	4.3407	4.2376	4.1544	4.1219	4.0560	3.9908
Pakistan	Rupee	PKR	28.1490	27.7280	27.1529	27.0142	26.4711	26.6253
Papua New Guinea	Kina	PGK	1.3356	1.4471	1.3588	1.3691	1.4694	1.5056
Philippines	Peso	PHP	21.0757	20.2754	19.9247	20.1754	20.1202	20.8861
Portugal	Escudo	PTE	105.2721	103.0448	102.7000	98.7954	98.1993	97.2241
Singapore	Dollar	SGD	0.9423	0.9233	0.8991	0.8912	0.8645	0.8794
Solomon Islands	Dollar	SBD	2.6673	2.5613	2.5338	2.5422	2.4824	2.5366
South Africa	Rand	ZAR	3.3613	3.3492	3.1852	3.2553	3.1169	3.0883
Spain	Peseta	ESP	87.3596	85.5194	85.2233	81.9873	81.4956	80.5749
Sri Lanka	Rupee	LKR	38.6272	37.8369	37.7550	37.7391	36.6361	36.8584
Sweden	Krona	SEK	4.6735	4.6094	4.4718	4.3250	4.2704	4.2132
Switzerland	Franc	CHF	0.8464	0.8191	0.8204	0.7868	0.7843	0.7752
Taiwan	Dollar	TAI	18.1100	17.5600	17.1250	17.0150	16.2650	16.3500
Thailand	Baht	THB	20.6574	19.8452	19.3950	19.4568	19.4790	21.1619
Tonga	Pa'anga	TOP	0.8695	0.8466	0.8328	0.8474	0.8312	0.8279
Vanuatu	Vatu	VUV	70.9386	68.8476	68.2050	67.8090	66.0948	65.4608
Western Samoa	Tala	WST	1.6439	1.6037	1.5856	1.5860	1.5500	1.5469

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.

NEW GUIDE TO BINDING RULINGS

The coming into force of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 and the Tax Administration (Binding Rulings) Regulations 1999 has made a number of changes to the binding rulings regime.

The changes are reflected in a new version of the *Guide to Binding Rulings IR715* (formerly IR115G), available from 14 October 1999, that includes:

- The new fees: now a $310 application fee and an hourly rate of $155 (both GST inclusive).
- The introduction of status rulings.
- The new rules governing the publication of product rulings.
- The effect of a notice of proposed adjustment (NOPA) on our ability to rule.

The booklet may be viewed on Inland Revenue's website at: www.ird.govt.nz and a copy down-loaded.

Copies (max.10) may be obtained by phoning the number for "Forms and Brochures" under "Inland Revenue" in the Blue Pages™ Government Section of your local telephone directory. Any existing stock of the IR115G should be destroyed.

NOTICE OF EXTENSION OF PUBLIC RULING

1. This is a notice of extension of a public ruling made under section 91DD of the Tax Administration Act 1994.
2. Public ruling No.96/4A entitled "Debt forgiveness in consideration of natural love and affection" was signed on 8 December 1996 and notice of its making appeared in the Gazette of 12 December 1996 (Issue No.180). A copy of the ruling appeared in Inland Revenue's *Tax Information Bulletin* Vol.8, No.10 of December 1996.
3. Public ruling No.96/4A originally applied to amounts of debts forgiven in the 1997-98 and 1998-99 income years, and applied to taxpayers with standard, early, or late balance dates for these years. The ruling now applies to amounts of debts forgiven from the commencement of the 1997-98 year to 19 May 1999 for taxpayers with standard, early, or late balance dates for this period.

Martin Smith
General Manager (Adjudication & Rulings)

GST – ZERO-RATING OF INTERNATIONAL STUDENTS' TUITION FEES – LEGISLATIVE CHANGE

Section 91G of the Tax Administration Act 1994 states that "a binding ruling does not apply from the date a taxation law is repealed or amended to the extent that the repeal or amendment changes the way the taxation law applies in the ruling".

Inland Revenue has issued a number of product rulings in relation to the zero-rating of tuition fees for international students, where the contractual recipient of the services is non-resident - usually the parent. Persons who are involved in or are interested in such arrangements should note that the Taxation (Remedial Matters) Act 1999 has inserted a new subsection (2A), making the zero-rating of tuition fees under section 11(2)(e) subject to this new provision. The GST treatment of the fees outlined in the product rulings is likely to be affected by this change in the law. All affected or interested parties are advised to refer to the new legislation, and to seek professional advice if necessary.

DEBT FORGIVENESS IN CONSIDERATION OF NATURAL LOVE AND AFFECTION

PUBLIC RULING - BR Pub 99/7

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 (prior to the enactment of the Taxation (Accrual Rules and Other Remedial Matters) Act 1999) unless otherwise stated.

This Ruling applies in respect of section EH 4(6).

The Arrangement to which this Ruling applies

The Arrangement is the forgiveness by a natural person (in this Ruling referred to as the creditor), including by way of testamentary disposition under a will, of an amount owing under a debt in the following circumstances:

1. The debtor is a relative (for example a father or child, brother or sister, husband or wife (or non-spousal domestic partner), grandchild, niece or nephew) or close friend of the creditor; or
2. The debtor is a trustee or trustees of a family trust, being a fixed trust, where all of the beneficiaries, other than default beneficiaries, are qualifying beneficiaries; or
3. The debtor is a trustee or trustees of a family trust, being a discretionary trust, where all the beneficiaries, other than default beneficiaries, are qualifying beneficiaries.

Such forgiveness may relate to the whole or a part of the relevant debt, and may be conditional or absolute.

This Ruling does not apply to:

- A forgiveness of a debt due by a company (including a family company); or
- A forgiveness by a trustee of a debt due by one or more of the beneficiaries of the trust; or
- A debt forgiveness that forms part of a tax avoidance arrangement subject to section GD 11 or section BG 1.

For the purposes of this Ruling, the term “qualifying beneficiary” means:

- A relative (for example a father or child, brother or sister, husband or wife (or non-spousal domestic partner), grandchild, niece or nephew, and other descendants or antecedents of the creditor, whether by blood, marriage, non-spousal domestic relationship, or adoption, and whether or not born during the creditor’s lifetime), or close friend of the creditor; or
- A fixed trust where all the beneficiaries, other than default beneficiaries, are relatives or close friends of the creditor or are qualifying beneficiaries or a combination of these; or
- A discretionary trust where all the beneficiaries, other than default beneficiaries, are relatives or close friends of the creditor or are qualifying beneficiaries or a combination of these; or
- A superannuation scheme that is a trust established specifically by its deed to provide retirement benefits to qualifying beneficiaries only.

For the purposes of this Ruling, the term “default beneficiary” means:

- A person specified as a beneficiary for the sole purpose of their benefiting from the trust only in the event that all the qualifying beneficiaries pre-decease or no longer exist.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- Amounts owing under debts forgiven in the circumstances outlined in the Arrangement are, in terms of section EH 4(6), deemed to be paid for the purposes of the qualified accruals rules, as referred to in section OZ 1(1).

The period for which this Ruling applies

This Ruling will apply for the period 1 April 1997 to 19 May 1999.

This Ruling is signed by me on the 23rd day of September 1999.

Martin Smith
General Manager (Adjudication and Rulings)

COMMENTARY ON PUBLIC RULING BR Pub 99/7

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Ruling BR Pub 99/7 ("the Ruling").

The subject matter covered in the Ruling is also dealt with in Public Ruling BR Pub 96/4A (in TIB Volume Eight, No.10 (December 1996) at page 40 under the heading *Debt forgiveness in consideration of natural love and affection*).

This Ruling (BR Pub 99/7) does **not** replace BR Pub 96/4A, which applies from the 1997-98 year to 19 May 1999. This Ruling applies for the period 1 April 1997 to 19 May 1999. Under section 91DB(2) of the Tax Administration Act 1994, this permits taxpayers to rely upon either ruling during the period that both apply. The expiry date for both rulings is 19 May 1999 being the last day prior to the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 having application. That Act provides for a new section EH 5 on debt forgiveness in consideration of natural love and affection.

Background

The relevant provisions of the accruals rules are sections EH 1 to EH 10.

Base price adjustment calculations for financial arrangements are contained in section EH 4. The base price adjustment is effectively a "wash up" calculation of all income or expenditure under a financial arrangement upon the maturity, transfer, or remission of that arrangement.

Generally, under section EH 4, any principal, interest, or other amount payable on a financial arrangement that is "remitted" is gross income to the issuer. If the debt is remitted, the issuer is the debtor.

This is illustrated by the examples below.

Example 1

Creditor lends Debtor $50,000 repayable in two years with $10,000 interest. However, in the second year of the loan Debtor is in financial difficulties. Creditor agrees to accept $50,000 with no interest, in full and final settlement of Debtor's obligations. The $10,000 interest is accordingly remitted in the second year. Debtor, however, claimed an income tax deduction for $5,000 of the interest in the first year (on an accruals basis).

Assume Creditor is not a cash basis holder.

Debtor's base price adjustment in the second year effectively results in the recapture of her income tax deduction of $5,000. She has derived gross income of $5,000. Her gross income is calculated as follows:

$$
\begin{aligned}
& a - (b + c) \\
= \quad & \$50{,}000 - (\$50{,}000 + \$5{,}000) \\
= \quad & - \$5{,}000 \text{ (income).}
\end{aligned}
$$

(A negative result is income for an issuer.)

For Creditor, the holder of the financial arrangement, a bad debt deduction for the $5,000 forgiven would be available if the requirements of section EH 5(1) were satisfied prior to the remission.

Example 2

Assume that Creditor made the loan under *Example 1* and that Debtor had claimed an income tax deduction of $5,000 in the first year (on an accruals basis). Assume, however, that after the first year, Debtor's financial difficulties lead the parties to agree that only $40,000 of principal and $10,000 of interest would be repaid in the second year in full and final settlement. If the balance of the interest ($5,000) were deductible by Debtor in the second year, she would have gross income of $5,000 under the base price adjustment.
This is because the deductible interest in that year would partly offset her taxable remission income of $10,000. Debtor's base price adjustment would be:

$$
\begin{aligned}
& a - (b + c) \\
= \quad & \$40{,}000 + \$10{,}000 - (\$50{,}000 + \$5{,}000) \\
= \quad & - \$5{,}000 \text{ (income).}
\end{aligned}
$$

Creditor could only claim a deduction for the remission under section EH 5(2) if she satisfied the requirements of that subsection prior to the remission. Creditor would only be entitled to a bad debt deduction if she carried on a business of holding or dealing in such financial arrangements and was not associated with Debtor.

Legislation

Section EH 4(6) allows issuers relief from the taxation of remissions for certain intra-family and private debts. It replaced, without material amendment, the former section 64F(7B) of the Income Tax Act 1976.

Section EH 4(6)

Section EH 4(6) states:

Where an amount owing under a debt (including any amount accrued and unpaid at the time of the forgiveness) is forgiven by a natural person in consideration of natural love and affection, the amount forgiven shall, for the purposes of the qualified accruals rules, be deemed to have been paid when the amount is forgiven.

Application of the Legislation

Requirements of section EH 4(6)

In summary, for section EH 4(6) to apply:

- There must be an amount owing.
- It must be owing under a debt.
- It may include any amount accrued and unpaid.
- It must be forgiven.
- It must be forgiven by a natural person.
- It must be forgiven in consideration of natural love and affection.

The following discusses some of the requirements of the subsection.

Debt

Section EH 4(6) only applies when there is "an amount owing under a debt". It is not available for forgiveness of all types of "financial arrangement" that may be subject to the accruals rules. "Financial arrangement" as defined in section OB 1 is a very broad term. For example, it includes sell-back and buy-back arrangements, debt defeasances, and assignments of income. None of these is, in itself, a debt.

"Debt" is not defined in the Act. Accordingly, the expression is given its ordinary or common meaning. In legal terms a "debt" is understood to be a liquidated money demand or something recoverable in court by action for debt. A debt is a certain sum due from one person to another, either by record (e.g. court judgment) or in writing.

Forgiven

An amount under a debt must be "forgiven" for section EH 4(6) to apply. The expression "forgiven" does not necessarily mean the same thing as "remitted" (as defined for accruals rules purposes in section EH 4(9)(c)). "Remitted" includes a wider range of events that are not necessarily forgiveness. These events could include when the issuer has been released from making payments by operation of statute (e.g. the Insolvency Act 1967) or lapse of time (e.g. become statute barred).

"Forgiven" is not defined in the Act. The expression must be given its ordinary or common meaning, i.e. the giving up of any claim to restitution or remedy for an obligation. That forgiveness must be a positive act by the creditor (holder) as opposed to a consequence of the operation of statute or the lapse of time.

Such forgiveness is normally evidenced by a deed or other document.

Partial forgiveness

The Commissioner considers that section EH 4(6) can apply to a partial debt forgiveness. The subsection applies in broadly the same way as to a full debt forgiveness. It deems the amount forgiven to be paid for the purposes of the base price adjustment calculation. However, a difference is that a partial debt remission does not trigger a base price adjustment, unless it accompanies maturity or transfer of the financial arrangement.

Conditional forgiveness

If a forgiveness is conditional, it does not occur until the conditions are fulfilled. Accordingly, the Commissioner considers that the amount conditionally forgiven is not deemed paid under section EH 4(6) until the conditions are fulfilled.

Natural person

The person forgiving the debt (the creditor or holder) must be a "natural person". The expression "natural person" is a legal term whose meaning is not altered by the Act. It is a human being as opposed to an artificial person (such as a company): *Pharmaceutical Society v London & Provincial Supply Assn.* (1880) 5 A.C. 857, 869-870.

This commentary sets out the Commissioner's interpretation of "natural person" for deceased persons and for trusts settled by natural persons.

In consideration of natural love and affection

This requirement of the subsection confines it to family and other private transactions. It does not apply to business or commercial arrangements.

The phrase "in consideration of natural love and affection" is another legal concept. It is not further defined in the Act. It is used to describe an action by a person where the motive is induced not by a promise of something in return but by the natural love and affection the person has for another. An action undertaken in consideration of natural love and affection does not entice reciprocation, i.e. there is nothing in return expected from the debtor. Natural love and affection is generally considered to subsist between relatives, such as father and child, brother and sister, husband and wife (or non-spousal domestic partners), uncle and nephew, grandmother and grandchild, great-grandfather and great-grandchild and other descendants or antecedents of the creditor, whether by blood, marriage, non-spousal domestic relationship, or adoption – whether or not born during the creditor's lifetime.

Except as discussed below in relation to trusts, the Commissioner considers that section EH 4(6) requires that the natural love and affection exist between the creditor and the debtor.

The Commissioner considers that in some cases it would be possible for natural love and affection to be present outside the family. For example, it could be present between close friends (although not ordinary acquaintances or colleagues). In testing the state of mind of a creditor in establishing the presence of natural love and affection, the Commissioner may look at a number of factors, such as express statements made, past distributions, existing relationships, and future intentions. However, this is by no means a complete list of the factors the Commissioner can take into account in determining whether the creditor has natural love and affection for the debtor.

Inland Revenue does not propose to publish detailed rules or guidelines on the degree of relationship necessary to establish natural love and affection. This question can only be considered on a case by case basis.

Debt is deemed paid
If the requirements of section EH 4(6) are satisfied, the amount of the debt forgiven is deemed paid; including any amount accrued and unpaid on the debt. This consequence is deemed for all purposes within the qualified accruals rules.

The main provisions when this deemed payment is relevant are sections EH 4 (base price adjustment) and EH 5 (bad debts). Broadly, the effect for the issuer or debtor is that no taxable remission arises on a base price adjustment. For the holder or creditor, no bad debt deduction is available under section EH 5 because the amount forgiven is deemed paid. Also, any interest or accruals income forgiven is taxable to the holder, for the same reason.

Example 3

Assume that the forgiveness is as in *Example 1*, but that Creditor and Debtor are closely related (sisters) and that the requirements of section EH 4(6) are met.

Debtor has claimed a $5,000 interest deduction in the first year. In the second year, rather than $5,000 of gross income as in *Example 1*, Debtor's base price adjustment would result in expenditure of $5,000. This is the balance of the interest remitted that is deemed paid. Her calculation would be:

a - (b + c)
= ($50,000 + $10,000) – ($50,000 + $5,000)
= $5,000 (expenditure).

(The amount deemed paid, $10,000, is added into item 'a'.)

Creditor is required over the two years to return the $10,000 of interest remitted as gross income under the accruals rules. No bad debt deduction is available for the remission as it is deemed paid.

Example 4

Assume that the forgiveness is as in *Example 2*, but that Creditor and Debtor are closely related (sisters) and that the requirements of section EH 4(6) are met.

Rather than $5,000 of gross income as in *Example 2*, Debtor's base price adjustment would result in expenditure of $5,000, being the balance of the interest paid. The $10,000 of debt remitted is not taxable to Debtor, as Debtor is deemed to have paid it. Debtor's calculation would be:

a - (b + c)
= ($50,000 + $10,000) – ($50,000 + $5,000)
= $5,000 (expenditure).

Creditor is assessed on the $10,000 interest received. She is not entitled to a bad debt deduction for the remission as it is deemed paid.

Testamentary dispositions and trusts

Testamentary dispositions
The question has arisen as to whether a deceased taxpayer can be a "natural person" for section EH 4(6) purposes. For example, can section EH 4(6) apply to a debt forgiveness by will when the other requirements of that provision are present?

The Commissioner considers that the deceased can be a "natural person" and that section EH 4(6) can apply. This is because, under section 24 of the Wills Act 1837 (UK), in relation to the property of the deceased, a will speaks and takes effect from the time immediately prior to the deceased's death. (The Wills Act 1837 (UK) has been incorporated into New Zealand law.)

Accordingly, the Commissioner considers that section EH 4(6) will apply to a testamentary debt when its requirements would have been satisfied immediately prior to the deceased's death.

Example 5

Son owes Father a debt of $10,000. Father dies, and his will provides for the debt to be forgiven. Section EH 4(6) applies and Son is deemed to have paid the debt to Father for accruals purposes.

Family fixed trusts

The issue has also arisen as to whether the forgiveness of debt to a trust may satisfy section EH 4(6). The situation envisaged is when a trust settlor or creditor is a natural person. He or she has natural love and affection for the trust beneficiaries. The trust is a fixed trust (i.e. the trust deed sets out the share or interest that each beneficiary is to take) for beneficiaries. The trust owes the settlor or creditor a debt. The creditor forgives the debt to the trust.

The Commissioner considers that the subsection can apply, provided that all the requirements are satisfied. The Commissioner considers that it is necessary to "look through" the trust from the creditor to the beneficiaries in determining whether there is natural love and affection. The presence or absence of that state between the creditor and the trustee, in his or her private capacity, is irrelevant. Similarly, the presence or absence of that state between the trustee and the beneficiaries is irrelevant.

The state must exist, or have existed, between the natural person creditor and all of the trust's beneficiaries (subject to the comments below about certain default beneficiaries).

Family discretionary trusts

The position is less clear for discretionary trusts when the class of beneficiaries includes persons for whom the settlor or other creditor has natural love and affection.

Some parties have argued that a creditor does not have to have natural love and affection for all the beneficiaries of a discretionary trust in order to satisfy the section. The section does not mention "all beneficiaries" but merely provides that there must be natural love and affection. However, in the Commissioner's view, it is implicit in the words of the section that the debt must be forgiven in consideration of natural love and affection towards all the beneficiaries. This is because the forgiveness, in a discretionary trust, could benefit any of the objects of the trust. If the trustee has power to allocate benefits to beneficiaries for whom a creditor could not have natural love and affection such as a company or a charity, this would seem to defeat the clear intention of the section.

The Commissioner considers that the subsection will apply in a family discretionary trust situation, provided that at the time the debt is forgiven all of the objects of the trust (subject to the comments below about default beneficiaries) are persons for whom the creditor has or would have had natural love and affection, i.e. qualifying beneficiaries. The fact that the terms of the trust may include a power to add objects or beneficiaries for whom a creditor could not have natural love and affection will not preclude the section from applying to a forgiveness of debt if that discretion has not been exercised.

Family trusts (fixed and discretionary) with default beneficiaries

A related question is whether the subsection applies if a trust deed specifies default beneficiaries for whom the settlor does not have natural love and affection. For example, it is common for family trusts to have charities and similar bodies as default beneficiaries in the event that the qualifying beneficiaries pre-decease.

There needs to be a legal mechanism whereby the assets of the trust are definitely to be distributed at some point in time. The naming of default beneficiaries to receive trust property if the intended beneficiaries or objects are not alive when the distribution takes place is accepted by the Commissioner as not precluding the application of section EH 4(6), notwithstanding that such default beneficiaries may be persons for whom the creditor does not necessarily have natural love and affection. Therefore, non-qualifying beneficiaries, such as charities, can be default beneficiaries and the section will still apply in a situation of debt forgiveness.

Similarities between family companies and family trust arrangements

The Commissioner has considered submissions that focus upon the similarities between family companies and family trust arrangements. However, there is clear legal distinction between these chosen vehicles, in that a company has separate legalpersonality from its shareholders. This was affirmed in the House of Lords case *Salomon v Salomon & Co Ltd* [1897] AC 22. Accordingly, any relationship between the creditor and the shareholders is regarded as being irrelevant in a forgiveness of debt situation.

In contrast, a trust is a form of relationship in which one person (the trustee) holds property in his or her own ownership for the benefit of a second party (the beneficiary). The publication *Nevill's Law of Trusts, Wills and Administration in New Zealand* refers to Keeton and Sheridan's definition of a trust as:

> the relationship which arises whenever a person called the trustee is compelled in equity to hold property, whether real or personal, and whether by legal or equitable title, for the benefit of some persons (of whom he may be one and who are termed beneficiaries) or for some object permitted by law, in such a

way that the real benefit of the property accrues, not to the trustees, but to the beneficiaries or other objects of the trust. [See *The Law of Trusts*, 10th edition, at page 5.]

In *Garrow and Kelly's Law of Trusts and Trustees*, 5th Edition, 1982, a trust is defined as:

an equitable obligation under which a person having the control of property is bound to deal with that property either:

(a) For the benefit of definite persons (of whom he may himself be one) and any one of whom may enforce the obligation; or

(b) For some object or purpose permitted by law.

These definitions emphasise that trust property is vested in trustees who control it and manage it for the benefit of the beneficiaries or objects. A trust is the relationship between the trustee and beneficiaries, whereas a company is a separate legal entity from its shareholders.

A forgiveness to a company or other non-natural person is not in consideration of natural love and affection. A number of commentators share this view. For example, the Valabh Committee commented on this issue in its discussion paper issued in October 1991 on the *Operational Aspects of the Accruals Regime*. The Committee said, at page 37:

The Committee is not persuaded that the natural love and affection exemption should be extended to loans made to companies. Where a loan is forgiven, the relationship between lender and shareholders seems too remote to justify such an extension.

Further comment is provided in the publication *The New Zealand Accrual Regime - a practical guide* by Glazebrook and Oliver. The authors say, at page 169:

However, a person could not have natural love and affection for companies or other non-natural persons. It is certainly difficult to envisage that the forgiveness of debt owed by a company, whoever the shareholders are, could be in considera-tion of natural love and affection.

In the discussion document *Taxation of Financial Arrangements* issued in December 1997, the following comments were made in respect of the forgiveness of company debt obligations:

- Section EH 4(6) should not be extended to include forgiveness of debts owing by companies whose shareholders were persons for whom the creditor had natural love and affection.
- A company has a separate legal identity from its shareholders. In contrast, a trust is a form of relationship in which one person (the trustee) holds property in his or her own ownership for the benefit of a second party (the beneficiary). The property is held according to terms that are dictated by the person who constituted the trust (the settlor). The function of trust law is to enforce the duties implicit in the trust relationship that exists between the trustee and the beneficiary and to provide remedies for a breach of those duties.
- A forgiveness of a debt owing by a trust will benefit the beneficiaries of that trust. However, there may be situations where a loan to a company that is subsequently remitted does not beneficially flow through to shareholders - for example, if a company is insolvent, or in loss.
- We note that the Valabh Committee, in its 1991 report, was also opposed to extending section EH 4(6) to cover forgiveness of debts owing by companies.

Superannuation schemes as trust beneficiaries

A superannuation scheme may be one of the beneficiaries of a trust. As long as the superannuation scheme is a trust established specifically by its deed to provide retirement benefits to persons for whom a creditor has natural love and affection, i.e., relatives or close friends, any debt forgiven by the creditor will be deemed to have been paid under section EH 4(6).

Charities as beneficiaries

Section EH 4(6) will not apply when a charity is a beneficiary (other than a default beneficiary). Natural love and affection cannot be held for a charity. To interpret section EH 4(6) otherwise would be to ignore the plain words of the section. Charities are not set up for specified or named people but with particular purposes in mind, e.g. relief of poverty, whereas a family trust will have specified beneficiaries as objects. Also, Parliament's intention in enacting the legislation was to provide an exemption for family arrangements - not to deal in any way with the taxation treatment of charities.

Example 6

Mother has established a trust, with her children as beneficiaries as to one-third each. The default beneficiary, if the other beneficiaries pre-decease, is a charity for the promotion of musical education. Mother has sold her business assets to the trust for a debt owed back by the trust of $100,000. Mother forgives the $100,000 debt in consideration of natural love and affection for the beneficiaries. Section EH 4(6) applies and the trustee is deemed to have paid the debt for accruals purposes. Although natural love and affection cannot exist in respect of a charity, its presence in the trust as a default beneficiary does not prevent the subsection applying.

Example 7

Prior to his death, the deceased established a family discretionary trust under which the only potential beneficiaries are his children. He lent money to the trust to pay for an overseas trip by his children. His will provided for the loans to be forgiven.

Section EH 4(6) applies and the trustee is deemed to have paid the debt for accruals purposes.

Example 8

A discretionary trust is established whose beneficiaries are the settlor's children, other family members, and family superannuation schemes. As long as the superannuation schemes are trusts established specifically by their deeds to provide retirement benefits to family beneficiaries only, debts forgiven by the settlor to the trust will fall within the provisions of section EH 4(6) and the Ruling will apply.

Example 9

A discretionary trust includes within its objects the children of the settlor, a family company, and a charity. Both the company and the charity receive regular payments from the trust, i.e. they are not default beneficiaries. The Ruling will not apply where debt is forgiven to such a trust. The presence of the company and the charity precludes section EH 4(6) from applying in a debt forgiveness situation. Natural love and affection cannot be extended to a company or a charity. The same position will apply if no distributions are made to the company or charity.

Example 10

A trust may have as its beneficiaries family members and a discretionary family trust. Provided that the beneficiaries (apart from default beneficiaries) of the discretionary trust are family members or close friends, i.e. qualifying beneficiaries, the provisions of section EH 4(6) will apply and so too will the Ruling.

Other situations that may arise

Situations will arise that fall outside the examples described here. If taxpayers or their agents are uncertain as to whether the Ruling applies in particular circumstances, they should check with their local Inland Revenue office. If the Ruling does not apply to their arrangement, taxpayers can then ask their local Inland Revenue office for a non-binding opinion on the Commissioner's view of the law as it affects their arrangement. Alternatively, they can apply for a private binding ruling in respect of a particular arrangement.

Other situations where section EH 4(6) does not apply

The Commissioner considers that section EH 4(6) is not applicable if:

- A trustee, acting in his or her capacity as trustee, forgives a debt owed by the trust beneficiaries, in their capacity as beneficiaries, irrespective of a trustee's natural love and affection for the beneficiaries. The trustee's natural love and affection arises in his or her personal capacity. It would be improper for the trustee to forgive a debt in consideration of his or her personal natural love and affection for the beneficiaries. The trustee could only forgive in accordance with his or her duties as trustee (as set out in the trust deed). In the statutory context of section EH 4(6), the Commissioner considers that a trustee acting in his or her capacity as trustee is not a natural person. The settlor's natural love and affection for the beneficiaries would also be irrelevant as the forgiveness would be by the trustee.
- The debt forgiveness forms part of a tax avoidance arrangement in terms of a provision such as section GD 11 or BG 1. For example, an individual taxpayer owes a bank an amount under a debt which she cannot pay in full. The individual pays what she can, and the bank, in turn, transfers the balance of the debt to the taxpayer's spouse for nominal consideration. The spouse forgives the balance supposedly within section EH 4(6). In these circumstances the Commissioner might invoke an anti-avoidance provision such as section BG 1.

Submissions received from practitioners and others

We received many submissions in response to our initial draft of the ruling and we have adopted some of the suggestions made to us. We set out below how we have dealt with the main issues.

Power of resettlement

We were asked whether a trust having the power of resettlement will prevent the section from applying.

If a trust has the power to resettle, this alone will not prevent the exemption provisions of section EH 4(6) from applying. Provided that a trust currently satisfies the criteria to achieve an exemption, where a resettlement is effected the resulting beneficiary make-up will govern whether a debt forgiven to the trust comes within the section. If the beneficiaries satisfy the criteria, the exemption will apply - the test is whether a debt is forgiven in consideration of natural love and affection. This test is not affected by the ability of a trust to resettle.

Power to nominate further beneficiaries

Commentators suggested that the fact that a trust may have the power to add further beneficiaries to the trust for whom a creditor could not have natural love and affection should not prevent section EH 4(6) from applying to a forgiveness of debt. We agree with this view. Provided that at the time the debt is forgiven all the beneficiaries (apart from default beneficiaries) are persons for whom the creditor has natural love and affection, i.e. the ability to nominate further beneficiaries (other than qualifying or default beneficiaries) has not been exercised, section EH 4(6) will still apply. If, however, there is an intention (at the time of the debt forgiveness) to add such a non-qualifying beneficiary, the Commissioner reserves the right to consider the potential for invoking the anti-avoidance provisions of the Act if the circumstances support this.

Degree of relationship
Commentators stated that reference in the ruling to "near relatives" and "close friends" was too narrow an interpretation of the objects of a person's natural love and affection. We agree with this view. The use of the term "near relatives" and the examples given, left unclear the degree of family relationship to which the section applies. The current draft ruling now refers to "relatives", and expands on the examples, to take into account how a typical family trust makes provision for family members including those not yet born.

Classes of beneficiaries
Concern has been expressed as to how to differentiate between primary and minor beneficiaries. The Commissioner now considers that, in a family trust situation, the clear words of section EH 4(6) put the focus on beneficiaries of a trust for whom a creditor can have natural love and affection. The section will apply in all instances if the creditor has forgiven a debt owing by a trust where all the beneficiaries (apart from default beneficiaries) are persons for whom the creditor has natural love and affection, i.e. qualifying beneficiaries. Therefore, no distinction is required to be made between primary and minor beneficiaries.

Companies and charities
It was suggested by commentators that the section required the Commissioner to look through a company in much the same way that one looks through a trust to the beneficiaries. The Commissioner disagrees with this view. In respect of companies, there is a clear legal distinction between a company and its shareholders in that a company has a separate legal personality from its shareholders.
Accordingly, any relationship in a forgiveness of debt situation between a creditor and the shareholders is irrelevant. Some parties also suggested that charities should be permitted beneficiaries for the purposes of section EH 4(6) - primarily for perceived policy reasons. For the reasons noted earlier in this commentary, it is the Commissioner's view that a person cannot have natural love and affection for a charity or other non-natural person. Neither the history nor the wording of section EH 4(6) indicates any legislative intention to deal with charities; concessionally or otherwise.

PRODUCT RULING – BR PRD 99/10

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 has been applied for by The New Zealand Guardian Trust Company Limited as Trustee of the AMP Superannuation World Index Fund, IRD number 70-976-171.

Taxation Laws

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

This Ruling applies in respect of sections BD 2, EE 1, and EF 2.

The Arrangement to which this Ruling applies

The Arrangement is the redemption of Units in the AMP Superannuation World Index Fund ("the Fund") by investors who receive securities for their redemption, and those shares are trading stock or revenue account property of that investor.

The material details of the Arrangement are as follows.

1. The Fund is a registered superannuation scheme under the Superannuation Schemes Act 1989. It is established pursuant to a Deed of Trust dated 4 December 1998 (the "Trust Deed")

2. The Fund is a passive or index investor and is required to hold a portfolio of shares and other notes and options ("securities") that correspond to the composition and weighting of an index called the AMP World Index ("the Index"). The Index is based on the MSCI World Index with some modifications. The Index is determined according to the methodology set out in this Ruling.

   The term "Index" is defined in the Trust Deed as:

   > means the index of securities known as the AMP World Index or such other index of securities agreed by the Manager and the Trustee from time to time.

   However, this Ruling only concerns the investments in the AMP World Index and no other index.

3. Clauses 5.2.2 and 5.2.3 of the Trust Deed provide that:

5.2.2 Subject to clauses 4.7 and 5.2.5, the Trustee shall not invest in any investment other than:

5.2.2.1 Constituent Company Securities which cause the Fund to hold such securities as near as practicably possible to their weightings in the Index; or

5.2.2.2 Any Asset which
(i) was acquired and is held under a bona fide opinion that it is authorised by clause 5.2.2.1 or 5.2.5; or
(ii) was acquired inadvertently without recognition of its non-complying nature; or
(iii) was distributed to or received by the Fund as a result of holding an Asset of the Fund;

provided that the Asset is disposed of or the non-compliance is otherwise remedied to the satisfaction of the Trustee as soon as practicably possible but no later than 30 Business Days, or such longer period as the Trustee may prescribe, after the non-compliance is discovered and reported to the Trustee. The Manager shall report to the Trustee when it is discovered that any Asset is within the category described in this clause 5.2.2.2 and shall dispose of any such Asset.

5.2.3 Acquisitions and dispositions to achieve the objective set out in clause 5.2.2.1 are to be determined using the "least squares" methodology to minimise the Fund's aggregate deviation in dollar terms from the proportions of the index, after allowing for parcel size and transaction cost constraints. The Fund shall adopt the same policy on adjustments to the Constituent Company Securities held by the Fund to reflect mergers, takeovers, substitutions, share buybacks, new listings, issues, special dividends capital distributions and other adjustments to the Index as is adopted by the AMP Investments' World Index Fund;

5.2.5 The Trustee may maintain or invest in Cash in any amount representing up to five percent (5%) of the Current Fund Value at any time, PROVIDED THAT the investment in Cash shall only be used to facilitate the easier administration of the Fund and to reduce the number of transactions required to be made or to facilitate redemptions from time to time, but may not be used by the Manager or the Trustee to increase the performance of the Fund by maximising the holding of securities considered to be likely to give a high return or minimising the holding of securities considered likely to give a low return.

4. Cash is defined in the Trust Deed to:

[include] deposits, or negotiable instruments, in each case having maturities which are not later than the times at which the proceeds of realisation thereof are expected to be required, and on which there is full indefeasible liability of:

(a) a New Zealand registered bank (having the meaning given to that term by the Reserve Bank of New Zealand Act 1989) approved by the Manager for the purpose; or
(b) the New Zealand Government.

5. The Fund is required to buy and sell shares as necessary to ensure that its portfolio continues to correspond as near as practicably possibly to the Index. Such buying and selling is not motivated by any intention to derive a profit or gain from such sales. The sole purpose of the Fund is to have a portfolio which continues to track the Index as near as practicably possible irrespective of whether the sale of shares will give rise to a profit or loss.

6. The Fund does not take any action to hedge or manage foreign exchange risks or exposures that arise from the investments of the Fund in non-New Zealand currencies.

7. The Fund operates a cash pool which can hold at any time cash (as defined in the Trust Deed) up to a maximum of 5% of the current fund value. However, the Fund aims to have as little cash as practical and does not aim to hold a cash pool of up to 5%. Any cash that the Fund holds is cash held awaiting investment or redemption. However, the Fund can only transact in $1 million dollar lots and is required to accumulate cash in lots of $1million dollars before investing. Therefore, any amount accumulated in $1million dollar lots is required to be invested as soon as possible. The percentage of cash to be held by the Fund shall not exceed the 5% level and will be no greater than strictly necessary in order to operate the Fund efficiently.

8. Redemptions are made from the cash pool if sufficient funds are available, otherwise redemptions are financed from the sale of securities. In addition, following a redemption, the cash pool is not normally topped up and there is no specified period of time in which the cash pool will be injected with further funds. Accordingly, if there is insufficient cash to pay a redemption if it arises, the redemption will be financed through the sale of securities. There may be some situations in which redemptions may be made through the transfer of Constituent Company Securities to unitholders. This

situation will not be common and will only occur where the unitholder has elected to receive such securities and the Manager has approved the transfer of such securities. The Manager does not exercise this discretion with a view to increasing the performance of the Fund.

9. With regards the ability to suspend redemptions, the Trust Deed provides under clause 8.5 that the manager can suspend redemptions in certain circumstances up to a period not exceeding 20 business days. This clause states:

> The Manager, with the consent of the Trustee (which may not be unreasonably withheld), may at any time give notice (a "Suspension Notice") to Members suspending the operation of all existing and future requests under clause 8.3 relating to the Plan until the earlier of the Manager giving notice to the effect that the relevant Suspension Notice is cancelled or the expiration of 20 Business days from the date of the Suspension Notice or such other period (which may exceed 20 Business Days) that the Manager considers reasonable in the interests of all Members (the "Cancellation Date"), where the Manager in good faith determines that:
>
> (i) it is not practicable to pay a benefit due to insufficient Cash in the Plan, and an inability to convert sufficient assets into Cash, to enable the Manager to meet the Benefit payment; or
>
> (ii) the Market Value of the Units at the time is not a true reflection of the actual value of the Units, due to:
>
> (A) a suspension in trading of any Constituent Company Securities on any exchange; or
>
> (B) an exchange on which Constituent Company Securities are traded being closed for a period which in the Manager's opinion is likely to involve a material change in the market price of the Constituent Company Securities; or
>
> (iii) for reasons beyond its reasonable control, the Manager is unable to calculate the Redemption Price; and provided that the period of suspension is no longer than is necessary, according to the Manager's good faith determination, to accommodate the events referred to in paragraphs (i) to (iii).

10. Suspension of redemptions is likely to be very rare. Clause 8.5 caters for specific circumstances involving unusual market conditions or circumstances that give rise to "administrative difficulty" in complying with the requests for redemptions. It is the process for managing the redemptions (particularly the difficulty thereof) that is likely to give rise to suspensions rather than the market conditions relating to the securities. Also of particular note is clause 8.5(c) which provides that the Manager shall not use its discretion under this clause to increase the performance of the Fund or the returns to any member.

11. The Trustee of the Fund is The New Zealand Guardian Trust Company Limited.

12. The Manager of the Fund is AMP Investment Management (N.Z.) Limited ("the Manager"), a wholly owned subsidiary of AMP Limited. Initial subscriptions are made through the Manager. The Manager invests the cash subscriptions (or subscriptions made in securities) into the Fund in return for units on behalf of the investors. The Manager subcontracts the function of converting cash to parcels of shares in companies included in the Index to Henderson Investors Limited ("the Investment Manager"). The Investment Manager is a United Kingdom incorporated subsidiary of AMP Limited. The Investment Manager purchases securities in the Index according to the predetermined rules set out below.

Methodology for calculating the Index

13. The following predetermined rules apply for calculating and maintaining the Index:

Countries included in the Index

14. The Index includes countries in the MSCI World Index that are in Schedule 3 Part A (referred to as 'grey-list' countries) of the Income Tax Act 1994. The countries included in the Index must also be at least 1% of the MSCI World Index. Grey-list countries which meet this size constraint at the date of this Ruling are Germany, the United Kingdom, Australia, Japan, Canada and the United States.

15. If a new country, which meets the 1% threshold, achieves grey-list status the country will be added to the Index. If a country loses its grey-list status, or falls below 0.6% of the MSCI World Index, it will be removed from the Index. The Index country composition will be reviewed quarterly.

16. The thresholds for inclusion in or removal from the Index are designed to exclude small countries from the Index so as to minimise the number of shares required to be held by the Fund and the number of transactions.

Limitation on number of securities included in the Index:

17. The Index will have a country module for each grey-list MSCI Country Index. Each of the country modules will cover a certain percentage of the relevant MSCI Country Index by value. The percentage coverage for each country at the inception of the Index is contained in the table below.

Country	Market Coverage %
Australia	80
Canada	80
Germany	80
Japan	80
United Kingdom	80
United States	80

18. The methodology that the Index follows for the country module construction is to:
    1. List all the securities in each MSCI Country Index in order of size (market capitalisation), from largest to smallest.
    2. Start at the top of the list and work down until the Index has as many securities as required to obtain, as near as practically possible, the percentage market coverage in the above table.
    3. Weight the selected securities by market capitalisation.

19. The market coverage for each country is reviewed once a quarter in order to maintain the percentages of market coverage for each country in the table above as closely as practically possible. A constituent company is not removed from the Index unless its market capitalisation ranks it below those companies representing 82.5% of the MSCI World Index market capitalisation. Conversely, a constituent company is not added unless its market capitalisation ranks it among those companies representing 77.5% of the MSCI World Index market capitalisation. These rules promote index stability.

Methodology for minimising the deviation of the Fund from the Index

20. The Fund only acquires securities in tradeable lots. A tradeable lot is the minimum number of securities, usually determined by value, in which it is possible to trade in international markets. The Fund minimises the mismatch between the Fund and the Index by using a mechanical procedure to select securities. The correct combination of securities is dictated by a simple spreadsheet software program which uses the following formula:

    Deviation = $(\Sigma_i d_i^2 / (1 + (\Sigma_i w_i^2)) * 100$

    Where d_i is the difference (in decimal terms) between the Fund weight and the Index weight in security i and w_i is the weight (in decimal terms) of security i in the Index. When the Fund perfectly matches the structure of the Index all the d_i are equal to zero and the deviation of the Fund from the index is 0%.

21. The Applicant uses this deviation measure to identify the securities and determine the number of securities that are required to minimise fund deviation from the Index, having regard to minimum parcel and transaction cost restraints. The Fund buys the securities identified by the spreadsheet as soon as it is practicable to effect a trade in the particular market on the next day on which the market is opened. The main constraint for not purchasing stock in a company is the tradeable lot size for the stock of that company. This arises where there is insufficient funds allocated to the purchase of that stock from the funds available for investment. It should also be noted that if insufficient funds are available to allocate across all stocks, subsequent funds will be applied to the purchase of stocks not purchased previously. This is done in accordance with a mechanical process which enables the entire Index to be tracked and not just a portion of the Index.

22. The same methodology for minimising any deviation from the Index is applied to minimise any deviations arising where any securities are transferred to any unitholder to fund a redemption or where any securities are sold in order to fund a redemption in cash. Rebalancing occurs automatically and immediately as a result of the application of the formula used to minimise deviations. Upon a request for a redemption, the automatic procedure selects the securities that are to be sold or transferred to fund the redemption while at the same time minimising any deviation from the Index.

The MSCI World Index

23. The MSCI World Index currently comprises approximately 1500 securities in 22 countries. The company exposures are predominantly in the form of ordinary shares, but other types of equity securities do appear in the index. The MSCI World Index is constructed by MSCI by an amalgamation of the individual country indices.

24. The MSCI selection criteria are to:

    - Define the "Market". Data is collected to accurately measure the market capitalisation of each country. The assessed market capitalisation is then adjusted to remove double counting effects and all non-domiciled companies. Companies with significant cross-ownership are screened to avoid overstating a country's true market capitalisation.

- Capture 60 percent of market capitalisation of the country across all industry groupings. Once a country's market capitalisation has been estimated, the size of the industry segment capitalisations is targeted with the aim of capturing 60 percent of the market's exposure to each industry class.
- Select the most liquid securities within each industry.
- Select companies with a sufficient level of freely-tradeable equity securities.
- Avoid cross-ownership.
- Include companies in the index at their full market capitalisation weights (including shareholdings held by governments or which are otherwise not freely-tradeable). MSCI did recently alter their construction methodology to allow a company weighting of less than that implied by market capitalisation in very special circumstances. This would be in those cases where a large privatisation is announced, but the free float is only a very small portion of the market capitalisation.

25. MSCI changes its indices for two reasons - structural and market driven:

- Structural changes reflect the evolution of a market, with respect to industry structure or regulations. Industry restructurings take place every twelve to twenty-four months for each country. Structural changes can only take place on the first day of each quarter, and will involve additions and deletions.
- Market driven changes consist of new issues, mergers and acquisitions, spin-offs, bankruptcies and so on. These changes are announced and implemented as they occur.

26. In constructing the MSCI World Index, MSCI adopts a consistent selection methodology which does not involve any attempt to predict or take account of:

- any likely change in value of a company's securities; or
- whether a company is likely to be profitable or unprofitable; or
- whether a company is likely to exhibit changes in capital value.

27. The MSCI methodology is directed solely towards achieving a representative index by focusing on adequate coverage of all relevant industry sectors, liquidity of the relevant securities, "free float" of the relevant securities and avoidance of cross ownership situations.

Disposal of units by unitholders

28. A unitholder is only able to dispose of its units by redeeming them. A unitholder may redeem units subject to the conditions in clause 8 of the Trust Deed. Clause 8 requires redemptions to be for amounts of at least $10,000 or all of a Member's units and no Member is to be left with less than $100,000 worth of units. The Manager may also suspend redemptions in the limited circumstances as noted earlier. The redemption can be in the form of cash and/or cash equivalents and/or securities. However, redemptions in securities is the exception rather than the norm and depends on the unitholder making a request to receive securities instead of cash and the approval of the Manager. The Manager does not exercise this discretion with a view to increasing the performance of the Fund in any way. Generally, redemption will be made from the cash pool and if there is insufficient cash, securities will be realised in order to fund the redemption.

29. Clause 8.3.2 of the Trust Deed provides:

> Every Benefit payable under ... clause 8.3 shall be determined by multiplying the Redemption Price calculated on the date of acceptance by the Manager by the number of Units redeemed and become payable to the Member not later than ten (10) Business Days following the date on which the Manager receives the Benefit request or on any later redemption date requested by the Member.

30. Redemption Price is defined in Clause 3 of the Trust Deed to mean the Current Unit Value less the Exit Fee.

31. Current Unit Value is defined in Clause 3 of the Trust Deed as:

> On any date an amount that is arrived at by dividing the Current Fund Value by the number of Units on issue on such date...

32. The Current Fund Value is defined in Clause 3 of the Trust Deed as:

The amount calculated by adding at any time when a valuation is required in relation to the Fund:

(a) the total of the market value of all Cash, Units in the AMP Investment's World Index Fund and investments of the Fund...

(b) the income of the Fund due but not yet received; and

(c) any other amounts which in the opinion of the Manager, should be included for the purposes of making a fair and reasonable determination of the value of the Fund having due regard to duly accepted accounting practice and accounting principles from time to time;

and deducting therefrom such amounts-

(d) as are required to meet liabilities properly attributable to the Fund (actual or contingent and not otherwise allowed for in determining the value of any asset) to the extent that the Manager has decided that provision should be made in the accounts of the Plan;

(e) as represent Administration Expenses payable by the Trustee or the Manager; and

(f) which, in the opinion of the Manager, should be included for the purpose of making a fair and reasonable determination of the current value of the Fund having due regard to generally accepted accounting practice and accounting principles current from time to time.

33. Clause 3 of the Trust Deed provides that Market Value in relation to Constituent Company Securities in the Index means:

the last sale price of that security on its home stock exchange at any relevant time (provided that the last sale price is the same as or higher than the then current buy price and lower that the current sell price. In the event that the last sale price is lower than the then current buy price, then the market value is the then current buy price and in the event that the last sale price is higher that the current sell price then the market value is the current sell price).

34. Exit Fee is defined in Clause 3 of the Trust Deed to mean:

... such sum, if any, as the Manager in its absolute discretion may determine (either generally or in relation to a particular Benefit) to be a fair fee payable in relation to the relevant Benefit to provide for the likely per Unit cost of realising Assets to meet that Benefit, having regard to the Manager's estimate of the aggregate of all costs, charges, expenses, disbursements, commissions, brokerage and other usual fees which would be likely to be incurred in respect of the sale or disposal of Assets on the date of calculation of the Redemption Price if Assets to fund a Unit's Redemption Price were sold or disposed of on such date.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

(a) The Fund operates in accordance with its Trust Deed dated 4 December 1998

(b) The Fund is a registered superannuation scheme under the Superannuation Schemes Act 1989

(c) The Fund only tracks the AMP World Index

(d) Where cash is distributed on redemption its market value will be its nominal value

(e) Where cash equivalents are distributed on redemption the value of this distribution will be the market value of these cash equivalents

(f) The market value of a security at any time shall be the value quoted on the relevant Stock Exchange at that time, as determined by the method provided in the definition of market value in Clause 3 of the Trust Deed

(g) The Manager in determining the Investors' entitlement to securities on redemption of Units in the Fund under clause 8.3 of the Trust Deed, shall use the market value of those securities at the valuation time (as defined in the Trust Deed)

(h) The formula for calculating the "Current Unit Value" as defined in clause 3 of the Trust Deed remains unaltered

(i) The amounts derived by the Investor from the subsequent sale or disposal of securities received on redeeming Units in the Fund will be gross income of the Investor

(j) Investors do not acquire Units in the Fund for the purpose of acquiring securities

(k) Units in the Fund are not tradeable on a secondary market

How the Taxation Laws apply to the Arrangement

Subject in all respects to the conditions stated above, the Taxation Laws apply to the Arrangement as follows:

- The cost of the securities acquired by an investor on redemption of Units in the Fund is the market value of those Units at the valuation time of the Units redeemed less any cash and/or cash equivalents received.
- The market value of the Units redeemed is equal to the Redemption Price of those Units.

- The cost of a security the investor receives on redemption of Units is the market value of that security as determined according to Condition (f) stipulated by the Commissioner in this Ruling.
- The cost of a security acquired by an investor on the redemption of Units is an allowable deduction under section BD 2 and is deductible:
  - In full in the income year in which the Units are redeemed, if the investor acquires the securities as trading stock for the purpose of section EE 1; and
  - In accordance with section EF 2, if the investor acquires the securities as revenue account property other than trading stock.

The period for which this Ruling applies

This Ruling will apply for the period 5 August 1999 to 31 July 2002.

This Ruling is signed by me on the 5th day of August 1999.

Martin Smith
General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 99/11

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 has been applied for by The New Zealand Guardian Trust Company Limited as Trustee of the AMP Superannuation Tracker Fund, IRD number 71-325-547.

Taxation Laws

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

This Ruling applies in respect of sections BD 2, EE 1, and EF 2.

The Arrangement to which this Ruling applies

The Arrangement is the redemption of Units in the AMP Superannuation Tracker Fund ("the Fund") by investors who receive securities for their redemption, and those shares are trading stock or revenue account property of that investor.

The material details of the Arrangement are as follows.

1. The Fund is a registered superannuation scheme under the Superannuation Schemes Act 1989. It was established pursuant to a Deed of Trust dated 10 February 1999 (the "Trust Deed").
2. The Fund is a passive or index investor and is required to hold a portfolio of shares and other notes and options (the "securities") that correspond to the composition and weighting of an index called the Russell/Ord Minnett Tradeable Index TM ("the Index"). The Index is determined according to the methodology set out below.
3. The term "Index" is defined in the Trust Deed as:

   > means the index of securities known as the Russell/Ord Minnett Tradeable IndexTM or such other index of securities agreed by the Manager and the Trustee from time to time.

   However, this Ruling only concerns the investments in the Russell/Ord Minnett Tradeable Index™ and no other index.

4. The Fund is required to buy and sell securities as necessary to ensure that its portfolio continues to correspond as near as practicably possible to the Index. Such buying and selling is not motivated by any intention to derive a profit or gain from such sales. The sole purpose of the Fund is to have a portfolio which continues to track the Index as near as practicably possible, irrespective of whether the sale of securities will give rise to a profit or loss.

5. The Fund only invests in the securities that make up the Index and in Cash as described below.

6. Clauses 5.2.2 and 5.2.5 of the Trust Deed provide that:

5.2.2 Subject to clauses 4.7 and 5.2.5, the Trustee shall not invest in any investment other than:

5.2.2.1 Constituent Company Securities which cause the Fund to hold such securities as near as practicably possible to their weightings in the Index; or

5.2.2.2 Any Asset which

(i) was acquired and is held under a bona fide opinion that it is authorised by clause 5.2.2.1 or 5.2.5; or

(ii) was acquired inadvertently without recognition of its non-complying nature; or

(iii) was distributed to or received by the Fund as a result of holding an Asset of the Fund;

provided that the Asset is disposed of or the non-compliance is otherwise remedied to the satisfaction of the Trustee as soon as practicably possible but no later than 30 Business Days, or such longer period as the Trustee may prescribe, after the non-compliance is discovered and reported to the Trustee. The Manager shall report to the Trustee when it is discovered that any Asset is within the category described in this clause 5.2.2.2 and shall dispose of any such Asset.

...

5.2.5 The Trustee may maintain or invest in Cash in any amount representing up to five percent (5%) of the Current Fund Value at any time, PROVIDED THAT the investment in Cash shall only be used to facilitate the easier administration of the Fund and to reduce the number of transactions required to be made or to facilitate redemptions from time to time, but may not be used by the Manager or the Trustee to increase the performance of the Fund by maximising the holding of securities considered to be likely to give a high return or minimising the holding of securities considered likely to give a low return.

7. "Cash" is defined in the Trust Deed to:

[include] deposits, or negotiable instruments, in each case having maturities which are not later than the times at which the proceeds of realisation thereof are expected to be required, and on which there is full indefeasible liability of:

(a) a New Zealand registered bank (having the meaning given to that term by the Reserve Bank of New Zealand Act 1989) approved by the Manager for the purpose; or

(b) the New Zealand Government.

8. Contributions to the Fund are made in the form of constituent company securities or contract notes for them, or with the approval of the Manager, Cash or AMP Investments' Tracker Fund units (which will immediately be converted into constituent company securities). However, the Fund will primarily accept contributions in the form of constituent company securities.

9. Cash may be accepted in the following circumstances:

(a) where there is a contemporaneous redemption against which the contribution can be netted off by receiving Cash into the Fund and then paying it out on the redemption; or

(b) to the extent the application cannot be made in securities due to uneven parcel sizes provided the Cash pool remains below 5% and, except where the Cash is committed to fund an obligation that was known at the time of receipt of the subscription, the Cash is converted to constituent company securities as soon as practicably possible; or

(c) in applications of less than $50,000, provided the Cash pool remains below 5% and, except where the Cash is committed to fund an obligation that was known at the time of receipt of the subscription, the Cash is converted to constituent company securities as soon as practicably possible.

10. Subscriptions to the Fund are primarily made by way of parcels of securities that ensure that the Fund continues to match the weighting and composition of the Index as near as practicably possible. Subscribers may purchase a parcel of such securities through AMP Investment Management (NZ) Limited who will Act as an agent of the subscriber pursuant to an agency agreement. Alternatively, the subscribers may purchase the parcel of securities necessary for investment in the Fund through other intermediaries such as brokers or financial advisors.

11. The Trustee of the Fund is The New Zealand Guardian Trust Company Limited.

12. The Manager of the Fund is AMP Investment Management (N.Z.) Limited ("the Manager"), a wholly owned subsidiary of AMP Limited. Initial subscriptions are made through the Manager.

13. The Index is calculated and compiled by Frank Russell and Ord Minnett. Management of the Index is overseen by an independent advisory board. Neither the Fund nor the Manager (or any associate of the Fund or the Manager) has any influence over the rules of the Index. In addition, there is no arrangement, and will be no arrangement, with Frank Russell or Ord Minnett which influences the compilation of the Index.

Methodology for calculating the Index

14. The following predetermined rules apply for calculating and maintaining the Index.

15. The Index is intended to form a benchmark for investment performance of active managers and to serve as a workable basis for a passive New Zealand index fund.

16. The criteria for an index to fill either of these roles are:

- Replicability. All securities included in the index must be sufficiently liquid to allow reasonably sized positions in the benchmark portfolio to be bought and sold freely at any time.
- Representativeness. A benchmark index must cover as wide a proportion of the investable market as possible.
- Stability. The benchmark portfolio must be one which managers can buy and hold without undue trading activity.

17. The most commonly used benchmark for New Zealand equities is the NZSE40 index, but it includes a number of illiquid issues and its composition is changed frequently for small stocks. The NZSE10 index avoids these problems but has limited coverage.

18. The Index addresses the issues of liquidity, representativeness and stability.

Membership criteria

19. The Index is a market weighted index with a target capitalisation representing at least 95% of a defined pool of tradeable securities listed on the New Zealand Stock Exchange (NZSE). Initially there were 25 companies in the Index, with this number subject to revision as necessary to maintain the 95% coverage of tradeable securities. Membership is normally reviewed quarterly. Major listings or delistings may also be included or excluded between quarterly reviews, with changes in the Index as necessary.

20. To be eligible for inclusion in the Index, a company must be listed on the NZSE and must meet and maintain the liquidity requirements described below.

21. Selection of companies for the Index from the tradeable pool is based on size and total coverage requirements, and is normally reviewed quarterly.

22. Where there is erratic movement in the securities price or market turnover, a longer review may occur. If in the initial public offering process there has been a restriction on the allocation of securities, then a company may be added to the Index in stages.

Ordinary shares

23. Generally, ordinary shares (or common stock) are included in the Index. However, rights, bonus shares, contributing shares and some convertible preference shares and notes may also be included, if they have the character of ordinary equity.

Exclusions

24. Securities traded on the NZSE which are securities in companies but domiciled in other countries are excluded from the Index. Company issued options, warrants, redeemable securities and non-convertible preference shares are generally excluded from the Index.

Liquidity requirement

25. Eligibility for inclusion in the Index is normally reviewed quarterly and is based on liquidity as defined by the percentage of market value traded on a weekly basis.

Inclusion in the index

26. As at 31 October 1998, the Index was made up of the top 26 companies by market capitalisation in the tradeable pool.

27. At each quarterly review the following criteria are used to select companies for inclusion in the Index:

- Number of Companies. The number of companies included in the Index may be adjusted if the coverage of the Index falls below 95% of the tradeable pool.
- In addition, major listings or delistings may also be included or excluded between quarterly reviews to maintain coverage at 95% of the tradeable pool. This could lead to a change in the number of companies in the Index at 31 October 1998.

Market value weighting

28. The Index is calculated from security price movements based on the last sale prices in the current period divided by the last sale prices in the previous period, with adjustment for the number of quoted securities as necessary. Adjusted price changes for each company are weighted by their market capitalisation relative to the total market capitalisation of the companies in the Index.

Index numbers and base period

29. The index values are stated in the form of an index number which is relative to a base period market value, initialised at 1,000 on 30 September 1996. There are three index values:
    - A capital index, excluding reinvestment of dividends;
    - A gross index, with reinvestment of Cash dividends but excluding imputation credits;
    - An adjusted gross index, with reinvestment of Cash dividends including adjustments for imputation credits.

Mergers and take-overs

30. Following a merger or take-over offer in respect of 100% of the issued securities of a company in the Index, the company's securities will be removed from the Index as soon as practicable after the offeror becomes entitled and announces that it will proceed with compulsory acquisition.

31. If a merger or take-over has less than 100% acceptance, then the company will remain subject to the normal eligibility and inclusion requirements for the Index. Continued inclusion in the Index may nevertheless be reviewed immediately.

Capital increases and decreases

32. An increase or decrease in the capital of a company in the Index will be reflected in the market value weighting of the Index, depending on the proportion of the total market value of the index represented by the change.

33. The same rules apply for inclusions and exclusions from the Index on the basis of changed market value.

Cash/rights/bonus issues

34. If a company in the Index makes a pro-rata Cash, rights or bonus issue that will alter the number of that company's quoted securities, then the Index will be adjusted on the ex date to reflect the change.

New listings

35. A new listing on the NZSE is not normally eligible for inclusion in the Index for at least three months following the issue of new securities because it must meet the liquidity requirement measured over a three month period. Eligibility will be reviewed at the end of each quarter.

36. However, if a new issue will represent more than 3% of the total market capitalisation of the Index, then the company may be considered for earlier inclusion.

Management

37. Management of the Index is overseen by an independent advisory board to assist it in meeting industry requirements as closely as possible and in ensuring all decisions regarding the composition of the Index adhere to the principles set out in the rules without influence from any external party.

Adjustments to the Fund

38. Because the objective of the Fund is to track the Index, any adjustments to the Index will necessitate corresponding portfolio adjustments to the assets of the Fund.

Disposal of units by unitholders

39. A unitholder is only able to dispose of its units by redeeming them. A unitholder may redeem units subject to the conditions in clause 8 of the Trust Deed. Clause 8 requires redemptions to be for amounts of at least $10,000 or all of a Member's units and no Member is to be left with less than $100,000 worth of units. The Manager may also suspend redemptions in the limited circumstances as noted at paragraph 48 below. The redemption can be in the form of Cash and/or Cash equivalents and/or securities.

40. Redemptions are usually made through the transfer of constituent company securities, but may, particularly in the circumstances described below, be made in Cash.

41. In the following circumstances a redemption will be made in Cash (where that Cash is not committed for other purposes):
    (a) where there is a contemporaneous contribution against which the redemption can be matched as described above; or
    (b) where the Cash is sufficient to fund the redemption in full, that redemption will be made from the Cash pool; and

(c) where the Cash is not sufficient to fund the redemption in full, the balance of the redemption will be made from securities in the proportions that will ensure that the Fund will continue to match the composition and weighting of the Index as near as practicably possible.

42. Clause 8.3.2 of the Trust Deed provides:

> Every Benefit payable under ... clause 8.3 shall be determined by multiplying the Redemption Price calculated on the date of acceptance by the Manager by the number of Units redeemed and become payable to the Member not later than ten (10) Business Days following the date on which the Manager receives the Benefit request or on any later redemption date requested by the Member.

43. Redemption Price is defined in Clause 3 of the Trust Deed to mean the Current Unit Value less the Exit Fee.

44. Current Unit Value is defined in Clause 3 of the Trust Deed as:

> On any date an amount that is arrived at by dividing the Current Fund Value by the number of Units on issue on such date...

45. The Current Fund Value is defined in Clause 3 of the Trust Deed as:

> The amount calculated by adding as at any time when a valuation is required in relation to the Fund -
>
> (a) the total of the market value of all Cash, Units in the AMP Investments' Tracker Fund and investments of the Fund...
>
> (b) the income of the Fund due but not yet received; and
>
> (c) any other amounts which, in the opinion of the Manager, should be included for the purposes of making a fair and reasonable determination of the value of the Fund having due regard to duly accepted accounting practice and accounting principles from time to time;
>
> and deducting therefrom such amounts-
>
> (d) as are required to meet liabilities properly attributable to the Fund (actual or contingent and not otherwise allowed for in determining the value of any asset) to the extent that the Manager has decided that provision should be made in the accounts of the Plan;
>
> (e) as represent Administration Expenses payable by the Trustee or the Manager; and
>
> (f) which, in the opinion of the Manager, should be included for the purpose of making a fair and reasonable determination of the current value of the Fund having due regard to generally accepted accounting practice and accounting principles current from time to time.

46. Clause 3 of the Trust Deed provides that Market Value in relation to Constituent Company Securities in the Index means:

> its value as in the Index at any relevant time.

47. Exit Fee is defined in Clause 3 of the Trust Deed to mean:

> ... such sum, if any, as the Manager in its absolute discretion may determine (either generally or in relation to a particular Benefit) to be a fair fee payable in relation to the relevant Benefit to provide for the likely per Unit cost of realising Assets to meet that Benefit, having regard to the Manager's estimate of the aggregate of all costs, charges, expenses, disbursements, commissions, brokerage and other usual fees which would be likely to be incurred in respect of the sale or disposal of Assets on the date of calculation of the Redemption Price if Assets to fund a Unit's Redemption Price were sold or disposed of on such date.

48. With regards the ability to suspend redemptions, the Trust Deed provides under clause 8.5 that the manager can suspend redemptions in certain circumstances up to a period not exceeding 20 business days. This clause states:

> The Manager, with the consent of the Trustee (which may not be unreasonably withheld), may at any time give notice (a "Suspension Notice") to Members suspending the operation of all existing and future requests under clause 8.3 relating to the Plan until the earlier of the Manager giving notice to the effect that the relevant Suspension Notice is cancelled or the expiration of 20 Business days from the date of the Suspension Notice or such other period (which may exceed 20 Business Days) that the Manager considers reasonable in the interests of all Members (the "Cancellation Date"), where the Manager in good faith determines that:
>
> (i) it is not practicable to pay a benefit due to insufficient Cash in the Plan, and an inability to convert sufficient assets into Cash, to enable the Manager to meet the Benefit payment; or
>
> (ii) the Market Value of the Units at the time is not a true reflection of the actual value of the Units, due to:
>
> (A) a suspension in trading of any Constituent Company Securities on any exchange; or
>
> (B) an exchange on which Constituent Company Securities are traded being closed for a period which in the Manager's opinion is likely to involve a material change in the market price of the Constituent Company Securities; or
>
> (iii) for reasons beyond its reasonable control, the Manager is unable to calculate the Redemption Price;
>
> and provided that the period of suspension is no longer than is necessary, according to the Manager's good faith determination, to accommodate the events referred to in paragraphs (i) to (iii).

49. Suspension of redemptions is likely to be very rare. Clause 8.5 caters for specific circumstances involving unusual market conditions or circumstances that give rise to "administrative difficulty" in complying with the requests for redemptions. It is the process for managing the redemptions (particularly the difficulty thereof) that is likely to give rise to suspensions rather than the market conditions relating to the securities. Also of particular note is clause 8.5(c) which provides that the Manager shall not use its discretion under this clause to increase the performance of the Fund or the returns to any member.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

(a) The Fund operates in accordance with its Trust Deed dated 10 February 1999

(b) The Fund is a registered superannuation scheme under the Superannuation Schemes Act 1989

(c) The Fund only tracks the Russell/Ord Minnett Tradeable IndexTM

(d) Where Cash is distributed on redemption its market value will be its nominal value

(e) Where Cash equivalents are distributed on redemption, the value of this distribution will be the market value of these Cash equivalents

(f) In determining the market value of a security at any time the last sale price for that security, as quoted on the New Zealand Stock Exchange at that time, shall be used

(g) The Manager in determining the Investors' entitlement to securities on redemption of Units in the Fund under clause 8.3 of the Trust Deed, shall use the market value of those securities at the valuation time (as defined in the Trust Deed)

(h) The formula for calculating the "Current Unit Value" as defined in clause 3 of the Trust Deed remains unaltered

(i) The amounts derived by the Investor from the subsequent sale or disposal of securities received on redeeming Units in the Fund will be gross income of the Investor

(j) Investors do not acquire Units in the Fund for the purpose of acquiring securities

(k) Units in the Fund are not tradeable on a secondary market.

How the Taxation Laws apply to the Arrangement

Subject in all respects to the conditions stated above, the Taxation Laws apply to the Arrangement as follows:

- The cost of the securities acquired by an investor on redemption of Units in the Fund is the market value of those Units at the valuation time of the Units redeemed less any Cash and/or Cash equivalents received.
- The market value of the Units redeemed is equal to the Redemption Price of those Units.
- The cost of a security the investor receives on redemption of Units is the last sale price of that security as listed on the New Zealand Stock Exchange at the time the Units are redeemed.
- The cost of a security acquired by an investor on the redemption of Units is an allowable deduction under section BD 2 and is deductible:
    - In full in the income year in which the Units are redeemed, if the investor acquires the securities as trading stock for the purpose of section EE 1; and
    - In accordance with section EF 2, if the investor acquires the securities as revenue account property other than trading stock.

The period for which this Ruling applies

This Ruling will apply for the period 5 August 1999 to 31 July 2002.

This Ruling is signed by me on the 5th day of August 1999.

Martin Smith
General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 99/12

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 has been applied for by 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 contractual supply of administration and facility services to a person who is not resident in New Zealand pursuant to a contract which provides for that non-resident person to pay an administration and facility fee 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. The College also provides administration and facility services for additional fees. This Ruling is only concerned with the administration component of the administration and facility fee.

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.
   - 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.

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

11. 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.

12. 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

13. 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

14. 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

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

16. The administration and facility fee is 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.

Composition of administration and facility fee

17. Administration fees are paid for the following services:
    - Student administration
    - Student support
    - Student welfare

18. Facility fees are paid for the following services:
    - Maintenance
    - Utilities
    - Availability of gymnasium
    - Availability of health clinic

The administration component of the administration and facility fee is described below.

Student administration

19. The College provides a 24-hour, 7 days per week student administration service. The services included in this fee are the provision to the student of information, and/or advice and/or the actual making of arrangements in relation to:
    - The issue of any passport, visa or permit to the student
    - Any travel, including international travel
    - The safety and security of the student
    - The receiving or sending of gifts, parcels or other items
    - Places to visit and activities available
    - Communication with the parents of students
    - Finance and money matters
    - Allocating to students homestay accommodation or rooms in the halls of residence
    - Maintaining liaison with homestay parents
    - Granting absence or leave from College
    - Maintaining compliance with Education law
    - Acquiring, owning and using motor vehicles
    - Matters arising as to the quantity and quality of food served in the dining hall

Students support

20. This section is concerned with positively supporting the students to successfully live and study in New Zealand.

    In particular, this section is focused on the provision of advice, and/or information and/or the actual making of arrangements in relation to:
    - Academic counselling of students in matters affecting what they study and how they cope with the pressures of learning
    - Personal counselling in all areas including relationship, state of mind and any other non academic issues

- Student health and safety and the provision of seminars and other educational material
- The risks associated with smoking, alcohol, sex, and eating habits
- Career and vocational guidance
- Consulting with the College doctor
- The taking out of student health insurance and making claims
- Student equity issues including discrimination and harassment

Student welfare

21. This section is concerned about the compliance by students with the accommodation and other living regulations. The services included in this fee relate to the imposition, compliance and enforcement of:
    - All regulations and rules by the student
    - Appropriate sanctions as necessary
    - Disciplinary policies and procedures
    - Appropriate hearings or meeting for enforcement of discipline
    - A database of student welfare issues

Conditions stipulated by the Commissioner

This Ruling is made subject to 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 administration component of the administration and facility services are performed.

b) No part of the administration component of the administration and facility fee charged in respect of the students relates to services which are supplied directly in connection with land or any improvement thereto situated inside New Zealand, or moveable personal property situated inside New Zealand.

How the Taxation Law applies to the Arrangement

Subject in all respects to the conditions above, the Taxation Law applies to the Arrangement as follows:

- The administration component of the administration and facility fee charged in respect of an international student for the supply of student services is a zero-rated supply for GST purposes in accordance with section 11(2)(e) where the administration services are contractually supplied by the College to a parent, guardian, or other person who is not "resident" in terms of section 2(1), and who is outside "New Zealand", as defined in section 2(1), at the time the administration services are performed.
- The facility component of the administration and facility fee charged in respect of the students relates to services which are supplied directly in connection with land or any improvement thereto situated inside New Zealand, or moveable personal property situated inside New Zealand, and shall be charged with GST at the standard rate in accordance with section 8.

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 6th day of August 1999.

Martin Smith
General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 99/16

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 has been applied for by Tower Limited (formerly Tower Corporation) ("Tower"), IRD number 45-402-460.

Taxation Laws

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

This Ruling applies in respect of the "life insurance rules" as defined in section OZ 1(1) and the definition of "claim" in section OB 1 of the Income Tax Act 1994.

The Arrangement to which this Ruling applies

The Arrangement is the issue of fully paid shares ("initial shares") in Tower to qualifying parent company members (as defined in the Scheme for Conversion (the "Scheme")) or to the Tower Safe Trust ("the Trust") on behalf of the qualifying parent company members (and subsequently to the qualifying parent company members). Further the Arrangement is the allocation of subscription rights for partly paid shares ("subscription rights") to qualifying subsidiary company members (as defined in the Scheme) or to the Trust on behalf of the qualifying subsidiary company members (and subsequently to the qualifying subsidiary company members) entitling them to subscribe for partly paid shares in Tower on favourable terms as part of the demutualisation of Tower and the issue of those partly paid shares to the qualifying subsidiary company members or to the Trust. Further details of the Arrangement are set out in the paragraphs below.

1. Tower is a mutual life insurer. It will demutualise by issuing shares and subscription rights in itself to its Members (as defined in the Tower Corporation Bylaws) in exchange for the extinguishment of their membership rights.
2. Tower will convert to a company registered under the Companies Act 1993 by way of the Scheme in accordance with the provisions of Part IV of the Tower Corporation Act 1990. Tower will be known as Tower Limited from the time of its conversion.
3. The allocation of initial shares and subscription rights in Tower will be to members who were members of Tower at 9:00pm on 8 December 1997 and who meet the qualifying rules. The allocation of the initial shares and the subscription rights received by each member will be determined by formulae that have been approved as part of the Scheme approval.
4. Qualifying parent company members will be issued with initial shares in Tower on the implementation date. Qualifying subsidiary company members will receive subscription rights to Tower shares on favourable terms on the implementation date. Qualifying subsidiary company members may then elect to subscribe, in which case they must also consent to be shareholders of Tower. If the qualifying subsidiary company members exercise the subscription rights, they will be issued shares in Tower on the subscription date, which will be within one month of the implementation date. The favourable subscription terms are:
   (a) that the new shares are credited as 50% paid at the time of issue, being the subscription date, to the qualifying subsidiary company member; and
   (b) the outstanding balance of 50% is not payable for two years.
5. The Trust will be established to receive initial shares and subscription rights issued by Tower where any member cannot be identified with sufficient specificity to enable the initial shares and subscription rights to be issued directly to the member. Further, the Trust will receive those subscription rights that a qualifying subsidiary company member has not exercised. The Trust will exercise all the subscription rights allocated to it under the Scheme. The trustee of the Trust will be Tower Safe Limited. On appropriate verification, a distribution will be made to the confirmed participant (as defined in the trust deed), as beneficiary of the Trust.
6. The Scheme does not provide for an allocation of Tower shares to non-members other than through the public float.
7. A prospectus has been issued in both New Zealand and Australia seeking new capital.
8. It is also intended that Tower's shares be listed on the New Zealand Stock Exchange and Australian Stock Exchange.
9. The High Court approved the Scheme on 15 June 1999.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The terms of the trust deed are not materially different from the draft trust deed submitted to the High Court on 18 September 1998 and received by the Rulings Unit on 9 October 1998.

b) The Scheme is not materially different from that submitted to the High Court on 18 September 1998 and provided to the Rulings Unit on 9 October 1998.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

The issue of initial shares in Tower to qualifying parent company members or to the Trust on behalf of those members (and subsequently to those members) and the allocation of subscription rights to qualifying subsidiary company members or to the Trust on behalf of those members (and subsequently to those members) entitling them to subscribe for the partly paid shares in Tower on favourable terms as part of the demutualisation of Tower and the issue of those new shares to the qualifying subsidiary company members or to the Trust as a result of demutualisation does not constitute a "claim" as defined in section OB 1. This means that the issue of initial shares and the allocation of the subscription rights and the associated issue of the partly paid shares by Tower:

- Will not be a "claim" to Tower in its own right.
- Will not be a "claim" to subsidiaries of Tower whose policyholders receive subscription rights and partly paid shares from Tower.
- Will not be a "claim" to the Tower Corporation Consolidated Group ("the Group") or to Tower as the nominated company of the Group.
- Will not be a "claim" in the hands of the qualifying participants (as defined in the Scheme).
- Will not be a "claim" in the hands of the Trust for unconfirmed members, nor subsequently in the hands of the confirmed participants once distributed from the Trust.

The period for which this Ruling applies

This Ruling will apply for the period from the date of signing until 1 October 2002.

This Ruling is signed by me on the 10th day of September 1999.

Martin Smith
General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 99/17

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 has been applied for by Tower Limited (formerly Tower Corporation) ("Tower"), IRD number 45-402-460.

Taxation Laws

All legislative references are to the Estate and Gift Duties Act 1968 unless otherwise stated.

This Ruling applies in respect of sections 61 and 63, and to the definitions of "disposition of property" and "gift" in section 2(2) of the Estate and Gift Duties Act 1968.

The Arrangement to which this Ruling applies

The Arrangement is the issue of fully paid shares ("initial shares") in Tower to qualifying parent company members (as defined in the Scheme for Conversion (the "Scheme")) or to the Tower Safe Trust ("the Trust") on behalf of the qualifying parent company members (and subsequently to the qualifying parent company members). Further the Arrangement is the allocation of subscription rights for partly paid shares ("subscription rights") to qualifying subsidiary company members (as defined in the Scheme) or to the Trust on behalf of the qualifying subsidiary company members (and subsequently to the qualifying subsidiary company members) entitling them to subscribe for partly paid shares in Tower on favourable terms as part of the demutualisation of Tower and the issue of those partly paid shares to the qualifying subsidiary company members or to the Trust. Further details of the Arrangement are set out in the paragraphs below.

1. Tower is a mutual life insurer. It will demutualise by issuing shares and subscription rights in itself to its Members (as defined in the Tower Corporation Bylaws) in exchange for the extinguishment of their membership rights.
2. Tower will convert to a company registered under the Companies Act 1993 by way of the Scheme in accordance with the provisions of Part IV of the Tower Corporation Act 1990. Tower will be known as Tower Limited from the time of its conversion.
3. The allocation of initial shares and subscription rights in Tower will be to those participants who were members of Tower at 9:00pm on 8 December 1997 and who meet the qualifying rules. The allocation of the initial shares and the subscription rights received by each member will be determined by the formulae approved as part of the Scheme approval.
4. Qualifying parent company members will be issued with initial shares in Tower on the implementation date. Qualifying subsidiary company members will receive subscription rights to Tower shares on favourable terms on the implementation date. Qualifying subsidiary company members may then elect to subscribe, in which case they must also consent to be shareholders of Tower. If the qualifying subsidiary company members exercise the subscription rights, they will be issued shares in Tower on the subscription date, which will be within one month of the implementation date. The favourable subscription terms are:
    (a) that the new shares are credited as 50% paid at the time of issue, being the subscription date, to the qualifying subsidiary company member; and
    (b) the outstanding balance of 50% is not payable for two years.
5. The Trust will be established to receive initial shares and subscription rights issued by Tower where any member cannot be identified with sufficient specificity to enable the initial shares and subscription rights to be issued directly to the member. Further, the Trust will receive those subscription rights that a qualifying subsidiary company member has not exercised. The Trust will exercise all the subscription rights allocated to it under the Scheme. The trustee of the Trust will be Tower Safe Limited. On appropriate verification, a distribution will be made to the confirmed participant (as defined in the trust deed), as beneficiary of the Trust.
6. The Scheme does not provide for an allocation of Tower shares to non-members other than through the public float.
7. A prospectus has been issued in both New Zealand and Australia seeking new capital.
8. It is also intended that Tower's shares be listed on the New Zealand Stock Exchange and Australian Stock Exchange.
9. The High Court approved the Scheme on 15 June 1999.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The terms of the trust deed are not materially different from the draft trust deed submitted to the High Court on 18 September 1998 and received by the Rulings Unit on 9 October 1998.

b) The Scheme is not materially different from that submitted to the High Court on 18 September 1998 and provided to the Rulings Unit on 9 October 1998.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- The extinguishment of membership rights in Tower in return for the issue of initial shares by Tower to qualifying parent company members or the Trust on behalf of those members will not constitute a "gift" pursuant to section 2(2) and therefore will not constitute a dutiable gift to any person under section 63.
- The extinguishment of membership rights in Tower in return for the allocation of subscription rights by Tower to qualifying subsidiary company members or the Trust on behalf of those members will not constitute a "gift" pursuant to section 2(2) and therefore will not constitute a dutiable gift to any person under section 63.
- The extinguishment of the subscription rights in Tower in return for the issue of the partly paid shares by Tower to qualifying subsidiary company members or the Trust on behalf of those members will not constitute a "gift" pursuant to section 2(2) and therefore will not constitute a dutiable gift to any person under section 63.

The period for which this Ruling applies

This Ruling will apply for the period from the date of signing until 1 October 2002.

This Ruling is signed by me on the 10th day of September 1999.

Martin Smith
General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 99/18

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 has been applied for by Tower Limited (formerly Tower Corporation) ("Tower"), IRD number 45-402-460.

Taxation Laws

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

This Ruling applies in respect of sections CF 1, CF 2, NG 1, and OB 1 of the Income Tax Act 1994.

The Arrangement to which this Ruling applies

The Arrangement is the issue of fully paid shares ("initial shares") in Tower to qualifying parent company members (as defined in the Scheme for Conversion (the "Scheme")) or to the Tower Safe Trust ("the Trust") on behalf of the qualifying parent company members (and subsequently to the qualifying parent company members). Further, the Arrangement is the allocation of subscription rights for partly paid shares ("subscription rights") to qualifying subsidiary company members (as defined in the Scheme) or to the Trust on behalf of the qualifying subsidiary company members (and subsequently to the qualifying subsidiary company members) entitling them to subscribe for partly paid shares in Tower on favourable terms as part of the demutualisation of Tower and the issue of those partly paid shares to the qualifying subsidiary company members or to the Trust. Further details of the Arrangement are set out in the paragraphs below.

1. Tower is a mutual life insurer. It will demutualise by issuing shares and subscription rights in itself to its Members (as defined in the Tower Corporation Bylaws) in exchange for the extinguishment of their membership rights.
2. Tower will convert to a company registered under the Companies Act 1993 by way of the Scheme in accordance with the provisions of Part IV of the Tower Corporation Act 1990. Tower will be known as Tower Limited from the time of its conversion.
3. The allocation of initial shares and subscription rights in Tower was allocated to those participants who were members of Tower at 9:00pm on 8 December 1997 and who met the qualifying rules. The allocation of the initial shares and the subscription rights received by each member was determined by the formulae approved as part of the Scheme approval.
4. Qualifying parent company members will be issued with initial shares in Tower on the implementation date. Qualifying subsidiary company members will receive subscription rights to Tower shares on favourable terms on the implementation date. Qualifying subsidiary company members may then elect to subscribe, in which case they must also consent to be shareholders of Tower. If the qualifying subsidiary company members exercise the subscription rights, they will be issued shares in Tower on the subscription date, which will be within one month of the implementation date. The favourable subscription terms are:
   (a) that the new shares are credited as 50% paid at the time of issue, being the subscription date, to the qualifying subsidiary company member; and
   (b) the outstanding balance of 50% is not payable for two years.
5. The Trust will be established to receive initial shares and subscription rights issued by Tower where any member cannot be identified with sufficient specificity to enable the initial shares and subscription rights to be issued directly to the member. Further the Trust will receive those subscription rights that a qualifying subsidiary company member has not exercised. The Trust will exercise all the subscription rights allocated to it under the Scheme. The trustee of the Trust will be Tower Safe Limited. On appropriate verification, a distribution will be made to the confirmed participant (as defined in the trust deed), as beneficiary of the Trust.

6. The Scheme does not provide for an allocation of Tower shares to non-members other than through the public float.
7. A prospectus has been issued in both New Zealand and Australia seeking new capital.
8. It is also intended that Tower's shares be listed on the New Zealand Stock Exchange and Australian Stock Exchange.
9. The High Court approved the Scheme on 15 June 1999.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The terms of the trust deed are not materially different from the draft trust deed submitted to the High Court on 18 September 1998 and received by the Rulings Unit on 9 October 1998.

b) The Scheme is not materially different from that submitted to the High Court on 18 September 1998 and provided to the Rulings Unit on 9 October 1998.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- The issue of initial shares and the allocation of subscription rights to qualifying participants (as defined in the Scheme) or to the Trust by Tower is not a "dividend" as defined in section CF 2(1).
- The issue of initial shares and the allocation of subscription rights to qualifying participants or to the Trust by Tower will not be gross income under section CF 1.
- The issue of initial shares and the allocation of subscription rights to qualifying participants or to the Trust by Tower will not be non-resident withholding income under section NG 1(2)(a).
- The issue of the partly paid shares to qualifying subsidiary company members or to the Trust by Tower and the deferral of payment of the unpaid amount on the partly paid shares is not a "dividend" as defined in section CF 2(1).
- The issue of the partly paid shares to qualifying subsidiary company members or to the Trust by Tower and the deferral of payment of the unpaid amount on the partly paid shares will not be gross income under section CF 1.
- The issue of the partly paid shares to qualifying subsidiary company members or to the Trust by Tower and the deferral of payment of the unpaid amount on the partly paid shares will not be non-resident withholding income under section NG 1(2)(a).

The period for which this Ruling applies

This Ruling will apply for the period from the date of signing until 1 October 2002.

This Ruling is signed by me on the 10th day of September 1999.

Martin Smith
General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 99/19

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 has been applied for by Tower Limited (formerly Tower Corporation) ("Tower"), IRD number 45-402-460.

Taxation Law

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

This Ruling applies in respect of sections CD 3, CD 4 and CD 5 of the Income Tax Act 1994.

The Arrangement to which this Ruling applies

The Arrangement is the issue of fully paid shares ("initial shares") in Tower to qualifying parent company members (as defined in the Scheme for Conversion (the "Scheme")) or to the Tower Safe Trust ("the Trust") on behalf of the qualifying parent company members (and subsequently to the qualifying parent company members) as part of the demutualisation of Tower. Further, the Arrangement is the allocation of subscription rights for partly paid shares ("subscription rights") to qualifying subsidiary company members (as defined in the Scheme) or to the Trust on behalf of the qualifying subsidiary company members (and subsequently to the qualifying subsidiary company members) entitling them to subscribe for partly paid shares in Tower on favourable terms as part of the demutualisation of Tower and the issue of those partly paid shares to the qualifying subsidiary company members or to the Trust. Further details of the Arrangement are set out in the paragraphs below.

1. Tower is a mutual life insurer. It will demutualise by issuing shares and subscription rights in itself to its Members (as defined in the Tower Corporation Bylaws) in exchange for extinguishment of their membership rights.
2. Tower will convert to a company registered under the Companies Act 1993 by way of the Scheme in accordance with the provisions of Part IV of the Tower Corporation Act 1990. Tower will be known as Tower Limited from the time of its conversion.
3. The allocation of initial shares and subscription rights in Tower will be to members who were members of Tower at 9:00pm on 8 December 1997 and who meet the qualifying rules. The allocation of the initial shares and the subscription rights received by each member will be determined by formulae that have been approved as part of the Scheme approval.
4. Qualifying parent company members will be issued with initial shares in Tower on the implementation date. Qualifying subsidiary company members will receive subscription rights to Tower shares on favourable terms on the implementation date. Qualifying subsidiary company members may then elect to subscribe, in which case they must also consent to be shareholders of Tower. If the qualifying subsidiary company members exercise the subscription rights, they will be issued shares in Tower on the subscription date, which will be within one month of the implementation date. The favourable subscription terms are:
    (a) that the new shares are credited as 50% paid at the time of issue, being the subscription date, to the qualifying subsidiary company member; and
    (b) the outstanding balance of 50% is not payable for two years.
5. The Trust will be established to receive initial shares and subscription rights issued by Tower where any member cannot be identified with sufficient specificity to enable the initial shares and subscription rights to be issued directly to the member. Further, the Trust will receive those subscription rights that a qualifying subsidiary company member has not exercised. The Trust will exercise all the subscription rights allocated to it under the Scheme. The trustee of the Trust will be Tower Safe Limited. On appropriate verification, a distribution will be made to the confirmed participant (as defined in the trust deed), as beneficiary of the Trust.
6. The Scheme does not provide for an allocation of Tower shares to non-members other than through the public float.
7. A prospectus has been issued in both New Zealand and Australia seeking new capital.
8. It is also intended that Tower's shares be listed on the New Zealand Stock Exchange and Australian Stock Exchange.
9. The High Court approved the Scheme on 15 June 1999.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) The terms of the trust deed are not materially different from the draft trust deed submitted to the High Court on 18 September 1998 and received by the Rulings Unit on 9 October 1998.

b) The Scheme is not materially different from that submitted to the High Court on 18 September 1998 and provided to the Rulings Unit on 9 October 1998.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

The demutualisation process (being the members of Tower voting to approve the Scheme and the steps that follow, as set out in the Arrangement above, that result in the qualifying parent company members, and qualifying subsidiary company members (" qualifying participants") and the Trust accepting the initial shares and subscription rights, the subscription rights being exercised and the qualifying subsidiary company members and the Trust accepting the partly paid shares issued by Tower) will not **of itself**:

- Be sufficient to constitute a business for the purposes of section CD 3 or the first limb of section CD 4.
- Mean that the initial shares, the partly paid shares and the subscription rights received by the qualifying participants and the Trust will be acquired for the purpose of sale or other disposition under the second limb of section CD 4.
- Constitute an undertaking or scheme entered into or devised for the purpose of making a profit under the third limb of section CD 4.
- Mean that the initial shares, partly paid shares and the subscription rights will be income according to ordinary concepts under section CD 5.
- Alter the account on which the qualifying participants hold their membership rights. That is the demutualisation process will not, of itself, mean that membership rights held by a qualifying participant on capital account prior to the demutualisation will become a revenue account item as a result of the demutualisation potentially giving rise to gross income under section CD 3, CD 4 or CD 5.

Important Note

This Ruling sets out how the Commissioner will apply the specified Taxation Laws in relation to the demutualisation process itself and should not be taken, in any way, as a ruling on:

- whether any income arising from the conversion of the membership rights for initial shares, partly paid shares and subscription rights in Tower is gross income which is taxable; or
- whether any proceeds from the sale of any initial shares and partly paid shares in Tower is gross income which is taxable.

The answer to either of the above issues will depend on the facts of any particular case.

The period for which this Ruling applies

This Ruling will apply for the period from the date of signing until 1 October 2002.

This Ruling is signed by me on the 10th day of September 1999.

Martin Smith
General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 99/20

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

Names of the Persons who applied for the Ruling

This Ruling has been applied for by Tower Limited (formerly Tower Corporation) (“Tower”), IRD number 45-402-460, and Tower Safe Limited, IRD number 70-891-115.

Taxation Laws

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

This Ruling applies in respect of sections HH 1, HH3, HH 4, and HH 6 and the definitions of “beneficiary income”, “dividend”, “qualifying trust”, “settlor”, “trustee income”, and “unit trust” in section OB 1 of the Income Tax Act 1994 and sections 61 and 63 of the Estate and Gift Duties Act 1968.

The Arrangement to which this Ruling applies

The Arrangement is the issue of fully paid shares (“initial shares”) and subscription rights for partly paid shares (“subscription rights”) in Tower to the Tower Safe Trust (“the Trust”) on behalf of the unconfirmed participants in exchange for their membership and other rights, the exercise of the subscription rights by the Trust and the subsequent issue of partly paid shares in Tower to the Trust, any accretions to the trust fund, the receipt of any income in respect of the trust fund, and subsequent distributions by the Trust in accordance with the trust deed to the Trust’s beneficiaries. Further details of the Arrangement are set out in the paragraphs below.

1. Tower is a mutual life insurer. It will demutualise by issuing shares and subscription rights in itself to its Members (as defined in the Tower Corporation Bylaws) in exchange for the extinguishment of their membership rights.
2. Tower will convert to a company registered under the Companies Act 1993 by way of the Scheme for Conversion (the “Scheme”) in accordance with the provisions of Part IV of the Tower Corporation Act 1990. Tower will be known as Tower Limited from the time of its conversion.

3. The allocation of initial shares and subscription rights in Tower will be to members who were members of Tower at 9:00pm on 8 December 1997 and who meet the qualifying rules. The allocation of the initial shares and the subscription rights received by each member will be determined by formulae that have been approved as part of the Scheme approval.

4. Qualifying parent company members will be issued with initial shares in Tower on the implementation date. Qualifying subsidiary company members will receive subscription rights to Tower shares on favourable terms on the implementation date. Qualifying subsidiary company members may then elect to subscribe, in which case they must also consent to be shareholders of Tower. If the qualifying subsidiary company members exercise the subscription rights, they will be issued shares in Tower on the subscription date, which will be within one month of the implementation date. The favourable subscription terms are:
   (a) that the new shares are credited as 50% paid at the time of issue, being the subscription date, to the qualifying subsidiary company member; and
   (b) the outstanding balance of 50% is not payable for two years.

5. The Trust will be established to receive initial shares and subscription rights issued by Tower where any member cannot be identified with sufficient specificity to enable the initial shares and subscription rights to be issued directly to the member. Further, the Trust will receive those subscription rights that a qualifying subsidiary company member has not exercised. The Trust will exercise all the subscription rights allocated to it under the Scheme. The trustee of the Trust will be Tower Safe Limited. On appropriate verification, a distribution will be made to the confirmed participant (as defined in the trust deed), as beneficiary of the Trust.

6. Tower will settle the Trust with a settlement of $100. The Trust will be formed for a maximum period of 80 years with a provision to enable the Trust to be brought to an end within that period. The Trust's objects will primarily be to provide for the beneficiaries who are the unconfirmed participants (as defined in the trust deed) who will be capital beneficiaries only. Tower shareholders (as defined in the trust deed) will also be included as an object of the Trust but only to enable any unclaimed shares or their proceeds to be distributed to Tower shareholders on the winding up of the Trust and to receive distributions, pursuant to clause 9 of the draft trust deed, after an "appropriate period" has elapsed since the commencement date.

7. The "trust fund" (as defined in the trust deed) includes the initial and partly paid shares issued by Tower. The initial and partly paid shares and the other assets of the Trust will be pooled. Shares will not be specifically associated with any particular unconfirmed participant. This is for ease of administration. The Trust will receive any dividends or other amounts distributed by Tower in respect of the shares held as part of the trust fund.

8. The Trustee has investment powers to hold shares or other securities or rights issued by or in Tower, invest in any Tower fund and hold cash or other funds in deposits with any bank in New Zealand or in the acquisition of New Zealand government stock, pursuant to clause 14 of the trust deed.

9. The Trustee will be entitled to exercise voting rights in respect of the shares held for the benefit of the unconfirmed participants.

10. The income of the Trust will only be available to pay trust expenses and any excess income (including current year income) will otherwise be accumulated by the Trustee to hold as an addition to the capital share of the capital beneficiaries. Any accumulated income will be expressly stated to be capital and thus available for distribution to the capital beneficiaries.

11. The Trustee will have sufficient powers to enable it to achieve the objects of the Trust, i.e. to make distributions to the unconfirmed participants as they are found and identified. Distributions will be met from the trust fund and will be on a formula basis which takes account of the original shares which the beneficiary would otherwise have been entitled to and a share of the Trust's tax-paid income (which has been accumulated and added to the capital of the trust fund) based on those shares.

12. The Trustee must make the distributions on a fair and equitable basis pursuant to the objects of the trust deed. The Trustee may provide a beneficiary with the cash equivalent of the value of Tower shares and other assets that they would otherwise receive. Beneficiaries will not be able to elect a cash option.

13. The Scheme does not provide for an allocation of Tower shares to non-members other than through the public float.

14. A prospectus has been issued in both New Zealand and Australia seeking new capital.

15. It is also intended that Tower's shares be listed on the New Zealand Stock Exchange and Australian Stock Exchange.

16. The High Court approved the Scheme on 15 June 1999.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

a) Tower in transferring the initial shares, subscription rights and the partly paid shares to the Trust does not do so as a nominee for the unconfirmed participants.

b) All of Tower Safe Limited's obligations (as trustee) in respect of the trustee's income tax liability have been satisfied.

c) No amount of gross income derived by the trustee will vest in a beneficiary of the Trust within the income year the amount is derived by the trustee or be paid or applied to or for the benefit of a beneficiary during or within six months after the end of the income year in which the amount was derived by the trustee.

d) No investments made by the trustee pursuant to the trust deed with an amount of gross income derived by the trustee during an income year will vest in a beneficiary of the Trust within the income year that amount is derived by the trustee or be paid or applied to or for the benefit of a beneficiary during or within six months after the end of the income year in which that amount was derived by the trustee.

e) The trustee will pay all income tax liabilities at the trustee rate of income tax on all gross income derived by the trustee during any income year.

f) The terms of the trust deed are not materially different from the draft trust deed submitted to the High Court on 18 September 1998 and received by the Rulings Unit on 9 October 1998.

g) The Scheme is not materially different from that submitted to the High Court on 18 September 1998 and provided to the Rulings Unit on 9 October 1998.

How the Taxation Laws apply to the Arrangement

Subject in all respects to the assumptions above, the Taxation Laws apply to the Arrangement as follows:

- Section HE 1 does not apply to the Trust, as the Trust is not a "unit trust" as defined in section OB 1.
- Distributions by the Trust to the beneficiaries of the Trust will not be a "dividend".
- The Trust is a "qualifying trust" as defined in section OB 1.
- Tower is the settlor of the Trust and the unconfirmed participants are not settlors of the Trust, as the term "settlor" is defined in section OB 1.
- No "trustee income" or "beneficiary income" as defined in section OB 1 arises as a result of the issue of the initial and partly paid shares in Tower and subscription rights in Tower to the Trust.
- When the trustee derives gross income in any particular income year, that income is not "beneficiary income" as defined in section OB 1 but it is "trustee income" as defined in section OB 1.
- Sections HH 3(1), HH 3(5) and HH 6(2)(a) apply to all distributions made by the Trust to the beneficiaries of the Trust, and all distributions made by the Trust to the beneficiaries of the Trust will not result in gross income being derived by the beneficiaries pursuant to those sections.
- Distributions from the Trust to the confirmed participants will not constitute a dutiable gift to any person under section 63 of the Estate &Gift Duties Act 1968, so no gift duty is payable on such distributions from the Trust under section 61 of the Estate &Gift Duties Act 1968.

The period for which this Ruling applies

This Ruling will apply for the period from the date of signing until 1 October 2002.

This Ruling is signed by me on the 10th day of September 1999.

Martin Smith
General Manager (Adjudication & Rulings)

TAX STATEMENT TO TOWER CORPORATION POLICYHOLDERS

This opinion is issued by the Commissioner in order to clarify the income tax consequences arising from the issue of shares in Tower in exchange for the extinguishment of members' rights in the mutual as part of the demutualisation of Tower Corporation. It is not a Binding Ruling.

Under the Scheme for conversion submitted by Tower and approved by the High Court on 15 June 1999-

- *qualifying parent company members will receive fully paid shares at demutualisation; and*
- *qualifying subsidiary company members will receive rights to subscribe for partly paid shares immediately following demutualisation as follows:*
  - *the partly paid shares will be issued to qualifying subsidiary company members at the same issue price as the other new shares issued post demutualisation - but with half the price already paid as compensation for giving up membership rights*
  - *qualifying subsidiary company members will have to pay the remaining half of the price after two years if they elect not to sell them by that time*
  - *until the shares have been fully paid up, they will be entitled to dividends and voting entitlements equivalent to 50 percent of all other ordinary shares*
  - *the partly paid shares will be listed on the New Zealand and Australian Stock Exchanges during the two years, and may be sold at market price*

This statement applies to qualifying parent company members of Tower Corporation.

There will be no tax consequences for most policyholders upon the receipt of shares on the demutualisation of Tower.

In particular, shares received as part of the demutualisation process and the proceeds of the first sale of those shares will not ordinarily generate gross income in the hands of a policyholder if:

- the policy was taken out for personal or family reasons. This includes the assignee of such a policy where the assignee is a relative or family trust; or
- the policy was taken out over the life or well being of an employee or business principal of the business (corporate or otherwise); or
- the policy was taken out to protect personal earnings or business income in the event of disablement or trauma of an individual; or
- the policy was taken out for the purposes of providing life cover in respect of the life or well-being of a member, or a group of members, of a New Zealand superannuation fund by the trustees of the scheme. The on-distribution of shares by trustees to members will not give rise to taxable income in members' hands; or
- the policy is an accident and disability or trauma policy taken out for the purposes of providing a lump sum or non-earnings related payment in the event of the disablement or trauma of an individual.

However, there may be tax consequences for these policyholders whose business activities mean that they deal in insurance policies or are otherwise ordinarily taxable on such receipts, or where it is demonstrated that any policyholder acquired shares for the purpose of sale or other disposal.

For the purposes of the trading stock valuation rules or for determining any profit on the sale of the shares, the cost price of the shares is their market value at the time they are issued by Tower, or the time of acquisition (in the case of further shares acquired).

In addition, if a person acquires further shares with the purpose of resale, any profit on the sale of those shares will be taxable gross income.

This statement represents the Commissioner's opinion in relation to the demutualisation of Tower. This is not a Binding Ruling. It is possible to obtain a formal Binding Ruling from our Adjudication & Rulings business group if individual policyholders are unsure whether, in their specific circumstances, a disposition of Tower shares might generate gross income. A detailed process must be followed, and fees are charged, for obtaining such formal rulings. A booklet on this process can be obtained.

Relevant policyholders should note that the treatment of the shares issued will not affect the tax status of the proceeds of any claim paid under a policy.

M J Carr
National Manager, Corporates
30 September 1999

TAX STATEMENT TO TOWER CORPORATION MEMBERS WHO ARE SUBSIDIARY COMPANY MEMBERS

This opinion is issued by the Commissioner in order to clarify the income tax consequences arising from the receipt of subscription rights and the subsequent issue of partly paid shares in Tower Corporation in exchange for the extinguishment of the subsidiary company members' rights in the mutual as part of the demutualisation of Tower Corporation. It is not a Binding Ruling.

Under the Scheme for conversion submitted by Tower and approved by the High Court on 15 June 1999-

- *qualifying parent company members will receive fully paid shares at demutualisation; and*
- *qualifying subsidiary company members will receive rights to subscribe for partly paid shares immediately following demutualisation as follows:*
  - *the partly paid shares will be issued to qualifying subsidiary company members at the same issue price as the other new shares issued post demutualisation – but with half the price already paid as compensation for giving up membership rights*
  - *qualifying subsidiary company members will have to pay the remaining half of the price after two years if they elect not to sell them by that time*
  - *until the shares have been fully paid up, they will be entitled to dividends and voting entitlements equivalent to 50 percent of all other ordinary shares*
  - *the partly paid shares will be listed on the New Zealand and Australian Stock Exchanges during the two years, and may be sold at market price*

This statement applies to qualifying subsidiary company members of Tower Corporation.

There will be no tax consequences for most members upon the receipt of subscription rights and the subsequent issue of partly paid shares on the demutualisation of Tower, where payment of the remaining 50 percent of the issue price will be required within two years.

In particular, partly paid shares received as part of the demutualisation process and the proceeds of the first sale of those shares will not ordinarily generate taxable gross income in the hands of a member if:

- the policy was taken out for personal or family reasons. This includes the assignee of such a policy where the assignee is a relative or family trust; or
- the policy was taken out over the life or well-being of an employee or business principal of the business (corporate or otherwise); or
- the policy was taken out to protect personal earnings or business income in the event of disablement or trauma of an individual; or
- the policy was taken out for the purposes of providing life cover in respect of the life or well-being of a member, or a group of members, of a New Zealand superannuation fund by the trustees of the scheme. The on-distribution of shares by trustees to members will not give rise to taxable income in members' hands; or
- The policy is an accident and disability or trauma policy taken out for the purposes of providing a lump sum or non-earnings related payment in the event of the disablement or trauma of an individual.

However, there may be tax consequences for these members whose business activities mean that they deal in insurance policies or are otherwise ordinarily taxable on such receipts, or where it is demonstrated that any policyholder acquired shares for the purpose of sale or other disposal.

For the purpose of the trading stock valuation rules or for determining any profit on the sale of the partly paid shares, the cost price of the shares is their market value at the time they are issued by Tower, or the time of acquisition (in the case of further shares acquired).

No tax consequences arise from members having a two-year period to pay the remaining portion of the issue price.

In addition, if a person acquires further shares with the purpose of resale, any profit on the sale of those shares will be taxable gross income.

This statement represents the Commissioner's opinion in relation to the demutualisation of Tower. This is not a Binding Ruling. It is possible to obtain a formal Binding Ruling from our Adjudication & Rulings business group if individual members are unsure whether, in their specific circumstances, a disposition of Tower shares might generate gross income. A detailed process must be followed, and fees are charged, for obtaining such formal rulings. A booklet on this process can be obtained.

Relevant members should note that the treatment of the shares issued will not affect the tax status of the proceeds of any claim paid under a policy.

M J Carr
National Manager, Corporates
30 September 1999

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.

SECTION 17 NOTICES – INV-321

Introduction

This standard practice statement outlines the procedures Inland Revenue will follow when issuing section 17 notices, and third party information request letters, pursuant to the Tax Administration Act 1994 (TAA). Appendix A provides copies of the section 17 notices, and third party information request letter, used.

This standard practice statement is effective from 1 October 1999.

Generally, where information is publicly available Inland Revenue will not use section 17 and will meet the usual charges, e.g. Land Transfer Office, Companies Office, Quotable Value New Zealand etc.

Background

Section 17 of the TAA is the legislative authority enabling Inland Revenue to require information and inspect books and documents.

Most taxpayers and third parties are willing to cooperate with Inland Revenue requests for information. Some taxpayers, such as banks, while they are willing to cooperate with Inland Revenue, require legal compulsion before they can properly divulge the information. Therefore, it is Inland Revenue practice when initially requesting information, books or documents either not to rely upon the section, or to simply state that the request is made in terms of section 17, e.g. to a bank where the request is made about one of their clients.

The reason for this practice is to foster a spirit of fairness, reasonableness, and mutual co-operation with taxpayers and third parties in their dealings with Inland Revenue. This is considered more appropriate than proceeding from the outset with a section 17 notice that refers to the statutory remedies for non-compliance with the terms of the notice. This response is also preferred by the major suppliers of information.

The section 17 notice makes reference to statutory consequences of non-compliance and includes a copy of section 17 in full. If not complied with, a section 17 notice will result in Inland Revenue invoking the statutory remedies as the next step in obtaining the information being sought.

Considerations when issuing section 17 notices

Inland Revenue will have considered the following prior to issuing section 17 notices:

- the reason for requiring the information - the request will be bona fide, and the information required will be necessary, or relevant;
- the impact of the request on the suppliers of information - Inland Revenue will be reasonable in relation to the quantity and/or timeliness for providing the information where there is genuine difficulty in obtaining and/or providing that information;
- the disputes resolution process - this process relies on full and prompt disclosure by both the Commissioner and the disputant; and
- the intention to ensure compliance with the notice - Inland Revenue will invoke the statutory remedies in the event of non-compliance.

Procedures

Generally, a section 17 notice will only be issued following a failure to provide information previously requested, or where specific issues have been identified and an attempt to resolve those issues has failed. Where it is considered necessary to issue a section 17 notice Inland Revenue will use the following procedures:

1. where an investigation is stalled by non-supply of information (refer notice “A”) or, has identified specific issues requiring resolution (refer notice “B”) a section 17 notice may be issued. The timing of issue will be determined on a case by case basis;
2. where the taxpayer or other entity contacts Inland Revenue and modification of the notice is agreed it will be recorded in writing (refer notice “C”);

3. where Inland Revenue considers a taxpayer has not complied with a section 17 notice an application for a court order, for compliance with the section 17 notice, may be made. Prosecution action may also be taken;
4. where non-compliance occurs a follow up notice will be issued stating that the section 17 notice has not been complied with, court orders are being sought and/or prosecution action is being considered (refer notice "D"); and
5. where prosecution action is taken it may be in tandem with, before or after, seeking a court order, but will not be prior to the issue of a follow up notice (refer notice "D"). Where compliance occurs subsequent to the issue of a follow up notice prosecution action may still proceed, e.g. where a pattern of late response emerges.

In following the above process every attempt will be made to maintain contact with the taxpayer so as to provide an opportunity for concerns to be raised.

Where requests are made to persons other than the taxpayer the procedure usually begins with a letter (refer letter "E"). It may follow a discussion. Where this request is not complied with the above process, to obtain the information, is commenced.

Note: Inland Revenue will not reissue section 17 notices in a different format. Once a section 17 notice has not been complied with the offence is committed and prosecution action, if taken, must be commenced within 6 months of the offence.

Standard Wording of Notices and Letters

The following minimum content will be included in letters and section 17 notices:

- the notice/letter will be typed on Inland Revenue letterhead. In cases where it is faxed it will still be on letterhead;
- a section 17 notice will include (refer notices "A" and "B");
  1. a brief background to the requisition,
  2. a statement as to why the requisition is made,
  3. reference to the legal authority for collecting the information,
  4. a statement that the information required is considered necessary or relevant for a proper purpose,
  5. a statement that is as specific as the circumstances allow,
  6. an address, time and date for collection which is reasonable relative to the information type and background to the requisition,
  7. an offer of assistance or flexibility to enable compliance (i.e. to modify, collection time, collection place, collection date, requisition content) [Note: any change to the date for compliance must be agreed before expiration of the original date. Beyond this a breach has occurred and an extension of time cannot be given],
  8. a reference to the possible consequences of non-compliance including any defence available,
  9. the date of issue of the notice and a copy of section 17, and
  10. signature and position of officer of Inland Revenue.
- the notice may also include;
  1. an additional request for identification of items, if any, for which legal privilege is claimed, and
  2. a requirement that any written information or particulars furnished be verified by statutory declaration.
- a follow up notice will include;
  1. a statement that to Inland Revenue's knowledge compliance has not occurred,
  2. a statement as to the actions being considered,
  3. a list of offences committed,
  4. an indication of the maximum penalties applicable to each offence, and
  5. copies of the offence sections including any defence section [i.e. section 143(2), section 143A(2)].
- the first request to a person other than the taxpayer will refer to section 17 and include a date by which compliance should occur. (refer letter "E"). This letter is not to be use to request information that is publicly available.

This Standard Practice Statement was signed by me on 1 October 1999.

Michael Rapson
Manager Technical Standards

Appendix A

Section 17 Notices and Third Party Information Request Letter

Note: The notice/letter must be typed on Inland Revenue letterhead. The wording in italics may change from notice to notice/letter to letter, however, the wording not in italics will be the same on every notice/letter issued.

Notice "A": Section 17 Notice - Investigation Delayed

Name and address

Attention:

NOTICE TO FURNISH INFORMATION

On (date) (name) wrote to you stating that an audit of your taxation affairs was to be carried out. You were requested to have the necessary information available when (name) called on (date).

Further access to this information is now required. Therefore I, (name), (designation), (office), being duly authorised by the Commissioner of Inland Revenue pursuant to section 7 of the Tax Administration Act 1994 (the "Act"), require you pursuant to section 17 of the Act (copy attached) to furnish in writing the information sought below, and produce for inspection the following books and documents which I consider necessary or relevant to establish your correct taxation liability.

The information to be furnished, and the books and documents to be produced for inspection are as follows;

1 . ...
2 . ...
X. *A list of persons or entities you are aware of who may hold or control any information, or related information, referred to above. (optional)*
Y. *A list of items claimed to be subject to legal professional privilege. (optional)*

I also require that the written information or particulars furnished be verified by statutory declaration.

Any document covered by legal professional privilege is outside the scope of this notice. You should consult your legal advisers if assistance is required in determining whether a specific document is covered by legal professional privilege.

(Name) will call at *(place and time)* on *(date)* to collect the information. If you wish to make other arrangements as to collection will you please telephone *(name)* on ....

If gathering this information is going to be time consuming or otherwise cause you difficulty, please contact (name) on the above number as they are willing to assist. If you wish to discuss the content or detail of the notice, including any claim for legal privilege, please contact (name) as modifications will be agreed to in cases of genuine difficulty, or where privilege operates.

I point out that failure to comply with this notice may lead to a court order being requested to enforce compliance and/or prosecution action.

However, section 143(2) of the Act states that no person may be convicted of an offence against subsection (1)(b) for not providing information (other than tax returns and tax forms) to the Commissioner, if they did not, as and when required to provide the information, have that information in their knowledge, possession, or control.

Control here is used in its wider sense and includes material held by others on your behalf.

Dated at .... this .... day of ...., ...

(Name)
(Designation of signatory)

Notice "B": Section 17 Notice - Specific issues identified but unresolved

Name and address

Attention:

NOTICE TO FURNISH INFORMATION

Further to the meeting of (date) several issues remain unresolved. The following information is requested to progress resolution of these issues and to ensure that Inland Revenue has all the relevant information and books and documents bearing on these issues.

Therefore I, *(name)*, *(designation)*, *(office)*, being duly authorised by the Commissioner of Inland Revenue pursuant to section 7 of the Tax Administration Act 1994 (the "Act"), require you pursuant to section 17 of the Act (copy attached) to furnish in writing the information sought below, and produce for inspection the following books and documents which I consider necessary or relevant to determining the issues which remain outstanding following the investigation.

The information to be furnished and the books and documents to be produced for inspection are as follows;

1. .....
2. .....

X. *A list of persons or entities you are aware of who may hold or control any information, or related information, referred to above. (optional)*

Y. *A list of items claimed to be subject to legal professional privilege. (optional)*

I also require that the written information or particulars furnished be verified by statutory declaration.

Any document covered by legal professional privilege is outside the scope of this notice. You should consult your legal advisers if assistance is required in determining whether a specific document is covered by legal professional privilege.

(Name) will call at *(place and time)* on *(date)* to collect the information. If you wish to make other arrangements as to collection will you please telephone (name) on.......

If gathering this information is going to be time consuming or otherwise cause you difficulty, please contact (name) on the above number as they are willing to assist. If you wish to discuss the content or detail of the notice, including any claim for legal privilege, please contact (name) as modifications will be agreed to in cases of genuine difficulty, or where privilege operates.

I point out that failure to comply with this notice may lead to a court order being requested to enforce compliance and/or prosecution action.

However, section 143(2) of the Act states that no person may be convicted of an offence against subsection (1)(b) for not providing information (other than tax returns and tax forms) to the Commissioner, if they did not, as and when required to provide the information, have that information in their knowledge, possession, or control.

Control here is used in its wider sense and includes material held by others on your behalf.

Dated at .... this .... day of ...., ...

(Name)
(Designation of signatory)

Notice "C": Section 17 - Agreed Change/Amended Notice

Name and address

Attention:

NOTICE TO FURNISH INFORMATION

Further to the previous notice to furnish information dated *(date)* and our conversation of (date) I confirm that the following amendments to the notice to furnish information are agreed;

1. *I will now call on (day and date) at (place) to collect the information. [Note: any change to the date for compliance must be agreed before expiration of the original date. Beyond this a breach has occurred and an extension of time cannot be given]*
2. ......

If you have any queries please contact me on.......

Dated at .... this .... day of ...., ...

(Name)
(Designation of signatory)

Notice "D": Section 17 Follow Up Notice - Non-Compliance

Name and address

Attention:

NOTICE OF IMPENDING COURT ORDER AND PROSECUTION ACTION

Further to the Notice to Furnish Information dated (*date*), my records indicate that this request has not been complied with. Accordingly, I write to inform you that I am considering commencing procedures to obtain a court order for compliance with the request.

I am also considering commencing prosecution action for the following offences, *(list the offence(s) and relevant sections)*. The penalties for which include; maximum fines of between $.... and $.... and imprisonment for up to 5 years. (copies of the relevant section(s) attached)

Please advise me immediately why the department should not take this action.

Dated at .... this .... day of ...., ...

(Name)
(Designation of signatory)

Letter "E": Information Request to Persons other than the Taxpayer

Name and Address

Attention:

NOTICE TO FURNISH INFORMATION

Re: *(Full Names [for individuals include all Christian names]/Address [including last known address where possible]/Known Bank Accounts/Telephone Numbers/IRD Numbers/Date of Birth/Date of Incorporation etc.)*

I, *(name)*, *(designation)*, *(office)*, being duly authorised by the Commissioner of Inland Revenue pursuant to section 7 of the Tax Administration Act 1994 (the "Act"), require you to furnish the following information relating to the above persons:

1. *(where applicable included the period for which the information being requested is required)*
2. *(etc as required)*

The above information, which I consider necessary and relevant, is required in terms of Section 17 of the Act. I would appreciate the information by *(date, allow at least five working days)*.

If you have any queries, or I can assist with collection of the information, please contact me on *(phone/ fax numbers)*.

Dated at .... this ...... day of ...., ...

(Signature)

(Name)
(Designation of signatory)

TAXPAYER AMENDMENTS TO TAX RETURNS – INV-500

This statement also appears in TIB Volume 11, No 9, October 1999

Introduction

The Disputes Resolution regime requires taxpayers to follow a formal process when requesting an adjustment to a previously filed tax return. This Standard Practice Statement, in conjunction with SPS INV 490, states the Commissioner's operational practice when taxpayers wish to make adjustments to tax returns.

Application

This Standard Practice Statement applies to taxes and duties payable under a tax law from 1st December 1999, and to adjustments made on or after this date, regardless of the return period when the error occurred. These practices do not apply to assessments issued under the Child Support Act 1991 or to ACC assessments, except to the extent that the ACC adjustment occurs as a result of an income tax change.

Definitions

Credit adjustment: an adjustment that results in a reduced amount payable, increases a net loss, or increases a refund.

Debit adjustment: an adjustment that results in an increase in the amount payable, reduces the amount of a refund or reduces a net loss.

Response period: the response period referred to in this SPS is the two-month period starting on the date of issue of a notice of assessment or determination of loss. For GST purposes the response period is the two-month period commencing the day after the last day for filing the GST return.

Calculation of the tax effect of an adjustment

Income tax

The tax effect of an item in a return period is calculated using the taxpayer's marginal tax rates for the return period in which the error arose, not the period in which it is subsequently corrected.

If a taxpayer has no tax to pay in the period in which the error arose, the rate of tax that applies is the lowest marginal rate that would apply to the return period if the taxpayer did have tax to pay.

Other taxes

The tax effect of an item in a return period is calculated by multiplying the value of the item adjusted by the applicable rate of tax. For example the amount of an FBT adjustment is calculated by multiplying the value of the benefit by 49%.

The total tax effect of an adjustment is calculated by adding the tax effect of all return periods affected by the item adjusted.

Correcting small errors in Income tax and Fringe Benefit Tax (FBT) returns

In many instances the costs to the taxpayer and Inland Revenue in correcting small errors is significant in relation to the tax effect of the adjustment, and in some cases may prove a deterrent to taxpayers correcting errors. As a solution to this problem, Inland Revenue will now allow small errors in Income tax and FBT returns to be corrected in the following return period where the income tax or FBT effect of the adjustment or adjustments is **$500 or less per return period.**

In designing this practice, Inland Revenue considered the Care and Management provisions of the Tax Administration Act 1994. Section 6A of the Tax Administration Act 1994 charges the Commissioner with the care and management of the taxes covered by the Inland Revenue Acts. Subsection 3 of that section states:

> In collecting the taxes committed to the Commissioner's charge, and notwithstanding anything in the Inland Revenue Acts, it is the duty of the Commissioner to collect over time the highest net revenue that is practicable within the law having regard to -
>
> (a) The resources available to the Commissioner; and
>
> (b) The importance of promoting compliance, especially voluntary compliance, by all taxpayers with the Inland Revenue Acts; and
>
> (c) The compliance costs incurred by taxpayers.

The Commissioner also used the Care and Management provisions in SPS INV-490, to implement a practice whereby registered persons are able to self-correct GST errors in a subsequent GST return. (See TIB Volume Ten No.6 (June 1998), and TIB Volume Eleven No.2 (February 1999). The extension of self-correction of small errors to income tax and FBT returns is consistent with the principles of that practice.

Application of self-correction

Self-correction is only practicable for revenues where there is no impact on unrelated taxpayers, as errors in certain tax returns can result in the need for consequential adjustments to third party's returns.

(e.g. An error in PAYE deductions accounted for may lead to a consequential adjustment to a recipient's tax return). This has led Inland Revenue to limit the application of self- correction to income tax, FBT and GST. However, self-correction also caters to those situations where one adjustment affects related taxpayers. This means that self-correction can be made to an income tax return filed by a partnership (for example), with the resulting adjustments to the partners' tax returns.

Because the tax affairs of those taxpayers who receive only source deduction payments (i.e. salary or wages) are simple, self correction does not apply to IR 5 tax returns, or (from 1 April 1999), income statements.

Income tax and annual FBT returns are for a full year, and self-correction will result in a deferral of tax for 12 months or more. Therefore income tax and annual FBT errors can only be corrected in the immediately succeeding return if it has not already been filed when the error is detected For example, errors in a 1998 tax return can only be self-corrected in the 1999 year. Quarterly FBT returns may be self corrected in a following return period if the correction is made when it is found, and within twelve months of the period in which the error arose.

Compliance and penalties provisions

The implementation of the Compliance and Penalties regime in 1997 included universal interest to provide compensation for tax that has been under or over-paid. This was intended, along with the other changes introduced, to encourage voluntary compliance, i.e. taxpayers had greater incentive to get things right first time. Allowing for self-correction in a following period will mean that interest is not charged in these circumstances, thus alleviating a potential barrier to compliance.

Inland Revenue reserves the right to impose shortfall penalties and assess the correct tax position in the year in which the error arose if:

- we believe the taxpayer's original tax position was not a genuine mistake; or
- the taxpayer repeatedly makes the same or similar mistake and self-corrects; or
- the practice is used to create an unwarranted advantage.

Where errors are detected during an audit or investigation the taxpayer will only be allowed to self-correct errors in the following return if the **total tax effect** of the error or errors is $500 or less per return period, and the immediately following return has not already been filed. However, taxpayers will be allowed to self-correct errors that are disclosed at the time an audit is commenced (subject to the conditions above).

In view of the considerations above, a requirement of self-correction is that sufficient records must be kept to show:

- The return period the error occurred
- The amount of tax involved
- The nature of the error
- The return period correction was made

These records must be readily available for review by Inland Revenue staff.

General Rule for adjustments to tax returns over the telephone

Inland Revenue will consider telephone requests for :

a) Changes to PAYE returns (IR 66N, IR 66W, IR 68P, IR 345, IR 346, IR 348, IR 349),

b) Changes to Non-Resident Withholding tax and Approved Issuer Levy returns (IR 67P, IR 67S),

c) Changes to Resident Withholding (IR 15P, IR 15S),

d) Changes to Non-resident individual income tax returns (IR 3NR),

e) Transposition of numbers and arithmetical errors in all returns,

f) Changes to the rebates for an IR 3 or IR 5 returns, (excluding the donations rebate),

g) Changes to Family Assistance,

h) Adjustments where the tax effect falls within the criteria allowed for under self-correction.

Other credit adjustments

Small errors in FBT, income tax and GST returns may be self-corrected in a following period, subject to the conditions specified above and in SPS INV 490.

Employer Monthly schedules may be amended by telephoning or by sending an Employer monthly schedule amendments form (IR 344) to correct the error in the period in which it arose.

All other types of credit adjustment must be made in writing. Where the total tax effect of the adjustment is $2,000 or more, a Notice of Proposed Adjustment (NOPA) on the prescribed form must be issued. The tax effect of an adjustment is calculated by adding the tax effect of all tax return periods affected by the item adjusted. For example, an omitted item of expenditure has an income tax effect of $1650 and a GST effect of $555. As the total tax effect of the adjustment is greater than $2,000, a Notice of Proposed Adjustment is required. The only exception to this requirement is if the error has arisen because of a simple arithmetical or transposition error.

The Commissioner's practice applying to the content standards for Notices of Proposed Adjustment can be found in Standard Practice Statement INV 150, published in TIB Volume 11, No.6 (July 1999).

A NOPA must be issued where the issue involves a contestable interpretation of tax law, regardless of the tax effect of the adjustment, even if the tax effect is $500 or less.

If the adjustment is being requested after the expiry of the applicable response period, an explanation must be included as to why the request should be accepted late, unless it relates to a simple arithmetical or transposition error.

If the amount of the adjustment is less than $2,000, use of the NOPA form is optional, however all NOPAs are given priority by Inland Revenue. If an informal request for an adjustment has been made, and the issue has not been resolved within the applicable initial response period, a NOPA should be issued to protect the taxpayers right to further challenge the item in contention.

Inland Revenue will no longer accept amended tax returns for any credit adjustments.

Other debit adjustments

Small errors in FBT, income tax and GST tax returns may be self-corrected in a following period, subject to the conditions specified above and in SPS INV 490.

Employer Monthly schedules may be amended by telephoning or by sending an Employer monthly schedule amendmentform (IR 344).

In addition to those specified in the General rule above, debit adjustments may be made to IR3, IR 3NR, GST and FBT returns by telephone or in writing.

Adjustments to other tax returns must be requested in writing. Use of the NOPA form for these adjustments is optional, however all NOPAs are given priority. If an informal request for an adjustment has been made, and the issue has not been resolved within the applicable initial response period, a NOPA should be issued to protect the taxpayers right to further challenge the item in contention..

Any debit adjustments requested by way of Notice of Proposed Adjustment will be treated as voluntary disclosure for the purposes of consideration of penalties.

Inland Revenue will not accept amended tax returns for any debit adjustment.

Summary

1. Taxpayers may self-correct minor errors in income tax, FBT and GST returns, subject to the conditions outlined above and in Inland Revenue Standard Practice Statement INV 490.
2. Requests for correction of errors such as the transposition of numbers, or arithmetical mistakes may be made by telephone or in writing.
3. Adjustments that result in an increase in tax to pay, reduction of a refund or a decrease in the amount of net loss may be requested by telephone or in writing. Those that are requested on the prescribed Notice of Proposed Adjustment form will be given priority consideration.
4. In general. requests for adjustment where the tax effect is a decrease in tax to pay must be made in writing. Where the proposed adjustment has a tax effect of $2,000 or more, or where the issue involves contestable interpretation of tax law, the request must be made on the prescribed Notice of Proposed Adjustment form unless it is correcting a simple arithmetical or transposition error.
5. Amended or 'second' tax returns will no longer be accepted.

This Standard Practice Statement was signed by me on 8th October, 1999

Michael Rapson
Manager, Technical Standards

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 DIRECTORS EMPLOYEES OF THE COMPANY; WHETHER CERTAIN HOME AND ENTERTAINMENT EXPENSES WERE DEDUCTIBLE

Case:	TRA Number 98/035. Decision Number 020/99
Decision date:	15 September 1999
Act:	Income Tax Act 1976, Income Tax Act 1994 & Goods and Services Tax Act 1985
Keywords:	FBT, GST, shareholder or employee, deductibility of home and entertainment expenses

Summary

Judge Willy found in favour of the Commissioner on the issue of the deductibility of entertainment expenses and for the Disputant on remaining issues.

Facts

The Disputant is a construction company, which operates from the basement of the Directors' residence. Mr D is the director of the company with 999 shares, his wife holding the remaining share.

The Disputant sought to deduct entertainment expenses, which included local and overseas expenditure. The Disputant also sought to apportion various home related expenditure - deductions of 50% of the rates assessment, 80% of the power bills and 80% of the toll calls.

The Commissioner disallowed the entertainment deductions claimed on the basis that the Disputant had not established sufficient nexus between the entertainment expenditure and its business income.

The Commissioner also contended that Mr & Mrs D (the two directors) were employees of the company as they received small salaries as shown in the company tax returns and deducted ACC from those salaries. A company car was also assessed for FBT and GST as the Commissioner considered that they were employees and the car was available for private use.

Decision

Overseas Expenses

Judge Willy found that there was insufficient evidence to show that the expenses incurred on the overseas trip were in the course of earning assessable income and confirmed the Commissioner's assessment.

Local Entertainment Expenses

Judge Willy found that the records kept by the company were insufficient to support a claim that local entertainment expenses were incurred in the course of producing assessable income. Mr D also acknowledged that most of the money was spent on liquor and food for himself and his wife.

Rates

Judge Willy found on the evidence that a deduction of 50% of the rates assessment was a reasonable apportionment, as a large garage, office, storage area and toilet & shower was devoted to business use.

Electricity

Judge Willy also found on the evidence that most of the power went into heating hot water used by the Disputant's employees and allowed the claim of an 80% deduction of the power bills.

Telephone

Judge Willy found that the company's office work was done by Mr D's daughter in Dunedin and the amounts claimed for tolls were reasonable and sufficiently documented for the purposes of s22 of the Tax Administration Act 1994.

Employer/Employee Status

Judge Willy found on the evidence that there was no written employment contract between the company and (the directors) Mr & Mrs D. Mrs D did work for the company but was also employed by a third party who paid her wages and deducted PAYE.

His Honour also held that the company was not making source deduction payments on the $100 a week drawn on account of the profits by Mr D and therefore Mr & Mrs D could not have been employees of the company.

Fringe Benefit Tax & GST

His Honour found that Mr & Mrs D regularly used the motor vehicle to run personal errands. They did not keep a log book and had no evidence to show how expenses were divided between business and private use.

The FBT and GST assessments were cancelled on the grounds that it could not be established on the facts that Mr & Mrs D were employees of the company.

WHETHER THE ARRANGEMENT WAS TAX AVOIDANCE IN TERMS OF SECTION 99 OF THE INCOME TAX ACT 1976

Case:	TRA Number 90/207, 94/154, 93/59, 94/152, 93/058, 94/155, 93/62 & 94/153. Decision Number 021/99
Decision date:	21 September 1999
Act:	Income Tax Act 1976
Keywords:	Tax avoidance

Summary

The Taxation Review Authority confirmed the Commissioner's assessments.

Facts

This hearing was consequential to leave reserved in the earlier decision of 16 April 1998 reported as Case T52. That decision is incorporated into this decision. Since then the Taxation Review Authority has had the benefit of the Court of Appeal decision on the tax avoidance template, namely, *Miller v CIR*; *Managed Fashions Ltd v CIR* (1998) 18 NZTC 13,961 (CA).

Decision

There is considerable discussion of the Track C and D assessment approaches however the comments are obiter as neither have been used as the assessment approach in this particular case. The TRA rejected the submission made for the individual objectors that they were prejudiced and that there has been some type of abuse of process in the non disclosure of material associated with the other assessment approaches, namely Track C and D.

The TRA rejected the submissions made on behalf of the objectors that a reconstruction could have been made by the respondent using the agency provisions in sections 266 to 273 of the Act. The reconstruction as made by the Commissioner has been upheld by the Court of Appeal and the alternative approaches suggested by counsel are hypothetical.

Further, counsel for the objectors submitted that section 99 was not applicable and that the normal assessment provisions were adequate to deal with the situation. The TRA rejected that submission, stating that the Court of Appeal has found that section 99 is applicable.

The TRA discussed the submission made by counsel for the objectors that those individuals were incorrectly assessed on an amount equal to the full administration fee and should have been assessed on 77.5% of the net profits of the trading company which they actually received and kept. This issue has also been dealt with by the Court of Appeal and the assessments of 100% to the managers were confirmed.

The TRA heard submissions on the statute bar argument but held that the Court of Appeal has already determined that issue.

Counsel for the individuals dealt with the additional tax aspect of the present assessments, which was dealt with by Blanchard J in *Miller and Ors v CIR* at 13,974. The TRA considered that there was no right of objection in respect of the additional tax and accordingly it had no jurisdiction to direct a new due date for the payment of additional tax. However, the TRA observed that the relevant findings in *Withey & Anor v CIR* 18 NZTC 13,606 must be applied across the board to all taxpayers and the respondent had agreed to do so in this case.

The TRA considered the argument of the objectors that it was an abuse of the Commissioner's discretion that he employ whatever of Tracks A, B or C as he chooses in relation to different taxpayers. That decision was dealt with by Baragwanath J (in an unreported judgment of 26/9/97 dismissing an application for recall in *Miller*) where he held that the use in other cases of Track C did not invalidate the earlier Track B assessments in the present case.

With regard to the 5% consulting fee the TRA considered that at least 15 hours per month were spent by the objector's agent in giving general business advice hence the consulting fee was deductible to the two trading companies for a total, between the two companies, of 15 hours per month at $250 per hour.

GENERAL INTEREST ITEMS

SECTION EH 18 OF THE INCOME TAX ACT 1994

Introduction

This item discusses section EH 18 of the Income Tax Act 1994 ("the Act"), as inserted by the Taxation (Accrual Rules and Other Remedial Matters) Act 1999 ("the 1999 Act"). It has been suggested that this new section is unclear in its application. Therefore Inland Revenue will recommend to the Government that it be amended to make clear its application.

Background

The accrual rules are now set out in two divisions. Generally, the rules in division 1 apply to financial arrangements entered into before 20 May 1999. Division 2 applies to financial arrangements entered into on or after 20 May 1999 and also to financial arrangements entered into before 20 May 1999 if the taxpayer has elected to have the division 2 rules apply.

Other provisions of the Act relating to financial arrangements were also amended by the 1999 Act, and because division 1 financial arrangements may continue after 20 May 1999, it was necessary to have a rule linking division 1 financial arrangements to the other parts of the Act. Section EH 18 sets out this rule. Its aim is to ensure that the other parts of the Act apply to division 1 financial arrangements as those other parts were before 20 May 1999 (in other words, as if the other parts had not been amended by the 1999 Act).

For example, the 1999 Act amended section CG 8(8)(a) of the Act with effect from 20 May 1999. Section EH 18 is intended to ensure that section CG 8(8)(a) as it was worded before 20 May 1999 continues to apply to division 1 financial arrangements after 20 May 1999.

Application of section EH 18

It has been suggested that section EH 18 may not achieve its purpose. The reason is the section applies only when the provisions in other parts of the Act apply to division 1 financial arrangements. However, because of the amendments made by the 1999 Act, other parts of the Act *may not apply* to division 1 financial arrangements on or after 20 May 1999.

For example, the 1999 Act amended section CE 1(1)(c) with effect from 20 May 1999 and the amended section CE 1(1)(c) now applies only to the "accrual rules". Because the term "accrual rules" generally excludes division 1 financial arrangements, it is arguable that section CE 1(1)(c) does not apply to division 1 financial arrangements.

Inland Revenue's view

Inland Revenue's view is that the intent and purpose of the legislation are clear. A court faced with interpreting the section might apply the principles set out in cases like *Northland Milk Vendors Association v Northern Milk Limited* [1988] 1 NZLR 530 and *Cooper Brookes (Wollongong) Pty. Ltd v FCT* (1981) 147 CLR 297 to give the section appropriate meaning.

However, Inland Revenue agrees that section EH 18 should be made clearer and intends to recommend to the Government that appropriate amendments be made to the section, with an effective date of 20 May 1999.

1999 DEEMED RATE OF RETURN ANNOUNCED FOR FOREIGN INVESTMENT FUND RULES

The deemed rate of return used for the foreign investment fund (FIF) rules has been set at 9.82% for the 1998-1999 income year. The rate will apply to all types of investments, including interests in superannuation schemes and life insurance policies.

The FIF rules tax the income earned by foreign entities on behalf of New Zealand residents, and apply to investments that are not subject to the controlled foreign company rules.

The deemed rate of return method is one of four methods for calculating FIF income or loss. The rate for future income years will continue to be set annually.

GST – TAX INVOICES

Introduction

In December 1998 a Committee of Experts released its Report to the Treasurer and Minister of Revenue on Tax Compliance.

One of the concerns raised in the report related to problems businesses were having in complying with the tax invoicing requirements contained in section 24 of the Goods and Services Tax Act 1985. The report stated that evidence showed that a high proportion of documents held by small businesses, which purport to be tax invoices, do not meet the statutory requirements. The report went on to say that if the recipient of a supply does not take the time to get a proper tax invoice they risk penalties for making an input tax claim without valid supporting documentation.

Although the Committee considered ways to reduce this burden, it recognised that for the GST system to work effectively an audit trail is required, and to relax the tax invoicing requirements could result in difficulties for Inland Revenue in its audit activity.

The Committee recommended that Inland Revenue publish a statement on its operational policy on tax invoices for GST purposes. As a result of this recommendation Inland Revenue has prepared the following article which covers:

- legislative requirements for tax invoices,
- common errors of tax invoices encountered by Inland Revenue, and
- Inland Revenue's practice regarding tax invoices.

It does not however, identify which errors are considered significant and which are not. This is because the Goods and Services Tax Act 1985 is very specific concerning the details required to be on a tax invoice, and invoices being held at the time of any input tax deduction being claimed.

Legislation

Sections quoted refer to the Goods and Services Tax Act 1985 (the Act).

Section 20(2) of the Act, subject to sections 24(5) or 24(6) or 24(7) and 25, requires a registered person to hold a tax invoice pursuant to section 24, or a debit or credit note pursuant to section 25, to support any input tax claim at the time any return in respect of that supply is furnished.

Section 20(2) also gives the Commissioner the authority to disallow any input tax claim where that claim is not supported by a valid tax invoice.

The requirements of a tax invoice are contained in section 24 of the Act. The particulars required on a tax invoice are contained in section 24(3), which states:

Except as the Commissioner may otherwise allow, and subject to this section, a tax invoice shall contain the following particulars:

(a) The words "tax invoice" in a prominent place:

(b) The name and registration number of the supplier:

(c) The name and address of the recipient:

(d) The date upon which the tax invoice is issued:

(e) A description of the goods and services supplied:

(f) The quantity or volume of the goods and services supplied:

(g) Either -

  (i) The total amount of the tax charged, the consideration, excluding tax, and the consideration, inclusive of tax for the supply; or

  (ii) Where the amount of tax charged is the tax fraction of the consideration, the consideration for the supply and a statement that it includes a charge in respect of the tax.

Where a supply does not exceed $200, section 24(4) of the Act relaxes the information required on a tax invoice. Section 24(4) states:

Notwithstanding anything in subsection (3) of this section, where the consideration in money for a supply does not exceed $200 (or such greater amount as the Governor-General may, from time to time, by Order in Council declare), a tax invoice shall contain the particulars specified in that subsection or the following particulars:

(a) The words “tax invoice” in a prominent place:

(b) The name and registration number of the supplier:

(c) The date upon which the tax invoice is issued:

(d) A description of the goods and services supplied:

(e) The consideration for the supply and a statement that it includes a charge in respect of tax:

Provided that this subsection shall not apply to a supply that is charged with tax pursuant to section 11 of this Act.

Section 24(5) does not require a registered person to issue a tax invoice for supplies where the consideration in money for that supply does not exceed $50. Section 24(5) states:

Notwithstanding any other provision of this Act, a supplier shall not be required to provide a tax invoice if the consideration in money for a supply does not exceed $50 (or such greater amount as the Governor-General may, from time to time, by Order in Council declare).

Section 24(6) allows the Commissioner to determine that a tax invoice does not have to contain one or more of the requirements mentioned in sections 24(3) and 24(4), or that a tax invoice does not have to be issued at all. Section 24(6) states:

Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or class of supplies, and that it would be impractical to require that a tax invoice be issued pursuant to this section, the Commissioner may determine that, subject to any conditions that the Commissioner may consider necessary, -

(a) Any one or more of the particulars specified in subsection (3) or subsection (4) of this section shall not be contained on a tax invoice; or

(b) A tax invoice is not required to be issued.

When the Commissioner is likely to use section 24(6) is discussed under Inland Revenue Practice, below.

Common Errors

Tax Invoices

The biggest problem Inland Revenue staff encounter when conducting GST checks is that either no tax invoice has been issued for a supply, e.g. property transactions, or documents being used to support input tax claims do not meet the requirements laid down in sections 24(3) and 24(4) of the Act. Common errors found in incomplete documentation include:

- the words “tax invoice” missing,
- incorrect GST numbers being used, usually transposition or using old numbers,
- name of recipient incorrect or missing,
- no GST content shown and no statement to say the total is GST inclusive,
- using the simplified tax invoice for supplies over $200,
- date missing.

In some instances registered persons are not obtaining, or retaining, tax invoices for supplies just over $50. Although the Act states that tax invoices are not required for supplies up to $50 once the supply is more than $50 then a tax invoice is required or the claim may be disallowed.

There have also been instances where taxpayers have issued buyer created tax invoices for supplies that have occurred prior to, or without, approval being granted by Inland Revenue. Section 24(2)(a) is quite specific that the Commissioner must have granted prior approval before a taxpayer can issue buyer created tax invoices. Where prior approval has not been granted, the supplier, and not the recipient of the supply, must issue the tax invoice.

Statements

The use of statements to support input tax claims is another area where the tax invoicing requirements are not being met. Although it may be easier to use a statement when preparing GST returns, the information contained on the statement does not generally meet the requirements of sections 24(3) or 24(4) of the Act. A statement generally just summarises the invoices issued for a specific period, e.g. a month, it does not normally have the words “tax invoice” in a prominent place or a description, and where appropriate the quantity or volume, of the goods and services supplied.

Credit Notes

It is also noted that some registered persons are not issuing credit notes when:

- A supply of goods and services has been cancelled; or
- The nature of that supply of goods and services has been fundamentally varied or altered; or
- The previously agreed consideration for a supply of goods and services has been altered, whether due to the offer of a discount or otherwise; or
- The goods and services supplied, or part thereof, have been returned to the supplier.

Section 25(3)(a) of the Act requires a credit note to be issued when a tax invoice has been provided for a supply and one of the above situations occurs. Section 25(3)(e) allows a registered person not to issue a credit note when the excess is the result of the recipient of the supply taking up a prompt payment discount offered by the registered person. The terms of the prompt payment discount have to be clearly stated on the face of the tax invoice.

Section 25(3B) provides the Commissioner with the discretion not to require a credit note to be issued, or vary the requirements contained in the credit note, only where he is satisfied that there are, or will be, sufficient records available to establish the particulars of any supply or class of supplies, and it would be impractical to require a credit note to be issued. When the Commissioner is likely to use section 25(3B) is discussed under Inland Revenue Practice.

Inland Revenue Practice

For the GST system to work effectively there must be a clear audit trail in place. This audit trail is achieved by requiring a registered person to have a tax invoice to support all input tax claims for supplies over $50.00, with the exception of claims for second-hand goods purchased from non registered persons.

It is therefore important that all registered persons ensure they obtain tax invoices, that comply with section 24 of the Act, if they intend to make an input tax claim in relation to a supply. Failure to do so may result in the claim being disallowed and penalties being imposed.

Where a taxpayer claiming an input tax deduction is not the person named on the tax invoice, Inland Revenue will allow the claim providing the taxpayer can establish that they are the recipient of the supply. For example, where a taxpayer is claiming expenses incurred by an employee, that claim will only be allowed where the employer can demonstrate that the costs incurred by the employee are in respect of the taxpayer's business, and the taxpayer has reimbursed the employee for the actual expenses incurred.

Commissioner's discretion under sections 24(6) and 25(3B) of the ActSections 24(6) and 25(3B) allow the commissioner to either;

- dispense with any one or more of the particulars specified in sections 24(3), 24(4), 25(3)(a) or 25(3)(b), or
- dispense with the need to issue a tax invoice, credit note or debit note.

Where the Commissioner gives dispensation under sections 24(3) or 24(4) section 26(6A) of the Act requires the modified tax invoice to contain the words "modified tax invoice - IRD approved".

The Commissioner will only apply complete dispensation for the requirement to issue a tax invoice, credit note or debit note where;

- there are sufficient records available to establish the particulars of the supply, and
- it would be impractical to require that a tax invoice, credit note or debit note be issued.

As mentioned above, the tax invoice, credit note and debit note are required to ensure there is an audit trail in place, therefore dispensation under sections 24(6) and 25(3B) will be rare.

The fact that a registered person does not hold a valid tax invoice, debit note or credit note, at the time their GST return is lodged, is not generally sufficient reason for approval under sections 24(6) and 25(3B) to be granted.

USE OF THE FBT RATE OF 24% OF THE ORIGINAL COST PRICE TO DETERMINE THE FRINGE BENEFIT VALUE OF A MOTOR VEHICLE

Introduction

In its December 1998 report , the Committee of Experts on Tax Compliance recommended that Inland Revenue publish in the *Tax Information Bulletin* an informative explanation of the rationale underlying the use of 24% of the original cost price of the vehicle[1] as the value for fringe benefit tax purposes. The Committee perceived that there is widespread misunderstanding of the reason for using this rate.

The rate is set having regard to the average costs (both fixed and running) an employee would have incurred had he or she:

- purchased the car new;
- run it for five years; and
- done 16,000 km in private use per year.

Neither the portion of business use nor the actual private use is part of the calculation. Instead, the focus is on the costs the employee would have incurred had he or she purchased the car and run it according to the criteria above Over the five-year period the total costs that would have been incurred by the employee, based on the criteria above, are 120% of the cost of the car. The 24% figure is merely one-fifth of this.

The basis for the formula of 24% of the original cost price of the vehicle

An employer who makes available a motor vehicle for an employee to use privately is liable to pay fringe benefit tax (FBT). The employee is deemed to derive the benefit from the availability of the vehicle, regardless of actual use. These fringe benefits are valued each year at the rate of 24% of the original cost price of the motor vehicle.1

The 24% rate can best be explained by reference to the April 1982 report of the Task Force on Tax Reform (the McCaw Committee), which suggested the benefit valuation formula. Extracts from this report follow:

"Introduction

The Task Force considers that the provision of a car to an employee should give rise to a taxable benefit where that car
is substantially available for private use at the employee's discretion. A benefit should be assessed for each month or part of a month during which the vehicle is so available.

Valuation of the Benefit

The value to an employee of a company car will vary depending on a number of factors, including the cost of the car, the extent of private running and the amount of operating costs met by the employer. It would be impracticable for all such variables to be identified and quantified for each case. Adoption of a specified formula is therefore proposed.

The Task Force has concluded that as a general rule the value to an employee of a fringe benefit is equal to the amount by which the employee's need to meet private outgoings is reduced. Thus the value of a benefit to the employee may differ from the employer's costs of providing that benefit.

Therefore, in arriving at an appropriate formula we have had regard to the typical costs of operating a vehicle. We have adopted as a benchmark the total operating costs where the annual distance travelled is 16,000 kms and have used as a base details published by the Automobile Association Inc.
New Zealand.

Formula Options

The first option is to provide that the taxable value be calculated by applying a fixed percentage rate to the cost of the vehicle. ......

If this option were adopted, the Task Force is of the opinion that the rate should be set at a conservative level, say 2% per month **[or 24% per year]**.....

The second option would be to adopt the specified rate approach of the first option, but to apply the selected rate to the book value of the vehicle rather than to the cost price (book value being that arrived at after the deduction of depreciation at departmental rates). The rate adopted should be something in excess of that which would have been adopted under the first option. This option has the added advantage that the value to be assessed will reduce as the vehicle ages.

A third option would be to fix a specific value which varies with the size of vehicle. ....."

[1] Two methods exist to calculate the value of the fringe benefit: 24% of the GST-inclusive cost of the motor vehicle, or 27% of the GST-exclusive cost of the motor vehicle.

The key point is that the McCaw Committee found that 2% per month on cost was a satisfactory approximation of the cost of employees running their own cars. This is based on the following assumptions:

- The benefit (use or availability for use) should be based on the total costs the employee would have incurred had the employee purchased the car.
- The car is purchased new and owned for five years.
- The private use is 16,000 km per year.

The actual cost was (and still is) higher than this, but the McCaw Committee recommended 2% as an appropriate figure.

Over the five-year period referred to, the total estimate of these costs is 120% of the cost of the car. The McCaw Committee then considered three options as to how this could be applied. The Government decided to use the first option, a flat 24% per year (or 120% over five years), which is the simplest to apply.

The trade-off is that it is arbitrary in any specific circumstance (as are, in fact, all three options suggested by the McCaw Committee). The reason for this arbitrariness is that the actual costs (that the employee would otherwise have incurred) are unknown. Any attempt to make it less arbitrary would significantly increase compliance costs. Further, the method ignores the employer's actual costs and the amount of **business use** – there is no apportionment of the fixed costs between business and benefit.

As the McCaw Committee suggested in its second option, an alternative would be to base the benefit on depreciated value. Alternatively, market value could be used. As the Committee noted, this would lead to the use of a higher rate. For example, presuming that:

- 24% of cost is correct;
- the other assumptions stand; and
- the average value over the five-year period of the vehicle is 60% of its cost,

an average rate of 40% (rather than 24%) would be needed to ensure the benefit equalled 120% of the cost of the vehicle over the five-year period.

Further, the value would need to be known for each FBT return, whereas cost over the ownership period is constant. This in itself would increase compliance costs.

Although the value could be determined with greater accuracy if specific circumstances were taken into account, compliance costs would also increase significantly. Each marginal increase in accuracy achieved for some taxpayers by incorporating one of these factors would increase compliance costs for all. Further, although the change might reduce the FBT payable by some taxpayers, the tax to be paid by others might increase.

Using original cost to determine the value provides certainty, and a compromise between accuracy and compliance costs. This is an explicit trade-off the Government made in legislating that the FBT value would be 24% of the original cost of the motor vehicle.

The Committee of Experts on Tax Compliance repeated the research of the McCaw report using current prices and costs, the results of which are shown in Table 1. The Committee considered that the global "percentage of cost" approach provides a satisfactory compromise and thus endorsed the formula suggested by the McCaw Committee and chosen by the Government.

Table 1: Car Running Costs

(Based on figures from the March 1998 issue of the Automobile Association magazine Directions)

Vehicle engine size	to 1300 cc	1300-1600 cc	1600-2000 cc	over 2000cc
Original cost	$21,193	$26,809	$35,063	$42,116
Fixed costs per year (incl depreciation)	$ 4,588	$ 5,639	$ 7,176	$ 8,484
Running cost per kilometre ¢/l	16.0	17.1	18.9	22.1
Cost per year – Annual kilometres plus fixed costs				
8,000 Annual kilometres	$ 5,868	$ 7,007	$ 8,688	$10,252
12,000	$ 6,508	$ 7,691	$ 9,444	$11,136
16,000	$ 7,148	$ 8,375	$10,200	$12,020
20,000	$ 7,788	$ 9,059	$10,956	$12,904
24,000	$ 8,428	$ 9,743	$11,712	$13,788
Cost per year cost as a percentage of original cost				
8,000 Annual kilometres	27.7	26.1	24.8	24.3
12,000	30.7	28.7	26.9	26.4
16,000	33.7	31.2	29.1	28.5
20,000	36.7	33.8	31.2	30.6
24,000	39.8	36.3	33.4	32.7
FBT rate	24	24	24	24
1982 equivalent summarised from the McCaw Report				
16,000 Annual kilometres	N/A	43.5	40.9	35.6

REGULAR FEATURES

DUE DATES

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.

December 1999

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

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

Second 2000 instalment due for taxpayers with April balance dates.

Third 2000 instalment due for taxpayers with December balance dates.

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

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

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

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

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

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

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

RWT on dividends deducted during November 1999 due.

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

31 Third instalment of 2000 Student Loan non-resident assessment due.

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

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

By post: Tick the drafts you want below, fill in your name and address, and return this page to the address below. We'll send you the drafts by return post. Please send any comments *in writing, to the address below*. We don't have facilities to deal with your comments by phone or at our other offices.

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

Name ____________________

Address ____________________

____

√	*Standard Practice Statements*	*Comment deadline*
☐	**ED0007** Settlement of disputed tax litigation	30 November 1999
☐	**ED0008** Finalising agreements in tax investigations	30 November 1999
☐	**ED0009** Instalment arrangements for payment of tax debt	30 November 1999
☐	**ED0010** Notification of a pending audit or investigation	30 November 1999
	Interpretation statements	
☐	**IS0006** Fines, penalties, and like payments - income tax deductibility	30 November 1999
☐	**IS3571** Retirement villages – GST treatment	30 November 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.

Affix
Stamp
Here

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

When you have completed this form please return it to: TIB Mailing List, PO Box 31 581, Lower Hutt

Reason for update
(Please tick)

- ○ You would like to receive the TIB mailing list—fill in your details below.
- ○ You are already on the TIB mailing list but want to change your name/address required—fill in your details below.
- ○ 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.

Attach a TIB label here or fill in your mailing label details below.

Personal details

Name ○ Mr ○ Mrs ○ Miss ○ Ms

Initials

Last name

Position in company

Name of company

Address of company

Street address/PO Box number

Town/city

Number of copies required

Member of the Institute of Chartered Accountants of New Zealand? ○ Yes ○ No