TAX INFORMATION BULLETIN

Volume Eleven, No. 10 November 1999

Contents

Invitation to comment on drafts 3

New Legislation

Personal Property Securities Act 1999 4

Binding Rulings

Product Ruling – BR Prd 99/13 7

Product Ruling – BR Prd 99/14 13

Product Ruling – BR Prd 99/15 16

Product Ruling – BR Prd 99/21 16

Product Ruling – BR Prd 99/22 18

Product Ruling – BR Prd 99/23 20

Product Ruling – BR Prd 99/24 21

Product Ruling – BR Prd 99/25 22

Legislation and Determinations

Portable Toilets – General Depreciation Determination DEP44 24

Standard Practice Statements

Re-publication of Standard Practice Statement INV–206 25

Unacceptable interpretation — non application of a tax law INV–206 25

Legal decisions – case notes

Whether supply of services made by partnership business with contractors as subcontractors of business, or directly as independent contractors 29
TRA Numbers 4/99 & 13/99. Decision Number 024/99

Whether assessment by Commissioner made with "improper purpose"; whether legitimate expectation affects the Commissioner's ability to make an assessment of liability 30
Commissioner of Inland Revenue v New Zealand Wool Board

Justiciable issues remaining in the template cases 32
TRA Numbers 97/97, 97/96, 97/95, 97/101, 97,99, 97/100, 97/94, 97/98, 92/056, 92/055, 92/053, 92/054 & 92/052. Decision Number 022/99

Affidavit not to be read in part or in total 33
TRA Numbers 97/97, 97/96, 97/95, 97/101, 97,99, 97/100, 97/94, 97/98, 92/056, 92/055, 92/053, 92/054 & 92/052. Decision Number 023/99

Questions we've been asked

Is a person working overseas while on leave of absence for two years resident for tax purposes? 34

Regular features

Due dates reminder 37

Your chance to comment on draft taxation items before they are finalised 39

ISSN 0114-7161

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

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.

THIS MONTH'S OPPORTUNITY FOR YOU TO COMMENT

Inland Revenue produces a number of statements/rulings aimed at explaining how taxation law affects taxpayers and their agents.

Because we are keen to produce items that accurately and fairly reflect taxation legislation, and are useful in practical situations, your input into the process – as perhaps a "user" of that legislation – is highly valued.

The following draft item is available for review/comment this month, having a deadline of 31 January 2000. Please see page 39 for details on how to obtain a copy:

Ref.	**Draft type**	**Description**
WD1821	Withdrawal notice	"Matrimonial property agreements – GST implications." The draft notice provides a number of reasons why it is appropriate for the Commissioner to withdraw the item "GST – Matrimonial Property Agreements" published in *Tax Information Bulletin* Vol.1, No.6 of December 1989. Comments are invited on the proposed course of action.

NEW LEGISLATION

PERSONAL PROPERTY SECURITIES ACT 1999

Summary

The Personal Property Securities Act 1999 was enacted on 14 October 1999. It has tax implications for the priority of tax debts in an insolvency, and makes terminology changes to a number of revenue Acts.

The new Act introduces the concept of personal property securities which are capable of creating a charge over floating assets. Currently charges over floating assets can only be created by means of a floating charge.

Under the new Act, preferential tax debts (GST, PAYE, RWT etc) will rank behind the claims of any person who has:

- a purchase money security interest (any security interest which secures the purchase price of goods, including the equivalent of a Romalpa clause), or
- a security interest which prohibits or restricts the property from being disposed of in the ordinary course of the business.

However, when a security interest does not prohibit or restrict the property from being disposed of in the ordinary course of the business, preferential tax debts will have priority. This is consistent with the existing ranking of debts secured by a floating charge.

The Personal Property Securities Act 1999 will come into effect on a date to be set by Order in Council.

This article describes the concept of a "floating charge" and explains debt priorities under the new legislation.

Priority of debts secured by a floating charge

The term "floating charge" is defined in the Law Commission Preliminary Paper No 6 as:

> "A species of equitable charge which does not affix until crystallisation when it becomes a fixed equitable charge. Crystallisation occurs on the appointment of a receiver, winding up, cessation of business and happening of an express crystallisation act or event."

A floating charge facilitates borrowing using short-term assets as security. For instance, the process of giving security over chattels or book debts would be cumbersome if the floating charge mechanism was not available. Security over chattels would require a Bill of Sale, while book debts would need to be assigned. Furthermore, a floating charge attaches to assets in their varying conditions and to future assets. Most importantly, from the borrower's point of view, it enables continuous day-to-day conduct of the business without onerous interference from the lender.

The Companies Act 1993 (see clause 9 the Seventh Schedule) and the Goods and Services Tax Act 1985 (see section 42(2)(c)) currently provide for preferential tax debts to take priority over debts secured by a floating charge.

Personal Property Securities Act 1999

The purpose of the Act is to ensure that the law relating to personal property securities is simple, clear and transparent. This will in turn create certainty in how the law is to apply in particular circumstances, and thus reduce the cost of commercial transactions involving personal property securities. The Act provides for a centralised personal property securities register which will replace the registration of charges at the Companies Office, and, among other things, chattels security registration at High Courts, and registration of motor vehicle securities on the Motor Vehicle Securities Register.

A key concept of the Act is the "perfection" of security interests. Security interests can be perfected either by registration of the security or by possession (such as a pledge). When the interest is secured by registration, the order of registration will determine the order of priority. A security interest that is not perfected will be subordinate to a perfected security interest, but will be binding on the parties.

The Act makes consequential amendments relating to the:

- Goods and Services Tax Act 1985
- Child Support Act 1991
- Income Tax Act 1994, and
- Tax Administration Act 1994.

Most of these changes simply reflect the language used in the new Act. From a taxation perspective, the only

significant provisions are in relation to the priority of preferential tax debts.

Preferential tax debts and debts secured by personal property securities

The policy objective is to maintain the existing ranking of debts in an insolvency until the Ministry of Commerce's Insolvency Review is complete. The intention of the Act is to abolish the concepts of fixed and floating charges. Currently, persons holding fixed charges rank before claims by preferential creditors. However, preferential creditors rank before those holding debts covered by a floating charge.

Clause 9 of the Seventh Schedule to the Companies Act 1993 will be amended by the Personal Property Securities Act 1999 so that preferential debts, as listed in clauses 2, 3, 4 and 5 of the schedule (including preferential tax debts) have priority as follows:

"9. The claims listed in clauses 2, 3, 4, and 5 –

(a) Rank equally among themselves and must be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and

(b) So far as the assets of the company available for payment of general creditors are insufficient to meet them, -

(i) Have priority over the claims of any person who has a security interest, other than a purchase money security interest, in the company's property that is not prohibited or restricted by the security agreement relating to the security interest from being sold or otherwise disposed of in the ordinary course of the company's business; and

(ii) Must be paid accordingly out of those assets."

Similar changes will be made to section 42(2)(c) of the Goods and Services Tax Act 1985.

The reference in the legislation to "purchase money security interest" preserves the priority relating to Romalpa clauses. A Romalpa clause provides that the title to goods does not pass to a purchaser until certain conditions are met. It is effective only if the goods involved do not change their character. Before the enactment of the Personal Property Securities Act the holder of a Romalpa clause never entered the pool of creditors, because property does not pass to the debtor when a debt is covered by a Romalpa clause. Complex case law has developed in relation to Romalpa clauses, and concern has been expressed that this leads to uncertainty.

Under the Personal Property Securities Act "purchase money security interest" is defined as follows:

"'Purchase money security interest' –

(a) Means –

(i) A security interest taken in collateral by a seller to the extent that it secures the obligation to pay all or part of the collateral's purchase price; or

(ii) A security interest taken in collateral by a person who gives value for the purpose of enabling the debtor to acquire rights in the collateral, to the extent that the value is applied to acquire those rights; or

(iii) The interest of a lessor of goods under a lease for a term of more than 1 year; or

(iv) The interest of a consignor who delivers goods to a consignee under a commercial consignment; but

(b) Does not include a transaction of sale and lease back to the seller:"

The distinction between fixed charges and floating charges is recognised by providing priority ranking for preferential debts when the security interest covers property which is not prohibited or restricted from sale or disposal in the normal course of the business. The Act abolishes the concepts of fixed and floating charges, but it preserves the existing ranking of debts in insolvency.

The difference between a fixed and a floating charge has long been debated by the Courts. A recent case is *Brumark Investments Ltd (in receivership); CIR v Agnew* (CA 50/99). In terms of the charge document, Brumark could not dispose of uncollected debts, but there was no restriction on the company to collect them. The bank which held the charge had a right to require proceeds to be paid into an account over which Brumark's access and use were restricted, but this right was not exercised.

In deciding the case, the Court of Appeal said:

> "We consider that the general principle remains that if the true nature of the arrangement is that the chargor is free to deal with the charged book debts the charge cannot be a fixed charge. That does not involve (as Fisher J suggests) characterising the charge over the book debts by reference to what may be done with the proceeds. It involves determining whether or not the charged book debts are under the control of the chargee."

and

> "The important difference in the case of a fixed charge is that proceeds, even if theoretically capable of being a separate security interest, are not (on the authorities) accessible to the chargor."

The court held that the security amounted to a floating charge.

The treatment of preferential tax debts is being reviewed as part of the Insolvency Review currently being carried out by the Ministry of Commerce.

Transition

The Personal Property Securities Act is to come into effect on a date to be set by Order In Council.

Currently, clause 9 of the Seventh Schedule to the Companies Act 1993 and section 42(2)(c) of the Goods and Services Tax Act 1985 provide, among other things, that preferential tax debts have priority over debts secured by a floating charge. Those provisions will continue to apply only to any floating charge which becomes a fixed or specific charge before the commencement of the Personal Property Securities Act 1999.

Existing floating charges may be registered in the centralised personal property securities register. There will be a transitional period during which existing charges will be deemed to be registered on the new register. After registration it would become a perfected security interest. An existing floating charge which is not registered will become an unperfected security interest and it will be binding between the parties only.

In either case, the priority of preferential tax debts will be determined according to whether the security interest prohibited or restricted the disposal of property in the normal course of the business.

BINDING RULINGS

This section of the TIB contains binding rulings that the Commissioner of Inland Revenue has issued recently.

The Commissioner can issue binding rulings in certain situations. Inland Revenue is bound to follow such a ruling if a taxpayer to whom the ruling applies calculates tax liability based on it.

For full details of how binding rulings work, see our information booklet "A Guide to Binding Rulings" (IR 715) or the article on page 1 of TIB Volume Six, No.12 (May 1995) or Volume Seven, No.2 (August 1995).

You can obtain these publications free of charge by:

- Downloading them from our website at http://www.ird.govt.nz/
- Requesting a copy from any Inland Revenue office.

PRODUCT RULING – BR PRD 99/13

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:

- WestpacTrust Investments Limited ("Issuer"); and
- Westpac Banking Corporation ("Westpac").

Taxation Laws

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

This Ruling applies in respect of:

Section BG 1
Section CF 2
Sections EH 47 and EH 48
Section GB 1
Section GC 22
Section GC 23
Sections OD 2 – OD 6

The following definitions in section OB 1:

"dividend"
"excepted financial arrangement"
"financial arrangement"
"option"
"shareholder"
"shareholder decision-making rights"
"specified option"
"tax avoidance arrangement"

The following sections of the Estate and Gift Duties Act 1968:

Section 63(1)

The following definitions in section 2:

"gift"
"disposition of property"

The Arrangement to which this Ruling applies

The Arrangement is the raising of equity in New Zealand for Westpac by the issue of NZ Shares in the Issuer. The Arrangement includes the Exchange Deed and Voting Deed referred to below. Further details of the Arrangement are set out in the paragraphs below.

1. Westpac wishes to raise up to NZ$800 million of equity in New Zealand. The New Zealand operations of Westpac are predominantly conducted through a branch (the "Branch"), established by the Bank of New South Wales in 1861. Thus, the capacity to raise ordinary equity in New Zealand is constrained by Westpac's legal and operating structure.

2. The aim of this transaction is to raise ordinary equity in New Zealand. The equity raising is to be achieved in a way that does not involve the full incorporation of Westpac's New Zealand operations as this would involve considerable regulatory, reporting, taxation and accounting complexities (both in New Zealand and Australia) which would inevitably take some considerable time to resolve.

3. The proposed transaction for raising the ordinary equity, therefore, reflects the existing limitations of a direct equity raising by the New Zealand operations. It involves the offer of shares (the "NZ Shares") to the public primarily in New Zealand and, to a lesser extent, interested international investors. No Westpac group entity or associated party will acquire NZ Shares pursuant to the offer. It is anticipated that the

offer will occur in September and October 1999. The NZ Shares will be issued by the Issuer, a New Zealand company that is an existing wholly owned subsidiary of Westpac Holdings –NZ– Ltd ("Parent"). The Issuer owns properties used by Westpac in New Zealand, leasing these properties to the various Westpac branches and subsidiaries. It has shares on issue with paid up capital and reserves of approximately NZ$250 million comprising both ordinary and redeemable preference shares.

4. Application has been made to list the NZ Shares on the New Zealand Stock Exchange ("NZSE"), and the NZ Shares are intended to track the performance of Westpac ordinary shares that are listed on the Australian Stock Exchange ("ASX"). Although Westpac, is an "overseas listed issuer" on the NZSE, its shares are not quoted on the NZSE and must therefore be traded through Australian brokers. The transaction has been submitted to the NZSE, ASX and APRA for their approvals.

5. It is understood that the existing New Zealand based ordinary shareholders in Westpac amount to about 1.2% of the ordinary share capital of Westpac, and it is proposed that Issuer raise capital equivalent to up to 5% of the ordinary share capital of Westpac.

Terms of NZ Shares

6. The key terms of the NZ Shares are as follows:

(i) It is expected that the Issue Price will be related to the price of a Westpac ordinary share on or about the issue date, converted into New Zealand dollars. Payment for the NZ Shares will be in two tranches. The first tranche of the issue price will be payable on application for the NZ Shares and will be set at $7.20. The second tranche is expected to be payable approximately 15 months later and will be based on a book-building process undertaken during the offer period. Under the book-building process, institutional and other qualified bidders in selected jurisdictions (including selected brokers and investors in New Zealand) will be invited to indicate the number of NZ Shares they wish to purchase at a range of prices. The final price will then be set based on these prices and other factors. The NZ Shareholders will be notified before the issue of the NZ Shares of the amount to be paid in aggregate.

(ii) The payment of dividends will be at the discretion of the directors of the Issuer. However, if dividends are declared on the NZ Shares, they will be based on the cash dividends of Westpac ordinary shares. In such circumstances, the dividends on the NZ Shares will equal dividends paid by Westpac on the Westpac ordinary shares multiplied by the exchange fraction (discussed below), converted into New Zealand dollars at the prevailing foreign exchange rates. If declared, full dividends will be paid on the partly paid shares.

(iii) At the discretion of the directors of the Issuer, the Issuer will "mirror" all bonus issues (other than those arising under dividend reinvestment plans), share splits, consolidations and rights issues undertaken by Westpac in respect of Westpac ordinary shares. Where "mirroring" is not undertaken the exchange fraction will be adjusted.

(iv) The holders of the NZ Shares ("NZ Holders") will have their voting rights in Issuer restricted. Extensive waivers have been granted by the NZSE to allow voting rights at Issuer shareholder meetings to be limited to:

- Decisions concerning major transactions under the New Zealand Companies Act and the NZSE Listing Rules;
- Amendments to the Issuer's constitution to the extent that such amendments affect the rights attached to the NZ Shares; and
- Amendments to the Exchange Deed and Voting Deed.

In each case the approval of a special resolution of NZ Holders is required except in the case of votes concerning major transactions which only require an ordinary resolution. In addition, the constitution of the Issuer will provide for certain approved capital changes, but otherwise will prohibit it from undertaking any variation in the capital that affects the rights attached to the NZ Shares.

(v) Subject to a cap, rights to receive distributions on liquidation of the Issuer will be on a pro rata basis with the Issuer's ordinary shareholders. These rights and the right to dividends will be

protected by the Constitution. The quantum of the cap will depend on whether or not Westpac is also in liquidation. The purpose of the cap is to ensure that NZ Holders are not entitled to windfall gains, which could arise if NZ Holders received the full benefit of the Exchange Deed (refer later) without relinquishing their NZ Shares. The Exchange Deed will therefore be referred to in the Issuer's constitution.

7. The offer will be made primarily to the New Zealand public. The offer of NZ Shares will not be specifically made to current Westpac ordinary shareholders. Nor will there be any necessity for shareholders in Westpac to give up their shares and acquire shares in Issuer. There will be no stapling of shares in any form.

8. There will not be any specific requirement in the terms of issue of the Issuer's shares that equivalent dividends must be paid by Issuer on both the ordinary shares of Issuer and the NZ Shares at the same time. It is the current intention that this would happen although, from time to time, additional dividends may be declared to distribute surplus funds to the ordinary shareholders of the Issuer.

9. It is intended that the funds raised from the issue will be lent by the Issuer to the Borrower, which is a New Zealand resident company which is another wholly owned subsidiary of Westpac Holdings –NZ– Ltd (referred to in the documents as the Money Market Loan). Where possible, it is intended to attach imputation credits to the fullest extent possible to the dividends paid to the NZ Holders. The imputation credits will arise from payments of tax made by the Issuer in respect of its taxable income (which would include the interest received on the Money Market Loan, the net fund flows, if any, arising under the Swap (referred to below), and its property related income).

Support Deed

10. Westpac will enter into a deed (the "Support Deed") under which it undertakes to ensure that the Issuer is solvent after the payment of any dividend. This will not be a guarantee or security of the payment of any dividends, but merely a covenant to the Issuer.

Voting Deed

11. NZ Holders will have the benefit of a voting deed (the "Voting Deed") granted by a special purpose company ("SPC") which will hold enhanced voting shares in Westpac (the "Enhanced Voting Shares"). SPC will be owned by a third party, a company associated with Allen Allen & Hemsley, one of the major Australian law firms.

12. SPC will acquire 500 existing ordinary shares in Westpac. Westpac will grant enhanced voting rights in addition to the one vote ordinarily attached to each of those shares in respect of the Enhanced Voting Shares. These enhanced voting rights will, in aggregate, be equivalent to the number of NZ Shares on issue from time to time not owned by Westpac or any of its subsidiaries, adjusted by the exchange fraction. The enhanced voting rights will also be proportional to the amount paid on the NZ Shares, with full voting rights when fully paid. SPC will hold the full legal and beneficial interest in the Enhanced Voting Shares, retaining all dividend, voting and other rights in respect of these shares. Dividends received by SPC from Westpac will be used for its own purposes, and any gains or losses on disposal will be to the account of SPC.

13. The SPC will not be able to borrow, and will only be able to sell the Special Voting Shares to a transferee approved by Westpac, or if required to do so by a special resolution of NZ Holders. In either case the transferee will need to execute a new Voting Deed.

14. The Voting Deed will provide that:

    (i) The NZ Holders will have the right to indicate (by post) as to whether or not they approve the resolutions being put to Westpac's ordinary shareholders; and

    (ii) The SPC will covenant under the Voting Deed to exercise such proportion of the enhanced voting rights on any poll requested at the Westpac meeting as corresponds to and in accordance with the indications of the NZ Holders. However, SPC will not take any action where no poll is demanded.

    SPC will also covenant not to exercise its votes in relation to those shareholders who would have a greater than 10% holding in Westpac (or such other percentage permitted under Westpac's Deed of Settlement) if their shares were exchanged at that time. The Voting Deed will not affect SPC's ability to cast votes in respect of the voting rights attached to the ordinary Westpac shares prior to the attachment of the enhanced voting rights.

15. Neither the NZ Holders nor the Issuer will have any rights against Westpac under the Voting

Deed. Furthermore, neither the NZ Holders nor the Issuer will have a right to vote at shareholder meetings of Westpac. If the SPC fails to vote in accordance with its covenant under the Voting Deed, the only remedies available to the NZ Holders will be against the SPC for breach of the Voting Deed, and any exchange right which may arise under the Exchange Deed (refer later).

Exchange Deed

16. The NZ Shares will, in certain circumstances, be exchangeable into Westpac ordinary shares. Westpac will enter into a deed (the "Exchange Deed") prior to the issue of the NZ Shares, under which it will covenant to exchange the NZ Shares, based on the exchange fraction, for Westpac ordinary shares if an exchange event occurs.

    Pursuant to clause 4.10 of the draft Exchange Deed (provided to the Inland Revenue Department on 6 August 1999), the parties agree at the time of entering into the Exchange Deed that on any exchange of NZ Shares for Westpac ordinary shares the lowest price is to be equal to the market value of the NZ Shares exchanged for the Westpac ordinary shares. This agreement forms part of the terms of the shares when the Exchange Deed is executed by virtue of paragraph 4.9 of the Constitution. [Draft of this paragraph provided to Inland Revenue in a fax dated 2/9/99 from Mr Niels Campbell of Bell Gully Buddle Weir, Barristers and Solicitors.]

17. The exchange fraction will initially be on a one-for-one basis. The exchange fraction will be adjusted as is necessary from time to time to take account of situations where the Issuer has not mirrored bonus issues (other than under a dividend reinvestment plan), share splits, consolidations or rights issues and other types of capital reorganisations or a distribution in specie. The exchange fraction will also be adjusted where a dividend is not paid by the Issuer and NZ Holders elect to exchange their shares.

18. Similarly, if the Issuer does any of the matters listed above and Westpac does not mirror it, the exchange fraction will be adjusted as appropriate. No adjustment will be made to the exchange fraction where both the Issuer and Westpac offer shares to their respective shareholders, or an offer is made by one of Issuer or Westpac to all the shareholders of both entities, or either entity has made a placement of shares or made an on-market buy-back.

19. Westpac ordinary shareholder communications, including notice of Westpac general meetings and the resolutions to be put at the meetings will be sent to the NZ Holders and the NZSE, and all announcements made to the ASX will be copied to the NZSE.

20. It is expected that the events leading to exchange will be of three types.

    (i) Compulsory exchanges will arise upon the happening of specified events which are expected to include the following situations:

    (a) the commencement of liquidation, statutory management or administration of the Issuer or Westpac – in so far as it relates to Westpac in Australia;

    (b) if a recommended takeover offer or scheme of arrangement for Westpac's ordinary shares is announced which will extend to cover Westpac ordinary shares being issued on an exchange event;

    (c) if a person becomes entitled to more than 50% of Westpac's ordinary shares on an unconditional basis;

    (d) if a scheme of arrangement involving a new holding company of Westpac is announced and the exchange structure is not replicated; or

    (e) where Westpac ceases to have control of the Issuer.

    (ii) Westpac will have the option of issuing Westpac ordinary shares in exchange for NZ Shares upon the happening of specified events which are expected to include the following situations:

    (a) where the rulings of either the Inland Revenue Department or the Australian Taxation Office (the "ATO") are no longer valid and are not renewed;

    (b) if a change of law or policy adversely affects the rights of Westpac, the Issuer or NZ Holders as a class including if APRA ceases to accept the NZ Shares as Tier 1 capital of the Westpac group;

    (c) if specified events occur which may precede liquidation, statutory management or any other similar events in respect of Westpac or the Issuer;

    (d) if less than 15% of the NZ Shares are

held by NZ Holders (other than Westpac or any entities it controls);

(e) if the Issuer is placed in receivership; or

(f) the commencement of a liquidation, statutory management or administration of Westpac occurs in any country other than Australia.

(iii) NZ Holders will have the option of exchanging some or all of their NZ Shares for Westpac ordinary shares upon the happening of specified events which are expected to include the following situations:

(a) where the Issuer fails to pay a dividend based on the Westpac dividend;

(b) if the Support Deed or the Voting Deed is no longer effective;

(c) if the Issuer's listing on the NZSE is cancelled for more than 5 consecutive business days or suspended for more than 14 consecutive business days;

(d) if the IRD private or product ruling, or the ATO ruling is no longer valid and is not replaced and the NZ Holders are adversely affected; or

(e) if a holder of Westpac's ordinary shares becomes entitled to more than 30% of all such shares by any means.

Westpac must promptly notify the NZ Holders of any occurrence which might trigger an optional exchange event for the NZ Holders.

21. At no time will the NZ Shares be able to be exchanged for Westpac ordinary shares until an event of exchange has occurred. Any partly paid NZ Shares will be exchanged for partly paid Westpac ordinary shares on an exchange.

22. Where an exchange event arises and shares are exchanged, the Issuer will be passive other than to record the transfer of the NZ Shares to Westpac in its share register. Although the Exchange Deed will be referred to in the constitution of the Issuer, there will be no recourse to the Issuer for the performance of the exchange. Any recourse will only be to Westpac, subject to any limitations applicable to insolvency situations.

23. NZ Holders will be entitled to vote on amendments to the Exchange Deed.

24. On an exchange, if Westpac ordinary shares cannot legally be allotted then in exchange for their NZ Shares the NZ Holders will receive a payment equivalent to the amount that would have been paid to them if they had been issued the non-allotted Westpac ordinary shares at the exchange fraction less any distributions they receive from the Issuer (if the Issuer is in liquidation). If Westpac is in liquidation, the right to receive this payment will be subordinated to the rights of all other creditors of Westpac (including any holders of redeemable preference shares). Any such payment will be effected at the same rate and date as any distributions paid by Westpac to its ordinary shareholders on the liquidation of that company.

25. The NZ Shares, once issued, will therefore have the benefit of the exchange arrangement to swap into Westpac ordinary shares in certain circumstances and will be expected, though not required, to pay dividends declared based on any Westpac dividends. These benefits are designed to enhance the value of the NZ Shares, and it is envisaged that their value will track the value of Westpac ordinary shares.

26. The Issuer and the Branch will enter into a debt/equity swap (the "Swap"). Under the Swap, to the extent of the number of NZ Shares on issue, the Issuer will pay the Branch a money market equivalent yield (based on NZ 3 month bank bill rate plus a premium) and the Branch will pay the Issuer a pretax equity equivalent yield based on dividends paid on Westpac ordinary shares (allowing for the exchange ratio), grossed up by the applicable New Zealand corporate tax rate. Full amounts are payable under the Swap even where the NZ Shares are partly paid, any shortfall will be funded from the Money Market Loan, other income, cash reserves and equity subscriptions if necessary.

Commercial purpose

27. The purpose of the Arrangement is to raise ordinary equity in New Zealand. Westpac wishes to issue shares to the public in New Zealand as part of Westpac's broader capital management strategy including creating shareholder value and diversifying the capital base, and to support Westpac's regional banking and branding strategy. The equity raising is to be achieved in a way that does not involve the full incorporation of Westpac's New Zealand operations.

Assumptions made by the Commissioner

This Ruling is made subject to the following assumptions:

a) That the Issuer will attach imputation credits to dividends paid on all classes of share to the fullest extent possible without incurring penalties or additional debits, taking into account the credits that are in the imputation credit account. However, this assumption will not be breached if a dividend is paid in circumstances where such a payment was inadvertent and was overlooked so long as this did not occur due to an absence on the part of the Issuer to take reasonable care.

b) Apart from specific dividends or particular transactions that are declared to ordinary shareholders only, the Issuer will, where possible, pay dividends on the ordinary shares and the NZ Shares at the same time. This assumption will not be breached if the timing of the payment of the dividends is different due to dividends being paid in circumstances where such a payment was inadvertent and was overlooked so long as this did not occur due to an absence on the part of the Issuer to take reasonable care.

Conditions stipulated by the Commissioner

This Ruling is made subject to the following conditions:

- That no Westpac group entity or associated party, except the Issuer, will hold or acquire, singularly or in aggregate, more than a 5% interest in the NZ Shares other than holdings acquired pursuant to exchanges under the Exchange Deed. However, shares held by the Westpac group entity during its ordinary course of business, as an agent or trustee acting at arm's length, on behalf of any independent third party that is not in any other way associated with the Westpac group entity, will not contravene this condition.
- That no Westpac group entity or associated party will acquire an interest in NZ Shares for purposes inconsistent with the commercial reasons for the Arrangement outlined in paragraph 27 of the Arrangement. However shares held by the Westpac group entity during its ordinary course of business, as an agent or trustee acting at arm's length, on behalf of any independent third party that is not in any other way associated with the Westpac group entity, will not contravene this condition.
- That although the Swap enables the Issuer to hedge its position and there is nothing in the draft documents submitted to the Inland Revenue Department on 6 August 1999 to suggest an obligation to pass on the proceeds of that Swap to the NZ Holders as dividends, the Issuer is not otherwise, and will not in the future be, party to or subject to any understanding with or obligation to Westpac to pass the equity equivalent yield on to the NZ Holders as dividends.
- That the Issuer will not issue any further classes of share.
- That the Exchange Deed is on arm's length terms and conditions.
- That the market value of the NZ Shares will not be materially different from the market value of the Westpac ordinary shares at the time of an exchange under the Exchange Deed.

How the Taxation Laws apply to the Arrangement

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

- Prior to an exchange event, the NZ Holders will not be "shareholders" in Westpac as defined in section OB 1.
- The Exchange Deed will not give rise to a "dividend" as defined in sections OB 1 and CF 2, to the NZ Holders.
- Section GC 23 does not apply to the Arrangement.
- Section GC 22 does not apply to the Arrangement.
- The share options inherent in the Exchange Deed will be "specified options" as defined in section OB 1.
- A lowest cash price clause that is equal to the market value of the NZ Shares exchanged for Westpac ordinary shares under the Exchange Deed will be the value of the property under the share option inherent in the Exchange Deed used in calculating the "consideration" in section EH 48 for the purposes of section EH 47.
- An exchange of NZ Shares for Westpac ordinary shares by NZ Holders will not give rise to a "dividend" as defined in sections OB 1 and CF 2.
- Section BG 1 does not apply to negate or vary the above conclusions.

- The Exchange Deed does not give rise to a "gift" or a "disposition of property" as defined in section 2 of the Estate and Gift Duties Act 1968.
- An exchange of NZ Shares for Westpac ordinary shares by NZ Holders will not give rise to a "dutiable gift" as defined in section 63(1) of the Estate and Gift Duties Act 1968.

The period or income year for which this Ruling applies

This Ruling will apply from the date this Ruling is signed until 30 September 2002.

This Ruling is signed by me on the 3rd day of September1999.

Martin Smith

General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 99/14

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 Restaurant Brands Limited (IRD number 13 617 171).

Taxation Laws

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

This Ruling applies in respect of:

- Section BD 2(2)(c)
- Section DE 1
- The definition of "income from employment" in section OB 1
- Section 6 of the Goods and Services Tax Act 1985 ("the GST Act").

The Arrangement to which this Ruling applies

The Arrangement is the engagement of a delivery driver by Restaurant Brands Limited ("RBL") pursuant to its standard delivery contract form used at the date of this Ruling and in accordance with the information provided to Inland Revenue in the ruling application as described below.

Relationship between RBL and its delivery drivers

1. The relationship between RBL and its drivers is identical for each driver. During the interview process, the drivers' requirements are checked, then a standard delivery contract governing the relationship is entered into by RBL and the delivery driver (in particular, the highlights of this, along with other relevant details, are explained to each driver). The terms of this contract are discussed below, along with other details relevant to the relationship. The relationship between RBL and its delivery drivers is stated at clause 19 of the delivery contract to be one of principal and contractor. Clause 1 of the delivery contract states that either party may terminate the contract upon notice to the other at the conclusion of any delivery, so that the contract operates on a per-delivery basis. Clause 20 of the contract states that drivers cannot assign their rights under the contract without the prior written consent of RBL. Drivers are advised that they are responsible for all their own income tax, GST and ACC obligations, and any other industry and government regulations, and must obtain their own advice on these matters. They are not required to belong to a union.

2. Under clause 2 of the contract, RBL reserves the right to engage other contractors. The drivers are not prohibited from working for another principal and/or having others work for them. Drivers are not required to find a replacement driver if they cannot work. RBL is responsible for ensuring that there are sufficient contractors available on each particular night and at the busy periods. However, if other drivers do work for RBL's delivery drivers, they must have a full driver's licence and a good driving record, like RBL's delivery drivers, and driver and vehicle details must be supplied to the relevant restaurant manager on the vehicle/driver detail form prior to any deliveries. The vehicle/driver detail form records personal and contact details, and information regarding the driver's bank account (for payment purposes), vehicle, insurance, driving history, and referees.

Delivery driver guidelines

3. Delivery drivers must observe all reasonable instructions given by RBL in relation to the delivery services. In particular, delivery driver guidelines are provided to drivers containing suggestions for the manner in which deliveries are to be made, what to do in the event of emergencies, and dialogue to address the customer in various circumstances (e.g., if the

order has missing items). Although these guidelines are not binding on the drivers, it is RBL policy to discontinue using a driver if the guidelines are not adhered to.

Responsibility of delivery drivers

4. Under clause 5 of the delivery contract, the drivers are liable for all costs of their business, including those relating to operating and maintaining delivery vehicles. The drivers are also liable for costs of any traffic tickets received during deliveries. They must also indemnify RBL against any liability arising in the provision of the delivery services. In addition, drivers are entirely responsible for the delivery service they provide to RBL customers (but not the quality of the products being delivered - provided products are not damaged as a result of wilful default, negligence, or breach of contract by the driver) so that they may be required to correct mistakes made (e.g. delivery to the wrong address). However, drivers do have the potential to increase the profitability of their business by the efficient delivery of RBL's products, as discussed with them at their interview.

Vehicles

5. Delivery drivers must provide their own vehicles and associated equipment, and maintain third-party property damage vehicle insurance as a minimum. They must only use vehicles detailed on the relevant form and approved by RBL in the performance of their contractual obligations (vehicles must be clean, well-maintained, registered, and have a current warrant of fitness). Drivers are advised to inform their insurers that the vehicles are being used for deliveries.

Deliveries

6. Delivery drivers are told how to make deliveries (they go out on a trial run with an experienced driver), and the area where they will deliver. They generally make themselves available Thursday to Saturday for rostered hours as per the roster sheet, between 4 pm and 12 pm, which are the peak times when drivers are required. Potential drivers are required to let RBL know of their availability during the initial telephone interview. RBL restaurant staff take orders over the phone, pack the food in RBL's thermal bags, and decide on the delivery sequence. Drivers must immediately notify RBL of any errors they discover. There is a maximum of two orders per delivery, and a time constraint, to ensure product quality. Drivers can refuse to complete a delivery at any time, normally by either failing to show up at the delivery centre or leaving the centre without any product. However, the driver's contract with RBL may be terminated if he or she fails to perform.

7. Under clauses 14 and 15, the drivers must wear and maintain the provided uniform and supply any additional clothing as directed, such as black trousers. Under clause 17 of the delivery contract, RBL's signage must be attached to delivery vehicles as instructed during delivery periods (RBL is not liable for vehicle damage as a result of a driver's negligence or omission). These two items, along with the thermal delivery bags, must be returned to RBL in a reasonable condition upon request (usually on the termination of the driver's contract, when the $30 uniform bond deducted from the driver's first payment, authorised by the uniform issue record, will be refunded. However, RBL may deduct any necessary replacement costs from amounts owing to the driver).

8. Drivers must also supply and carry a $30 cash float, and must report details of deliveries if required to the restaurant manager or delivery co-ordinator. Drivers must fill out an account and record of the deliveries on RBL's forms to evidence their completion. All cash received from deliveries must be returned to the RBL restaurant at the end of each delivery. Drivers are still liable for the relevant amount if RBL's customers do not pay (or if they failed to make the delivery) and must account for any cheques or credit card slips received on RBL's behalf.

Payment

9. Delivery drivers are paid by RBL per delivery, and are guaranteed to be offered a minimum of two deliveries per hour (but RBL does not guarantee a minimum remuneration because the driver is not paid if these deliveries are not made), although this guarantee is not included in the delivery contract. The pay rate is predetermined under the delivery contract, but may be varied prospectively at RBL's discretion. This pay rate does not include any allowance for overtime or sick pay, or any annual leave component, but does include any GST payable (PAYE income tax is not deducted). RBL pays a lump sum into drivers' bank accounts for amounts owing for services performed, within 14 days of the submission of invoices and a payment request (a standard form containing details of the deliveries made) by the drivers. Invoices must be submitted nightly at the completion of deliveries on forms supplied by RBL.

Relationship between RBL's employees (employed under a different contract) and delivery drivers

10. Although RBL employees do not generally carry out delivery work, they are required to carry out deliveries in some stores, especially in a combined dine-in and delivery store. In this case delivery drivers are not employed because the employee needs to be available to work in the restaurant. Remuneration terms for employees include an hourly wage and a tax-free allowance to compensate for running costs on their own cars (currently only $1.40 per delivery). No store uses both employees and delivery drivers for deliveries. Delivery drivers do not supervise employees of RBL, and do not have access to RBL's administration or support services, although they do have access to some of the same facilities and privileges as RBL staff (e.g. restaurant staff toilets and product discounts).

11. No other collateral contracts, agreements, terms or conditions, written or otherwise, have a bearing on the conclusion reached in this Ruling.

Assumption made by the Commissioner

This Ruling is made subject to the following assumption:

(a) The actual relationship between RBL and the delivery driver is, and will continue to be during the period this Ruling applies, materially in accordance with the information provided to Inland Revenue in the ruling application dated 11 December 1998 and as summarised in paragraphs 1 to 11 above.

Condition stipulated by the Commissioner

This Ruling is made subject to the following condition:

(a) The standard contract entered into by RBL and the delivery driver is exactly the same as that provided to the Inland Revenue in the ruling application dated 11 December 1998, except in relation to the following clauses where the number of days or dollar amounts (as appropriate) may vary from time to time:

- Clause 3, which states that RBL agrees to pay the delivery drivers within 14 days of submission of an invoice for their services in accordance with the rates set out in Schedule A. Schedule A only contains reference to the rate of $3.50 per delivery.
- Clause 14, which states that a $30 deposit will be retained out of the delivery driver's first payment, to be returned to the delivery driver on the return of the uniform in good condition.
- Clause 16, which provides that a float of $30 be carried by the delivery driver.

How the Taxation Laws apply to the Arrangement

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

- For the purposes of sections BD 2(2)(c) and DE 1, payments made by RBL to the delivery driver are not "income from employment" as defined in section OB 1, so the driver is not prevented from claiming deductions under these sections by reason only that the driver earns "income from employment"; and
- For the purposes of the GST Act, the provision of services by the driver to RBL under the delivery contract will not be excluded from the definition of "taxable activity" in section 6 of the GST Act by section 6(3)(b) of that Act as they are not made under "contracts of service".

The period for which this Ruling applies

This Ruling will apply for the period from 26 October 1998 until 26 October 2001.

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

John Mora

Assistant General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 99/15

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 PSIS Limited (IRD No: 10-571-405) ("PSIS").

The Arrangement to which this Ruling applies

The Arrangement is that PSIS will charge account holders monthly transaction fees, subject to terms and conditions which state that account holders will be exempt from transaction fees where they meet certain stated criteria.

Taxation Laws

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

This Ruling applies in respect of sections CD 5, CE 1(1)(a), CE 1(1)(b), the definition of "dividends" in section CF 2(1), and the definition of "interest" in section OB 1.

This Ruling does not consider how (if at all) section HF 1 applies to or affects the Arrangement.

Assumptions made by the Commissioner

This Ruling is made subject to the following assumptions:

- that the current commercial rate of interest is paid by PSIS in respect of all its accounts, regardless of whether any benefit is given to particular account holders in terms of an exemption from transaction fees.
- that the criteria for the exemption from transaction fees are not dependent on the account holder's status as a shareholder of PSIS.

How the Taxation Laws apply to the Arrangement

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

- The benefit of being exempt from transaction fees is not gross income of those account holders under section CD 5.
- Such benefits are not interest under section CE 1(1)(a) or (b).
- Such benefits are not dividends under section CF 2(1).

The period or income year for which this Ruling applies

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

This Ruling is signed by me on the 3rd day of September 1999.

John Mora

Assistant General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 99/21

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 Sovereign Assurance Company Ltd ("Sovereign") as the offeror of the Family Protection Benefit ("FPB") included in the Risk Protection Plus Life Insurance Policy ("the policy"), IRD number 62-519-215.

Taxation Laws

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

This Ruling applies in respect of sections BD 1(1), CB 9(f) and CM 2 of the Income Tax Act 1994.

The Arrangement to which this Ruling applies

The Arrangement is the:

- payment of the FPB by Sovereign to policy holders under the terms of the policy, when a policy holder has elected to:
  - receive the FPB when he or she enters the contract
  - convert their lump sum benefit to the FPB when the FPB becomes payable
- payment of a lump sum when the policy holder elects to convert the FPB (when it becomes payable) to a lump sum.

Further details of the Arrangement are set out in the paragraphs below.

1. Sovereign is a company incorporated in New Zealand which conducts the business of life assurance, superannuation and investment services.

2. Under the policy, Sovereign will pay to the policy holder a lump sum benefit, as specified in the schedule to the policy, upon the death of the person whose life is insured (who may be a person other than the policy holder).

3. The policy also permits there to be more than one person whose life is insured, and if so then Sovereign will pay a lump sum benefit to the policy holder upon the death of each such life insured.

4. The FPB is an additional optional benefit available to policy holders of the policy. Under this option, the policy holder will receive a monthly benefit that commences to be payable on the death of the life insured.

5. Presently the benefits under the FPB are not in any way linked to the lump sum death cover payments. However, Sovereign is seriously contemplating allowing a policy holder at the point of making a claim to convert the FPB to a lump sum payment, as well as allowing the policy holder to convert the lump sum death cover payment to which he or she is entitled to monthly payments under the FPB.

6. Two lives can be insured under the FPB, and if so then Sovereign will pay monthly benefits to the policy holder commencing on the death of each such life insured. The amount of the monthly benefit payable on the death of each life insured will be the monthly benefit applicable to that life.

7. Monthly benefits are payable under the FPB from the date of death of a life insured for a term selected by the policy holder at the time the policy is taken out. The term can be for a minimum of 10 years from the date of the death of the life insured up to a maximum of 30 years from the date of the death of the life insured, or until when the life insured would have reached 65 years of age (or to such other age as is specified in the application form).

8. For example, where a policy holder elects to take out a policy for the period of 20 years on a life insured who is then 40 years old, and that life insured later dies at 50 years old, the policy will be paid out for the 20 years following the date of the death of the life insured, i.e. until the life insured would have reached age 70.

9. Alternatively if the policy holder took out a policy on a life insured who was 40 years old and elected that the policy be paid until the life insured reaches 65 years old and the life insured later dies at age 50, then the policy will be paid out for 15 years (i.e. until the life insured would have reached age 65).

10. As well as electing the term of the policy, the policy holder also elects the amount of the monthly benefits to be paid under the FPB.

11. The dollar value of the benefit received under the FPB can be "level" or linked to the consumer price index ("CPI"). Under the level cover, the policy holder determines the monthly benefit to be paid on the death of the life insured. For example, if a policy holder chose a monthly benefit of $500 for a term of 10 years, then the payments will remain at that level throughout the whole term.

12. Under the CPI linked cover, the $500 will be adjusted annually in line with the CPI as follows. Where the increase in the CPI is ten percent or less, the level of cover will increase on each anniversary of the commencement date of the policy by the same percentage as the percentage increase in the CPI for the proceeding year ending 30 September.

13. However, where the increase in the CPI is more than ten percent, the policy holder may apply in writing to Sovereign for the full increase. The full increase will be granted if the life insured is able to satisfy Sovereign that he or she is in good health. If the policy holder does not apply in writing, the increase will be limited to ten percent per annum.

14. If the CPI falls in any year, the CPI linked benefit levels will not change.

15. The policy holder must write to Sovereign if he or she does not want the level of cover under the CPI adjusted FPB to be increased for a particular year. If this is done for two successive years, then the policy holder loses the right to have the level of cover automatically CPI linked in the future.

16. The FPB also allows the policy holder to request an increase in the monthly benefit payable for the life insured on each occasion that the life insured has a child (by birth or adoption), with a maximum of three requests. Such a request will be granted as from the date Sovereign receives a written request, provided that nothing has happened prior to that date which would entitle a claim to be made under the policy in respect of the life insured (i.e. the life insured must still be living). No evidence relating to the health of the insured person is required to process such a request.

17. Details of the FPB, including the dollar value of the benefit payable and the names of the life or lives insured are shown in the policy schedule.

18. The policy holder may assign their policy at any time by completing the memorandum of transfer printed at the back of the policy document, but to be valid the assignment must be registered with Sovereign. More than one person can own or take an assignment of the policy, however a trust or trustee cannot own the policy.

19. Sovereign will pay all benefits under the policy to the policy holder or their estate. The policy has no surrender value or cash value if it is cancelled.

20. The policy also provides benefits payable other than on the death of the life insured, such as on disability or critical illness. However, this Ruling only applies to the lump sum death benefit and to the FPB, as outlined above.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- Any monthly benefit paid pursuant to the FPB is exempt income under section CB 9(f).
- If Sovereign allows a policy holder at the point of making a claim to convert the FPB to a lump sum payment, the lump sum payment will not be part of the policy holder's gross income under section BD 1(1).
- If Sovereign allows a policy holder at the point of making a claim to convert the lump sum benefit otherwise payable to the FPB, the monthly benefits paid will be exempt income pursuant to section CB 9(f).

The period or income year for which this Ruling applies

This Ruling will apply for the period 10 September 1999 to 31 July 2002.

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

John Mora

Assistant General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 99/22

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 Network Tasman Limited – IRD No: 29-634-734.

Taxation Laws

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

This Ruling applies in respect of sections CD 3, CD 5 and EG 2.

This Ruling does not consider how (if at all) sections BG 1 and CD 4, apply to the Arrangement.

The Arrangement to which this Ruling applies

The Arrangement is between Network Tasman Limited ("NTL") and other persons seeking connection to its network ("proposed consumers") under which NTL will receive a lump sum capital contribution ("cash contribution"). The cash contribution is a contribution towards the cost of connecting the proposed customer to NTL's network where it is not economic or profitable for NTL to do so. Further details of the Arrangement are set out in the paragraphs below.

1. NTL has its origins as the Tasman Electric Power Board (the Board), a local authority constituted under the Electric Power Board Act 1925.

2. On 1 April 1987, the Board became a taxpayer by virtue of section 197C of the Income Tax Act 1976.

3. NTL was registered as a public company on 1 May 1993, in accordance with section 32 of the Energy Companies Act 1992 ("the ECA"). The ECA provided for the restructuring of Electric Power Boards into companies. The undertaking of the Board was vested in NTL on 1 May 1993 by an Order in Council, pursuant to section 47(1) of the ECA. The Board was duly dissolved and NTL became the supplier of electricity to the NTL area.

Contributions

4. Where a consumer, situated outside NTL's existing network, requests to be connected to the network, that consumer is required to either:

   - contribute towards the cost of constructing such extensions; or
   - construct such extensions on their own account and assign the extensions to NTL for a nominal consideration.

5. Where the person seeking connection to the network chooses to make a cash contribution, NTL will contract an external customer (often Tasman Electrical Limited, an associate company of NTL) to carry out the work installing the extension to the network. No such contributions have been made in the past and the occasions where they will occur in the future are expected to be rare as consumers are more like to decide to contribute the asset rather than the cash.

Change in business

6. NTL has sold its retail electricity business and will now be in the business of providing lines to electricity retailers.

Assumptions made by the Commissioner

This Ruling is made subject to the following assumptions:

(a) the cash contribution is contractually required to be applied by NTL to contribute to the cost of extending the electricity reticulation network to the potential customer's property and is based on the costs actually incurred by NTL;

(b) the cash contribution is not charged in lieu of a higher line charge such that the contribution is a pre-payment for the line charge in addition to the amount actually charged;

(c) NTL owns the new part of the electricity reticulation network created as a result of the new connection;

(d) No cash contributions have as yet been received. The number of contributions received will not significantly increase from the number of asset contributions received in previous years.

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:

- The cash contributions do not constitute gross income to NTL under sections CD 3 and CD 5 of the Act.
- For tax depreciation purposes, the cost of any property to NTL reticulation network is not reduced by the amount of cash contributions received.

The period for which this Ruling applies

This Ruling will apply for the period from 1 August 1998 to 31 July 2001.

This Ruling is signed by me on the 15th day of September 1999.

Martin Smith

General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 99/23

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 Network Tasman Limited – IRD No: 29-634-734.

Taxation Laws

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

This Ruling applies in respect of sections CD 3, CD 5 and EG 2.

This Ruling does not consider how (if at all) sections BG 1 and CD 4, apply to the Arrangement.

The Arrangement to which this Ruling applies

The Arrangement is between Network Tasman Limited ("NTL") and other persons seeking connection to its network ("proposed consumers") under which NTL will receive a contribution in the form of assets ("asset contribution") assigned by the proposed consumers in consideration for which NTL will extend its existing reticulation network so that the proposed consumers can receive electricity in return for which NTL pays a nominal consideration. This occurs where it is not profitable or economic for NTL to connect the consumer to its network without the asset contribution. Further details of the Arrangement are set out in the paragraphs below.

1. NTL has its origins as the Tasman Electric Power Board (the Board), a local authority constituted under the Electric Power Board Act 1925.

2. On 1 April 1987, the Board became a taxpayer by virtue of section 197C of the Income Tax Act 1976.

3. NTL was registered as a public company on 1 May 1993, in accordance with section 32 of the Energy Companies Act 1992 ("the ECA"). The ECA provided for the restructuring of Electric Power Boards into companies. The undertaking of the Board was vested in NTL on 1 May 1993 by an Order in Council, pursuant to section 47(1) of the ECA. The Board was duly dissolved and NTL became the supplier of electricity to the NTL area.

Contributions

4. Where a consumer, situated outside NTL's existing network, requests to be connected to the network, that consumer is required to either:

   - contribute towards the cost of constructing such extensions; or
   - construct such extensions on their own account and assign the extensions to NTL for a nominal consideration.

5. A person contributing assets to NTL may use Tasman Electrical Limited to do the work, or another contractor. It is not a condition of the asset contribution agreement which firm will do the installation, only that the installation meet any safety regulations and NTL design and construction standards. 102 such contributions were made in the year ended 31 March 1997, 42 for the year ended 31 March 1998 and 34 in the year ended 31 March 1999.

Change in business

6. NTL has sold its retail electricity business and will now be in the business of providing lines to electricity retailers.

Assumptions made by the Commissioner

This Ruling is made subject to the following assumptions:

(a) the asset contribution is not made in lieu of a higher line charge such that the contribution is a pre-payment for the line charge in addition to the amount actually charged;

(b) NTL owns the new part of the electricity reticulation network created as a result of the new connection;

(c) the number of contributions received will not significantly increase from the number of contributions received in previous years as set out in the facts above.

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:

- The contribution of assets do not constitute gross income to NTL under sections CD 3 and CD 5 of the Act.
- For tax depreciation purposes, the cost of any property to NTL's reticulation network is the amount of nominal consideration paid.

The period for which this Ruling applies

This Ruling will apply for the period from 1 August 1998 to 31 July 2001.

This Ruling is signed by me on the 15th day of September 1999.

Martin Smith

General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 99/24

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 Network Tasman Limited – IRD No: 29-634-734.

Taxation Laws

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

This Ruling applies in respect of sections EG 2, BD 2(1), and BD 2(2).

This Ruling does not consider how (if at all) section BG 1 applies to the Arrangement.

The Arrangement to which this Ruling applies

The Arrangement is between Network Tasman Limited ("NTL") and other persons seeking connection to its network ("proposed consumers") under which NTL will pay a "development contribution" to a person undertaking a substantial subdivision to induce the proposed consumer to connect the subdivision to its network. Further details of the Arrangement are set out in the paragraphs below.

1. NTL has its origins as the Tasman Electric Power Board (the Board), a local authority constituted under the Electric Power Board Act 1925.
2. On 1 April 1987, the Board became a taxpayer by virtue of section 197C of the Income Tax Act 1976.
3. NTL was registered as a public company on 1 May 1993, in accordance with section 32 of the Energy Companies Act 1992 ("the ECA"). The ECA provided for the restructuring of Electric Power Boards into companies. The undertaking of the Board was vested in NTL on 1 May 1993 by an Order in Council, pursuant to section 47(1) of the ECA. The Board was duly dissolved and NTL became the supplier of electricity to the NTL area.

Contributions

4. Where a consumer, situated outside NTL's existing network, requests to be connected to the network, that consumer is required to either:
   - contribute towards the cost of constructing such extensions; or
   - construct such extensions on their own account and assign the extensions to NTL for a nominal consideration.
5. Due to increasing competition from a neighbouring competitor, NTL makes development contributions to land developers, where they are connecting a significant number of new lots to the network, as an incentive for them to connect to NTL's reticulation network. Approximately 5-6 such contributions per year have been made in the past three income years.
6. The development contribution is determined by taking into account the potential density of the extension being developed. Where there is a high density potential, NTL will make a cash payment to the developer. NTL's policy is that the cash payment may be no more than:
   - The actual cost of the extension; or
   - The value of the network extension based on its ODV.

Change of business

7. NTL has sold its retail electricity business and will now be in the business of providing lines to electricity retailers.

Assumptions made by the Commissioner

This Ruling is made subject to the following assumption:

- NTL owns the new part of the electricity reticulation network created as a result of the new connection.

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:

- For tax depreciation purposes, the cost of property assigned to NTL's reticulation network is the amount of any development contributions paid.

The period for which this Ruling applies

This Ruling will apply for the period from 1 August 1998 to 31 July 2001.

This Ruling is signed by me on the 15th day of September 1999.

Martin Smith

General Manager (Adjudication & Rulings)

PRODUCT RULING – BR PRD 99/25

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 Mico Wakefield Limited ("Mico").

Taxation Laws

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

This Ruling applies in respect of sections CD 3 and CD 5. This Ruling does not consider how the "FBT rules", as defined in section OZ 1(1), apply to the Arrangement.

The Arrangement to which this Ruling applies

The Arrangement is the exchange of points, accrued to customers of Mico, for travel and associated accommodation benefits ("travel benefits").

Mico has implemented a customer trade loyalty programme entitled "Mico Air Points" ("the Programme").

Further details of the Arrangement are set out in the paragraphs below.

1. Certain customers of Mico have been invited to join and become "Members" of the Programme. "Customers" for the purposes of the Arrangement will generally be tradespeople, e.g. plumbers, electricians and builders, who treat Mico as their preferred supplier. These persons will in most cases be sole traders. The Programme is subject to the terms and conditions set out below.

2. In conjunction with the Member, Mico will establish the individual sales figure for the last 12 months. From this figure a base target will be agreed for the next 12-month period.

3. An agreed percentage of actual and referred sales through nominated accounts will be transferred into the Programme. Mico will add to this an additional 1% on sales. Where a Member's purchases exceeds the base annual target, Mico will pay an additional 1% on these incremental purchases.

4. Each year, in conjunction with the Member, Mico will establish a new 12-monthly base target.
5. Each month, Mico will advise all Members of their points for the month, along with the year to date position.
6. A booking fee of 5% will be added to the final amount of the travel cost. All travel will be booked through Mico's nominated Travel Wholesaler and Mico will always quote the points on an individual trip by trip basis.
7. Individual targets will be kept confidential between Mico and the Member at all times.
8. Mico reserves the right to cancel, adjust or modify the scheme at any time, provided one month's notification is advised in writing.
9. Members can purchase product at normal price from any Mico store and the purchase figure (exclusive of GST) of goods acquired through agreed nominated accounts will be used to calculate the points that go into the scheme. Mico will advise Members of the total number of points for the month which relate to purchases from any Mico store.
10. A $50 (inclusive of GST) membership fee will be payable on joining. Mico reserves the right to membership.
11. To qualify for points, accounts must be paid by the end of the month following the month of purchase.
12. Any tax liability arising from the scheme will be the sole responsibility of the Member and Mico make no warranty or representation in relation to such tax liability.
13. The Member is not entitled to redeem the points for cash or any other benefits. In addition, the travel benefits cannot be redeemed for cash or any other benefits.

Assumptions made by the Commissioner

This Ruling is made subject to the following assumptions:

a) The points can only be redeemed by a Member for the travel benefits in accordance with the Programme; and

b) Points and travel benefits are not able to be exchanged for purchase discounts or other purchase rebates; and

c) Purchase discounts or other purchase rebates that relate to actual product purchases are not able to be exchanged for points and travel benefits; and

d) The travel benefits cannot be redeemed by the Member for money or money's worth or any other benefit; and

e) The points cannot be assigned, sold or transferred by the Member to any other party; and

f) The travel benefits cannot be assigned, sold or transferred by the Member for money or money's worth, to any other party.

Condition stipulated by the Commissioner

This Ruling is made subject to the following condition:

a) Employees of Mico are not able to participate in the Programme.

How the Taxation Laws apply to the Arrangement

Subject in all respects to any assumption or condition stated above, the Taxation Laws apply to the Arrangement as follows:

- The receipt of points under the Programme by a Member participating in the Arrangement will not be gross income for the purposes of sections CD 3 and CD 5; and
- The receipt of the travel benefits by a Member participating in the Arrangement will not be gross income for the purposes of sections CD 3 and CD 5.

The period for which this Ruling applies

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

This Ruling is signed by me on the 15th day of September 1999.

Martin Smith

General Manager (Adjudication & Rulings)

LEGISLATION AND DETERMINATIONS

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

PORTABLE TOILETS – GENERAL DEPRECIATION DETERMINATION DEP44

In *Tax Information Bulletin* Volume Eleven, No. 8 (September 1999) at page 3 we published a draft general depreciation determination for portable toilets used in the cleaning, refuse and recycling industry.

No submissions were received on the determination, and the Commissioner has now issued the determination. It is reproduced below and may be cited as "Determination DEP44: Tax Depreciation Rates General Determination Number 44". The determination is based on the estimated useful life set out in the determination and a residual value of 13.5%.

General Depreciation Determination DEP44

This determination may be cited as "Determination DEP44: Tax Depreciation Rates General Determination Number 44".

1. **Application**

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

   This determination applies to "depreciable property" other than "excluded depreciable property" for the 1999/2000 and subsequent income years.

2. **Determination**

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

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

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

3. **Interpretation**

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

This determination is signed by me on the 4th day of November 1999.

Martin Smith

General Manager (Adjudication & Rulings)

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.

RE-PUBLICATION OF STANDARD PRACTICE STATEMENT INV–206

The recently published FEC report made a number of recommendations, recommendation 9 stated:

"The Inland Revenue reinforce both publicly and internally that if a taxpayer or adviser has not interpreted legislation a penalty for unacceptable interpretation cannot apply"

In light of this Inland Revenue has decided to re-issue Standard Practice Statement INV-206 – *Unacceptable interpretation – non application of a tax law* which is reprinted below. This states that where a tax shortfall has been identified and the Commissioner is satisfied that the taxpayer did not apply their mind to the tax laws or make an interpretation, the unacceptable interpretation shortfall penalty will not apply. Taxpayers who seek advice from an advisor or who have in-house tax professionals should note the Commissioner's practice in respect of these situations as stated in the Standard Practice Statement. Standard Practice Statement INV-206 appears below.

UNACCEPTABLE INTERPRETATION — NON APPLICATION OF A TAX LAW INV–206

Summary

In the case where a tax shortfall has been identified and the Commissioner is satisfied that the taxpayer did not apply their mind to the tax laws or make an interpretation, the unacceptable interpretation standard will not apply.

Where a taxpayer has taken the advice of a tax advisor, or a tax advisor has prepared their tax return the Commissioner has the expectation that the tax advisor applied his/her mind to the tax laws and exercised his/her judgment. The unacceptable interpretation standard will apply unless the Commissioner is satisfied that the tax advisor did not apply his/her mind to the tax laws or make an interpretation.

This Standard Practice Statement amends SPS INV-205 to the extent that a taxpayer must have turned their mind to the tax laws or made an interpretation to have taken an unacceptable interpretation.

Application

This practice applies to assessments of the unacceptable interpretation shortfall penalty issued on or after 1 June 1998.

Legislation

Section 141B(1) of the Tax Administration Act 1994 defines an unacceptable interpretation as follows:

> "In relation to a tax position taken by a taxpayer, an unacceptable interpretation –
>
> (a) Is an interpretation or an interpretation of an application of a tax law; and
>
> (b) Viewed objectively, that interpretation or application fails to meet the standard of being about as likely as not to be correct."

Background

Inland Revenue practice– SPS INV-205 set out the policy with respect to "non-application of a tax law" as follows:

> "There may be instances where a taxpayer argues that he or she did not apply a section of the Act, therefore, did not interpret the particular section as applying. Accordingly, the taxpayer contends that the unacceptable interpretation standard does not apply.
>
> The non application of a tax law will in all cases be considered to be applying the tax law."

Inland Revenue took the view that, in being liable for a penalty for taking an unacceptable interpretation of the law, taxpayers do not have to put their minds to the particular tax position taken.

This policy has now been reviewed and will not apply to assessments of the unacceptable interpretation shortfall penalty issued on or after 1 June 1998.

Practice applicable from 1 June 1998

In the case where a tax shortfall has been identified and the Commissioner is satisfied that a taxpayer did not apply their mind to the tax laws or make an interpretation, the unacceptable interpretation standard will not apply. Therefore, no consideration will be given to whether or not the taxpayer has breached the unacceptable interpretation standard. However, consideration will be given to whether or not the taxpayer has been culpable under the reasonable care, gross carelessness or evasion standard

Where a taxpayer has taken the advice of a tax advisor, or a tax advisor has prepared the tax return, Inland Revenue has the expectation that the tax advisor has interpreted the tax laws and exercised his/her judgment and the unacceptable interpretation standard will apply. This is a rebuttable presumption and Inland Revenue will take this position unless the tax advisor can demonstrate that this is not the case.

Inland Revenue considers that the following is appropriate to each case:

(1) Taxpayers who prepare their own returns without the assistance of an advisor

A taxpayer takes a tax position that results in a tax shortfall that is based on a tax law and exceeds the threshold for consideration of a penalty for taking an unacceptable interpretation. The taxpayer asserts that he/she did not apply the law because he/she did not consider the issue.

If, by their actions, it can be confirmed that the taxpayer looked at the legislation and demonstrated that they have considered the tax laws with respect to the transaction, Inland Revenue can consider the unacceptable interpretation penalty.

If Inland Revenue is satisfied that the taxpayer did not make an interpretation, the unacceptable interpretation standard will not be considered. However, the taxpayer may have breached the reasonable care, gross carelessness or evasion standard and this would need to be considered.

This does not mean that just because Inland Revenue cannot penalise a taxpayer under the objective unacceptable interpretation standard the penalty for lack of reasonable care, gross carelessness or evasion will automatically be imposed. It means that Inland Revenue will consider whether or not those standards have been breached.

(2) Taxpayers who have in house tax professionals

A corporate taxpayer employs tax professionals to make decisions upon the tax treatment of its transactions. The tax employees, also, prepare all of the taxpayer's tax returns. The taxpayer takes a tax position that results in a tax shortfall that is based on a tax law and exceeds the threshold for consideration of a penalty for taking an unacceptable interpretation.

In this case, Inland Revenue will take the view that the tax employees will have interpreted the law with respect to the tax positions taken, and the unacceptable interpretation standard applies. The exception would be if the Commissioner were satisfied that the tax employees did not make an interpretation, in which case, the unacceptable interpretation standard will not apply.

However, the taxpayer may have breached the reasonable care, gross carelessness or evasion standard and this would be considered.

(3) Taxpayer seeks advice from an advisor

A taxpayer is unsure of the tax position to take regarding a transaction. The taxpayer seeks the advice of a tax advisor, and that advisor puts his/her mind to the issue and makes an interpretation. In this case, the unacceptable interpretation penalty can be imposed.

This same result would occur if the taxpayer engaged a tax advisor to prepare his/her tax returns. Inland Revenue has the expectation that during preparation of the return, the tax advisor has applied his/her mind to the tax laws and exercised judgment when deciding to take the various tax positions in that return.

The exception would be if the Commissioner were satisfied that the tax advisor did not make an interpretation, in which case, the unacceptable interpretation standard will not apply. To be satisfied that a tax agent did not make an interpretation or exercise judgment, Inland Revenue staff will be making inquiries with respect to the tax treatment of transactions in returns prepared by the advisor.

In this case, if the taxpayer has taken reasonable care with the advisor, the taxpayer will have taken reasonable care.

Tony Bouzaid

National Manager, Operations Policy

Examples

Business taxpayer – deduction claimed for capital item

A business taxpayer employs an office person to complete its tax returns. The office person has a knowledge of the tax laws with respect to deductible expenditure.

During an audit of the company's 1998 income tax return, it is ascertained that a large item of plant that was purchased during the return period was claimed as deductible expenditure. The expenditure is disallowed and a tax shortfall results which is based upon the application of a tax law and exceeds the threshold for consideration of an unacceptable interpretation penalty.

The taxpayer contends that, when they took their tax position, they did not consider the tax laws with respect to the item purchased but that they just claimed the total amount of expenditure as noted in the ledger. They contend that the unacceptable interpretation penalty cannot apply, as they did not make an interpretation of the tax laws.

The company has good systems in place from which the tax returns are prepared. The particular purchase was coded to repairs and maintenance. At the time of preparing the tax return, the office person did not check to ensure that items of expenditure that are not deductible for tax purposes were not included. Also, as the total repairs and maintenance for this year was substantially larger than it was the previous year, the office person should have been put on notice that it may not be correct.

The taxpayer did not put its mind to the tax laws relevant to the claim – they did not make an interpretation. Therefore, the unacceptable interpretation standard will not apply.

However, a taxpayer in that category of taxpayer would be aware that they should have reviewed their accounts with respect to expenditure to ensure that capital expenditure was not included in the claim for deductible expenditure. The company did not do this and is considered to have not taken reasonable care.

Accordingly, the 20% penalty for not taking reasonable care would be imposed.

New business taxpayer with professional advisor – GST input claimed early

A taxpayer has purchased a franchise to undertake garden maintenance and landscaping. The taxpayer is new to this type of business and is not familiar with the tax laws relating to self-employed people. The taxpayer also registers for GST.

The taxpayer engages the services of a tax advisor to provide tax law advice for both income tax and GST and also to prepare the income tax returns.

During a GST return period, the taxpayer purchased a section that is intended for use in the taxable activity. The taxpayer was told that a tax invoice would be made available soon, as the property was being purchased from a GST registered person. During the return period, the deposit had been paid and the contract became unconditional.

All of the relevant information was provided to the tax advisor. The advisor told the taxpayer to make the claim for the GST input credit for the entire purchase price of the section in the GST return. The tax advisor told the taxpayer that a tax invoice needed to be held but as it was to be made available shortly, the input claim could be made.

After the GST return is furnished, the taxpayer becomes aware that the vendor of the property is not GST registered. Therefore, the taxpayer has purchased a second hand good from an unregistered person.

The GST return is audited and the GST input claim relating to the unpaid portion of the property is disallowed. The tax shortfall is based upon the application of a tax law and exceeded the threshold for requiring an acceptable interpretation.

Even though the taxpayer had not put his mind to the provisions of the law when taking his tax position, he had put his affairs in the hands of an advisor. The test is objective, so the efforts of the taxpayer are not taken into consideration.

The tax advisor asserts that the tax laws were not interpreted when the claim for the entire GST input credit was made. However, it is clear from the conversation with the taxpayer that the tax advisor had put his/her mind to the tax laws. The tax advisor was aware that the tax invoice was required when the advice was given. Therefore, the tax advisor had turned his/her mind to the tax laws.

The tax advisor, for the taxpayer, had clearly taken an unacceptable interpretation of the law. Accordingly, the 20% penalty for unacceptable interpretation would apply.

Business taxpayer with tax advisor

The taxpayer is a property developer. He has been in business for a number of years and purchases houses and sections for development. He considers that the proceeds of one particular property that he has purchased and developed is not taxable as he and his family have lived in the property for a short period of time prior to sale.

The taxpayer consults the advisor who advises, after reviewing the tax laws, that sale of the property is covered by the exemption in section CD1(3) of the Income Tax Act 1994 and, therefore, not taxable.

Inland Revenue considers that, as there has been a pattern of buying houses and living in them while renovating them prior to sale, that sale of the particular property is part of the taxpayer's gross income.

A tax shortfall is ascertained which exceeds the threshold for requiring an unacceptable interpretation, is based upon the tax law and is a tax position which, viewed objectively, is not about as likely as not to be correct. In this case, the tax advisor has turned his/her mind to the tax laws.

Accordingly, the 20% shortfall for taking an unacceptable interpretation penalty is imposed.

No apportionment of GST input claim for assets not used in taxable activity

A taxpayer registers for GST and purchases a farm that will be used in the taxable activity. Upon completing the first GST return, the taxpayer claims 1/9 of the total purchase price of the property. No apportionment is made for the fact that part of the property will not be used in the taxable activity.

The return is audited and the portion of the GST input claim relating to non-taxable supplies is disallowed. The tax shortfall is based upon the application of a tax law and is over the threshold requiring the taxpayer to have an acceptable interpretation.

When questioned, the taxpayer advises that they did not know that they could not claim a GST input credit for the portion of the property that did not relate to the taxable activity. The taxpayer claims that they did not interpret the law and did not consider it at all.

As the taxpayer did not interpret the law, the unacceptable interpretation penalty does not apply.

When completing the first GST return, a reasonable person in the taxpayer's circumstances would have inquired about which GST input credits could be claimed. A reasonable person would be expected read Inland Revenue's GST guide or consult a tax advisor. By not doing this, it is considered that the taxpayer did not take reasonable care. Accordingly, a 20% penalty for not taking reasonable care would apply.

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 SUPPLY OF SERVICES MADE BY PARTNERSHIP BUSINESS WITH CONTRACTORS AS SUBCONTRACTORS OF BUSINESS, OR DIRECTLY AS INDEPENDENT CONTRACTORS

Case: TRA Numbers 4/99 & 13/99. Decision Number 024/99

Decision date: 1 November 1999

Act: Goods and Services Tax Act 1985

Keywords: *GST liability, taxable supplies, "independent contractors", whether supply made by partnership business with contractors as subcontractors, or directly by contractors, sex industry.*

Summary

Judge Barber found on the evidence and on the balance of probabilities for the Disputant Partnership.

Facts

The Disputant Partnership operated a massage parlour, which also provided a range of advertised sexual services. The partners returned GST on both the value of their own supplies as women servicing customers and on a portion of the supplies made by the other women who operated from the parlour.

The Commissioner contended that all supplies made at the parlour were those of the parlour itself and that the other women making the supplies were sub-contractors to the Disputant partnership. The Disputants contended that the other women were independent contractors and the only supplies the parlour made in their respect were the facility and the licence.

Decision

His Honour Judge Barber described the present situation as 'borderline' and reduced the question at issue to whether the other women were integrated into the business of the partnership. The Judge relied on the oral testimony of the Disputant's witnesses as to the nature of the business's operations.

His Honour held that, on the balance of probabilities, the Disputant partners were in the business of providing sexual services to client on their own behalf, and of providing a licence structure and venue facilities to other women working at the parlour as independent contractors. In so holding he applied a 'business integration' test, more commonly used when determining whether a person is an employee or a contractor.

His Honour accepted that the Disputant partnership had successfully established an overall 'branding' and reputation for the parlour as a whole, but that this did not mean that the supplies were made by the parlour itself:

> "I do not think the reality of the Disputant's operation is that it is their establishment which advertises, arranges, and supplies the all inclusive sexual services contained in the menu. The Disputant partnership is in the business of operating the massage parlour only to the extent that premises and amenities are needed. The actual performance of customer services are obtained by each customer direct from a particular lady and not from the disputant partnership, which is not sub-contracting to the masseuse the service which the customer requires performed. That is a matter between the lady and the customer and is not between the Disputant and the customer."

Comments

As this judgment shows, decisions on this aspect of the GST legislation and especially relating to this type of industry are likely to be determined on a case-by-case basis.

WHETHER ASSESSMENT BY COMMISSIONER MADE WITH "IMPROPER PURPOSE"; WHETHER LEGITIMATE EXPECTATION AFFECTS THE COMMISSIONER'S ABILITY TO MAKE AN ASSESSMENT OF LIABILITY

Case: Commissioner of Inland Revenue v New Zealand Wool Board

Decision date: 2 November 1999

Act: Judicature Amendment Act 1972

Keywords: *Legitimate expectation, improper purpose*

Summary

The Commissioner's appeal was allowed and the judicial review proceedings were dismissed.

Facts

On 17 November 1988 the New Zealand Wool Board invested $100m in redeemable preference shares ("RPS") in Capital Markets Finance Limited ("CMFL") and thereafter treated the dividends as exempt income under s63 of the Income Tax Act 1976. On 29 March 1995, two days before the time bar expired for reassessing the Board for the income year ended 31 March 1990, the Commissioner of Inland Revenue made an amended assessment. The assessment included the dividends received during that year amounting to $11.75m as assessable income of the Board on the basis that the redeemable preference share investment was part of a wider arrangement attracting the anti-avoidance provisions of s99. The Board instituted judicial review proceedings challenging the validity of the assessment and subsequently also objected to the assessment under the objection provisions of the legislation. The case stated in respect of the objection has been deferred pending resolution of the judicial review proceedings.

On 9 March 1999 in a judgment reported at (1999) 19 NZTC 15,082, Durie J upheld the judicial review challenge on three grounds and made a declaration that the assessment was invalid. The three grounds were:

(1) That the pre-assessment enquiry was inadequate and the Commissioner did not make an honest judgment in the administrative law sense when reassessing the Board;

(2) That the Board had a legitimate expectation that the Commissioner would consult with it before issuing the assessment and the Commissioner's breach constituted an abuse of power; and

(3) That the reassessment was motivated by the improper purpose of counteracting criticism of the Inland Revenue Department in Parliament and the Winebox Inquiry.

A second amended statement of claim is dated 8 November 1996. It avers that the Board invested $100m in RPS in CMFL pursuant to a proposal put to the Board by Fay Richwhite and Company Limited; that the Board had no knowledge of what Capital Markets proposed to do or in fact did with the $100m invested in RPS; and that in reliance on s63 it treated the dividends paid to it on the RPS as exempt from income tax. The statement of claim went on to refer to, and rely on, two dealings between the Board and the Commissioner.

The first was that on or about 31 March 1994, following an investigation by the Commissioner of the Board's tax affairs including the Board's RPS investment, the Board and the Commissioner concluded a settlement of all tax issues that had been raised on behalf of the Commissioner in respect of the years concerned which were the subject of an amended assessment for the 1989 year and amended notices of loss adjustment for the 1990, 1991 and 1992 income years. In particular the Board averred that the Commissioner had not challenged and must be taken to have accepted, the tax exempt status of the RPS dividend income.

The second was that in a telephone conference with Mr O'Grady of the Board, Mr Nash, the senior departmental officer concerned, explained that he had to look into the

transaction again because of reference to it in the Winebox papers; that no reference was made by Mr Nash to any further tax liability for the Board; that by letter of 8 September 1994 Mr Nash sought specific information in respect of the RPS investment; and that on 30 September 1994 the Board replied, providing those of the items asked for that could then be located.

The statement of claim avers that there was no contact after the latter exchanges until Mr Nash wrote to the Board on 28 March 1995 foreshadowing the amended assessment and providing a copy of a position paper for which Mr Nash was responsible, dated 27 March 1995. The paper addressed in his view on behalf of the Commissioner, what had been done by way of the MCN transactions in each case, with the moneys invested in RPS of which the Board's RPS investment was one.

Decision

The statement of claim went on to plead that the Commissioner's action, in purporting to reassess the Board by the notice of 29 March 1995, was invalid in one or more of the four stated grounds. One ground, B. Bad Faith was abandoned at the beginning of the hearing in the High Court. The other three were A. Use of the power to assess motivated by improper purpose; C. Purported assessment arbitrary or tentative, or purely to avoid time bar or provisional; D. Inadequate research in the absence of inquiry of the taxpayer, and/or failure to afford an opportunity to comment.

The Court of Appeal held that the statute requires a genuine attempt to ascertain the assessable income of the taxpayer. That obvious obligation cannot be elevated into a requirement that the Commissioner not assess unless and until fully informed of the taxpayer's affairs. The statute requires the exercise of judgment but it does not set a high threshold as to the material on which that judgment is based. The Commissioner must do the best he or she can on the information in his or her possession and so, as it is put in the *Canterbury Frozen Meat Co Limited* case, it is only where the Commissioner acts arbitrarily – without any foundation for the assessment – or in disregard of the law or facts known to the Commissioner, that the purported assessment will be set aside on that ground.

The Court of Appeal noted that in his judgment Durie J tended to draw inferences from documents rather than to focus on the affidavit of Mr Nash. But it was Mr Nash as delegate for the Commissioner who made the purported assessments. The question is whether in doing so he exercised an honest judgment on the information then in his possession. The Court held that there was no basis for disregarding his statement on oath in that regard. He acted on legal advice. He recorded factual matters as he believed them to be. It cannot reasonably be said that when he came to assess on 29 March, Mr Nash had insufficient information on which to make an honest judgment on tax liability, and that he acted arbitrarily or in disregard of the law or facts known to him.

With regard to legitimate expectation the Court held that legitimate expectation cannot frustrate an honest appraisal by the Commissioner of the income tax liability of the taxpayer by means of an assessment of that liability. Faced with the time bar, if the Commissioner concludes that there is a proper basis for making an assessment the Commissioner is required to make an assessment. In that regard there can be no justification for restraining the Commissioner from making an assessment in the discharge of the Commissioner's statutory duty before the time bar would otherwise apply or for quashing an assessment as so made.

With regard to improper purpose the Court of Appeal stated that Durie J held on the first ground of challenge the Commissioner had not exercised an honest judgment in purporting to reassess the Board. On that point, the Court of Appeal reached a contrary conclusion. That now constituted a finding that the reassessment was a genuine exercise by the Commissioner of his judgment quantifying the statutorily imposed liability of the Board to tax for the 1990 year. The spotlight of the Winebox Inquiry may have encouraged the Commissioner to give particular attention at that time to the RPS/MCN transactions and to put his best foot forward in discharging his statutory responsibility. He is not to be criticised for that. But, even if at the outset the Commissioner is influenced by extraneous factors in construing the taxpayer's position, he may nevertheless end by making a proper assessment – as s23(1) puts it, by altering or adding to an existing assessment "as he thinks necessary in order to ensure the correctness thereof". It is the Commissioner's judgment that counts. Given the finding that the assessment was an honest exercise by the Commissioner of his judgment as to the tax liability of the Board, there is simply no room for denying its validity.

JUSTICIABLE ISSUES REMAINING IN THE TEMPLATE CASES

Case: TRA Numbers 97/97, 97/96, 97/95, 97/101, 97,99, 97/100, 97/94, 97/98, 92/056, 92/055, 92/053, 92/054 & 92/052. Decision Number 022/99

Decision date: 22 October 1999

Act: Income Tax Act 1976

Keywords: *Tax avoidance, justiciable issues*

Summary

The Taxation Review Authority ruled on the justiciable issues remaining in the template cases.

Facts

This is a ruling by Judge Barber as a consequence of an Application from the Respondent for a ruling on the justiciable issues remaining with regard to the present objections. The Application was made on the basis that the issues are the corner stone of relevance and that the Taxation Review Authority cannot deal with the relevance of documents, nor evidence and cross examination of witnesses without being clear what justiciable issues remain in this case and what matters are no longer justiciable bearing in mind the findings of the Court of Appeal in *Miller v CIR* (1993) 18 NZTC 13,961 (CA).

Decision

Judge Barber agreed almost entirely with the submissions made by the Respondent on all issues and the main submission of issue estoppel. The TRA found that there was sufficient privity between the present proceedings and *Miller* for issue estoppel to apply. Judge Barber notes that the template arrangement (or facts) as set out in *Miller* does not seem to be any different to the template facts in the instant case.

The issues which Judge Barber considered should not be relitigated are as follows:

- Going where the money is
- Failure to follow practice statement
- Tentative or provisional assessments
- Concurrent assessments on Tracks A and B
- Additional tax
- The time bar or statute bar
- Failure to comply with natural justice
- The tax avoidance scheme
- The reconstruction.
- Consulting Fee

With regard to vendetta the TRA referred to the Court of Appeal's finding. With regard to the Respondent's submission

that if the objectors are parties to template arrangement and the Respondent concludes that the arrangement falls within section 99 and assesses under Track B, that without any more there can be no grounds for allegations of "improper purpose" or "unlawful purpose" as the Respondent is simply doing his job, the TRA concluded that from what had been heard to date in many template cases, that was the case. However Judge Barber noted that the Objector would be generally entitled to mount such an issue if it was covered by a formal objection notice and in terms of general relevance to the facts of a particular case.

With regard to the Objector's submission that relied on *New Zealand Wool Board v CIR* (1999) 19 NZTC 15,082 (HC), the TRA held that there was no reason to conclude that any reassessment enquiry of the Objectors was inadequate so as to constitute an abuse of power. Rather the assessments and reassessments in the cases were preceded by the most intensive enquiries and consideration by IRD's staff. There was no evidence at all which would suggest that the Commissioner had acted unfairly towards the Objectors.

With regard to issues that may be relevant Judge Barber noted matters such as apportionment with regard to the reconstruction and also the 5% consulting fee charged by the agent.

AFFIDAVIT NOT TO BE READ IN PART OR IN TOTAL

Case: TRA Numbers 97/97, 97/96, 97/95, 97/101, 97,99, 97/100, 97/94, 97/98, 92/056, 92/055, 92/053, 92/054 & 92/052. Decision Number 023/99

Decision date: 22 October 1999

Act: District Court Rules

Keywords: *Affidavit not to be read in part or in total*

Summary

Judge Barber held that an affidavit produced by the taxpayers' agent would not be read either in part or in total at the objection proceedings and was to be struck from the record.

Facts

Counsel for the Commissioner filed a Notice of Application that the Affidavit filed on behalf of the taxpayers not be read either in part or in total.

The grounds for that Application were that the affidavit contained inadmissible material, that it unnecessarily set forth argumentative matters; that parts of it were scandalous; and that it was intended to insult or annoy and/or was needlessly offensive in form.

Decision

Judge Barber agreed with the Respondent's submissions. The Respondent submitted that Rule 508 of the District Court Rules 1992 relates to the form and contents of affidavits. Rule 508(1)(d) requires that every affidavit be confined to such matters as would be admissible if given in evidence at the hearing by the Deponent and r.508(2)(a)(i) gives the Court the discretion to refuse to read an affidavit which unnecessarily sets forth any argumentative matter. Counsel also referred to s14 of the Evidence Act 1908 which requires the Court to forbid any question which the Court regards as indecent or scandalous. Counsel submitted that s14 must also apply to the form and content of affidavits because under r.508(1)(d) an affidavit is required to be confined to such matters as would be admissible if given in evidence at the hearing by the Deponent. Counsel for the Respondent further submitted that the entire affidavit was a collection of submissions on behalf of the objectors, which should be excluded from the record on that ground alone. It was submitted that the material referred to in the affidavit was generally irrelevant, dealt with other template cases, and certain particular paragraphs made scandalous allegations.

Judge Barber agreed with all these submissions. He held that many of the paragraphs in the affidavit were disgraceful and defamed not only Counsel but also senior officers of the IRD. Further the tone of a number of other paragraphs of the affidavit was intemperate and unacceptable in a judicial forum. On the whole he considered the affidavit was unnecessarily argumentative and scandalous in that some parts were injurious to reputation, constituted false imputation, was shocking and was defamatory. The content did not relate in any meaningful way to the facts in issue regarding the objections or to matters necessary to be known in order to determine whether or not the facts in issue existed.

QUESTIONS WE'VE BEEN ASKED

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

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

IS A PERSON WORKING OVERSEAS WHILE ON LEAVE OF ABSENCE FOR TWO YEARS RESIDENT FOR TAX PURPOSES?

Section OE 1(1) Income Tax Act 1994 - Determination of residence of a person other than a company

A New Zealand resident has asked whether he will be tax resident during his two-year absence working for an international organisation in the United States. The person will not resign from his New Zealand job, but will take leave of absence. He says that he will consider employment opportunities in the United States and Europe at the end of the two years, as well as the option of returning to his New Zealand job.

The person's family will travel with him, and their Wellington house will be rented out while they are away. The person may terminate the tenancy by giving 42-days' notice in accordance with the Residential Tenancies Act 1986. Personal property will be disposed of or taken with him to the United States. Electrical equipment (unable to be used in the United States) will be stored in Wellington. The only investment (other than the house) remaining in New Zealand will be his interest in the Government Superannuation Scheme, to which he will continue making contributions for one year.

If a person is tax resident, he or she is required to pay tax in New Zealand on all income received, both from New Zealand and overseas.

The relevant legislation is section OE 1. An individual will be resident for tax purposes if the following provisions apply:

(1) Notwithstanding any other provision of this section, a person, other than a company, is resident in New Zealand within the meaning of this Act if that person has a permanent place of abode in New Zealand, whether or not that person has a permanent place of abode outside New Zealand.

(2) Where a person other than a company is personally present in New Zealand for a period or periods exceeding in the aggregate 183 days in any period of 12 months, that person shall be deemed to be resident in New Zealand from the first day within that period of 12 months on which that person was personally present in New Zealand.

(3) Where a person other than a company is resident in New Zealand and is personally absent from New Zealand for a period or periods exceeding in aggregate 325 days in any period of 12 months, that person shall be deemed not to be resident in New Zealand from the first day within that period of 12 months on which that person was personally absent from New Zealand and, subject to this section, thereafter.

...

The person is not present in New Zealand for more than 183 days in 12 months, so he will not be resident under section OE 1(2) during his time overseas. Notwithstanding this, he will be resident if he has a permanent place of abode in New Zealand under section OE 1(1), because the permanent place of abode test applies regardless of anything else in section OE. For the same reason, a person will not be non-resident under section OE 1(3) if he or she has a permanent place of abode in New Zealand

The permanent place of abode test is a broad one. A person can have a permanent place of abode in New Zealand even though he or she might have a permanent place of abode in another country.

The test of whether someone has a permanent place of abode is a matter of weighing all the facts of a person's circumstances. The nature and quality of the person's connection with New Zealand is important. Cases that have discussed the permanent place of abode test are: *FC of T v Applegate* 79 ATC 4,307, *Case Q55* (1993) 15 NZTC 5,313, and *Case H97* (1986) 8 NZTC 664.

In the current situation, counting against a finding of a permanent place of abode are the circumstances of the person's absence; the period of his absence being of significant length, the fact that his family goes with him, and that they take most of their personal property.

On the other hand, the person has some strong associations with New Zealand throughout his absence. Most importantly, he has a job here ready for him to return to, and a house available for him and his family to live in. His intention is that he may come back to New Zealand at the end of his two-year contract. Some property is kept here.

Although the family's house is tenanted in their absence, it can still be seen as being available to family members to live in. In *Case Q55*, the Taxation Review Authority commented:

> a "permanent place of abode" does not require that a dwelling be always vacant and available for the person to live in; but that there is a dwelling in New Zealand which will be available to the taxpayer as a home when, and if, that taxpayer needs it, and that the taxpayer intends to retain that connection on a durable basis, with that locality.

In conclusion, the facts that the person has a job in New Zealand and that he has a home potentially available to him, support a finding that the person has ongoing associations with New Zealand during his absence of sufficient strength to constitute a permanent place of abode, despite his two-year absence.

This means that the person is potentially subject to tax in New Zealand on his world-wide income. Whether or not he will be subject to tax in New Zealand will depend upon the operation of the New Zealand/United States of America double tax agreement. When a person is potentially subject to tax in two countries, a double tax agreement has rules for determining which country has the right to tax the person's income.

At the end of his contract with the overseas organisation, the person and his family may decide to stay overseas for an extended period. In that situation, he would no longer have sufficient ties with New Zealand to constitute a permanent place of abode in New Zealand.

If the person's leave of absence were for a period of three years, and the other facts were the same, the conclusion would probably be that he would not have a permanent place of abode in New Zealand. It should be noted, however, that an absence of three years will not, on its own, be determinative. The facts of each situation must be weighed up. In another situation, a person may have a permanent place of abode here, even though working overseas for three years, because of the existence of other ties with New Zealand throughout the period of absence.

In a recent case, *Case U17* (1999) 19 NZTC 9,174, it was held that a person who formerly lived in New Zealand did not have a permanent place of abode in New Zealand while he was overseas. This case is distinguishable from the facts in this item. The person was away from New Zealand for four years, and did not have employment in New Zealand available to him during that time (although he did have a business interest in New Zealand). He had separated from his wife and his old home was not available to him.

Observations on some relevant factors

Employment arrangements

The type of connection a person has with a New Zealand employer is a relevant factor in determining whether the person has a permanent place of abode in New Zealand. In the situation discussed in this item, the person's leave of absence arrangement represents a connection with New Zealand and a desire to retain connections.

Had the person instead been on secondment from a New Zealand job, that would indicate more strongly a connection with a New Zealand employer. A person on leave of absence may have some of the same connections, but not to the same degree.

If he had been on sabbatical leave and paid by a New Zealand employer during his absence, he would have a definite connection with New Zealand (see for example *Case F138* (1984) 6 NZTC 60,237 and *Case Q55* (1993) 15 NZTC 5,313).

If he had given up his job in New Zealand, that would indicate a lack of connection with New Zealand in that respect, but other factors would also need to be considered. For example, in *Case F139* (1984) 6 NZTC 60,245 a person returned to New Zealand to work for a previous employer. The Taxation Review Authority found the objector's loyalty to his employer a relevant factor in assessing the degree of the person's ties with New Zealand.

Another relevant factor relating to employment is whether an overseas position is for a fixed period, and if it is, the length of that period. A short-term overseas contract can indicate an intention to return to New Zealand, and therefore, that the person has an enduring relationship with New Zealand for the period of the contract.

Tenancy arrangements

The terms of a tenancy, particularly in relation to termination, may be relevant. A tenancy may be structured in a variety of ways: e.g. of fixed term set to expire on the owner's return (see *Case Q55*), or terminable on a period of notice (*Case F138*). A person may exchange the use of his or her house, fully furnished, with a person in another country for a set period (*Case J98* (1987) 9 NZTC 1,555), or allow friends to use the house rent free (*Case J41*(1987) 9 NZTC 1,240).

In this particular situation, the tenancy of the person's New Zealand house is terminable on giving due notice. If instead the tenancy were for a fixed term, that would suggest more strongly an enduring tie with the house. A fixed-term tenancy is consistent with an intention of the owner to live in the house at the end of the term, especially if other factors, such as temporary employment overseas, also point that way.

Of course, on its own, a fixed-term tenancy does not necessarily indicate a tie with New Zealand: it could also be consistent with someone who stays overseas for a long period. The significance of a fixed-term tenancy will be shown by the other circumstances applying to the particular person. Examples of further evidence of ties with the home are whether the house is rented out fully furnished, whether the person keeps the same telephone number (as in *Case Q55*), if the tenants are known to the person (*Case J41*), and whether the person lives in the house on returning (*Case Q55*, *Case F138,* and *Case J98*).

The relevance of these factors is not so much the apparent intention to return to New Zealand, but the indication that during the period of absence the person has retained ties with New Zealand.

The length of a fixed-term tenancy can also be a relevant factor. If it is for about a year (as in *Case F138* and *Case Q55*) or for a lesser period, that is a persuasive factor indicating a continuing tie with the house whilst overseas and retaining a permanent place of abode in New Zealand. A fixed term of two years could also be consistent with an enduring relationship with New Zealand. After three years, although there is no case law on the point, it may be that a fixed-term tenancy is not a particularly revealing factor. Again, it must be stressed that all the factors must be considered together. A three-year, fixed-term tenancy, will not on its own be determinative.

The absence of a fixed-term tenancy, does not necessarily point to a person not having a permanent place of abode in New Zealand. The owner can return to live in the house after giving due notice. So, even with a tenancy that is terminable by notice, as in the facts described in this item, the fact that the house is tenanted and not sold can indicate a tie with New Zealand. The same types of factors relevant to considering the importance of a fixed-term tenancy are relevant to a tenancy terminable by notice, e.g. the period of the tenancy, whether the house is rented furnished or the owners sell or store the furniture, if they know their tenants, if they live there on their return, etc.

In some situations, the nature of overseas accommodation might reflect on a person's intention regarding a house in New Zealand. Temporary overseas accommodation may indicate a continuing relationship with New Zealand.

Superannuation

Membership of the Government Superannuation Scheme might be seen as an investment that continues in New Zealand. However, the nature of a superannuation investment means that it cannot be viewed in the same way as other types of financial investments. A superannuation scheme is designed to give financial benefits when a person retires from the workforce. Usually, schemes are so designed that it is not a sensible economic decision to withdraw early. Continuing membership of a superannuation scheme may be consistent with a person returning to New Zealand at some distant point, and may not indicate significant ties with New Zealand during absence.

It is important to stress that no one factor should be viewed as more significant than any other. All of the facts should be viewed in context.

Additional information

More information on this topic can be found in the Commissioner's statements on residence in PIB 180 (June 1989) and TIB Vol.7, No.1 of July 1995.

REGULAR FEATURES

DUE DATES REMINDER

December 1999

6 Employer monthly schedule: **large employers** ($100,000 or more PAYE and SSCWT deductions per annum

- IR 348 *Employer monthly schedule* due

Employer deductions: **large employers** ($100,000 or more PAYE and SSCWT deductions per annum)

- IR 345 or IR 346 *Employer deductions* form and payment due

20 Employer deductions: **large employers** ($100,000 or more PAYE and SSCWT deductions per annum)

- IR 345 or IR 346 *Employer deductions* form and payment due

Employer deductions and Employer monthly schedule: **small employers** (less than $100,000 PAYE and SSCWT deductions per annum)

- IR 345 or IR 346 *Employer deductions* form and payment due
- IR 348 *Employer monthly schedule* due

RWT for those who deduct $500 or more each month due for the month of November 1999

January 2000

17 Employer monthly schedule: **large employers** ($100,000 or more PAYE and SSCWT deductions per annum)

- IR 348 *Employer monthly schedule* due

Employer deductions: **large employers** ($100,000 or more PAYE and SSCWT deductions per annum)

- IR 345 or IR 346 *Employer deductions* form and payment due

GST return and payment due for period ending 30 November 1999

20 Employer deductions: **large employers** ($100,000 or more PAYE and SSCWT deductions per annum)

- IR 345 or IR 346 *Employer deductions* form and payment due

Employer deductions and Employer monthly schedule: **small employers** (less than $100,000 PAYE and SSCWT deductions per annum)

- IR 345 or IR 346 *Employer deductions* form and payment due
- IR 348 *Employer monthly schedule* due

FBT return and payment due

RWT for those who deduct $500 or more each month due for the month of December 1999

31 GST return and payment due for period ending 31 December 1999

YOUR CHANCE TO COMMENT ON DRAFT TAXATION ITEMS BEFORE THEY ARE FINALISED

This page shows the draft public binding rulings, interpretation statements, standard practice statements, and other items 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 ____

____

	Interpretation statements	***Comment Deadline***
☐	WD1821: Matrimonial property agreements – GST implications: Withdrawal notice	31 January 2000

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