TAX INFORMATION BULLETIN

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Contents

This TIB has no appendix.

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Inland Revenue
Te Tari Taake

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Where to find us

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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 email 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 items/draft items are available for review/comment this month, having a deadline of 31 May 2000. Please see page 33 for details on how to obtain a copy:

Ref.	Type	Description
IP3168	Issues paper. The presentation of this subject matter in the form of an issues paper indicates that Inland Revenue: regards the matter as not being clear-cut, is keen for the subject to be discussed/debated, has not formed a concluded view, wishes to have the benefit of different technical views.	**The public benefit test.** This paper discusses the common law requirement that to be charitable an entity, such as a trust, must be for the benefit of the community or an appreciable section of it. That requirement is known as the public benefit test. Usually, it is necessary for an entity to satisfy the test before it can take advantage of the tax exemption available to charities under section CB4 (1)(c) and (e) of the Income Tax Act 1994.
IS3427	Draft interpretation statement	**Treaty of Waitangi settlements – GST treatment.** This draft interpretation statement sets out Inland Revenue's interpretation of how the Goods and Services Tax Act 1985 applies to settlements made between the Crown and Maori people for breaches of the Treaty of Waitangi by the Crown.
ED 0014	Draft standard practice statement	**Offsetting and transferring refunds.** This draft standard practice statement states the Commissioner's practice on the way Inland Revenue offsets and transfers refunds to accounts, whether they be to another period within the same revenue, to another revenue, or to another taxpayer.

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 "*Guide to Binding Rulings*" IR715 or the article on page 1 of *TIB* Volume Six, No.12 (May 1995) or Volume Seven, No.2 (August 1995). You can order these publications free of charge by:

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

COMMISSIONS RECEIVED BY LIFE AGENTS ON OWN POLICIES AND FAMILY POLICIES – INCOME TAX IMPLICATIONS

PUBLIC RULING - BR Pub 00/01

Note (not part of ruling): The issue dealt with by this ruling was covered in public ruling BR Pub 96/9A, published in TIB Volume Eight, No.8, (November 1996). BR Pub 96/9A also dealt with the fringe benefit implications arising from discounted life insurance premiums. These arrangements are now the subject of two separate rulings, with the fringe benefit issue being covered in BR Pub 00/02. A single commentary accompanies both rulings. In addition to the separation of the arrangements into two rulings, some formatting changes have also been made. The period of application of the rulings is from 1 January 2000 to 31 December 2004. BR Pub 96/9A applied up until 31 December 1999.

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

Taxation Laws

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

This Ruling applies in respect of sections CD 3 and CH 3.

The Arrangement to which this Ruling applies

The Arrangement is as follows:

- The receipt by a life agent of cash commissions on the life agent's own life policy or family life policy, or the set off of commissions on such policies against premiums payable on the life agent's own life policy or family life policy.

How the Taxation Laws apply to the Arrangement

The Taxation Laws apply to the Arrangement as follows:

- Cash commissions received by a life agent on the life agent's own life policy or a family life policy are gross income under section CD 3 (if the life agent is an independent contractor) and section CH 3 (if the life agent is an employee). When a life agent sets off commissions on such policies against premiums payable on these policies, the amount of commission set off is gross income under section CD 3 or CH 3.

The period for which this Ruling applies

This Ruling will apply for the period from 1 January 2000 to 31 December 2004 to the receipt of cash commissions and the set off of commissions, occurring within that period.

This Ruling is signed by me on the 29th day of March 2000.

Martin Smith

General Manager (Adjudication & Rulings)

DISCOUNTS ENJOYED BY LIFE AGENTS AND THEIR FAMILIES ON LIFE POLICY PREMIUMS – FRINGE BENEFIT TAX IMPLICATIONS

PUBLIC RULING - BR Pub 00/02

Note (not part of ruling): The issue dealt with by this ruling was covered in public ruling BR Pub 96/9A, published in *TIB* Volume Eight, No.8, (November 1996). BR Pub 96/9A also dealt with the taxation of commissions received by life agent on their own policies and on family policies. These arrangements are now the subject of two separate rulings, with the taxation of commissions issue being covered in BR Pub 00/01. A single commentary accompanies both rulings. In addition to the separation of the arrangements into two rulings, some formatting changes have also been made. The period of application of the rulings is from 1 January 2000 to 31 December 2004. BR Pub 96/9A applied up until 31 December 1999.

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

Taxation Law

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

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

The Arrangement to which this Ruling applies

The Arrangement is as follows:

- The enjoyment of discounted premiums by a life agent on a policy on the life agent's own life or that of a family member or the enjoyment of discounted premiums by members of the life agent's family on a family life policy.

How the Taxation Law applies to the Arrangement

The Taxation Law applies to the Arrangement as follows:

- When a life agent enjoys discounted premiums on a policy on the life agent's own life or that of a family member, or persons associated with the life agent receive discounted premiums on family life policies, the discounted premium will be a fringe benefit under section CI 1(h). The life insurer will be liable for fringe benefit tax (FBT) on the taxable value of the benefit.

The period for which this Ruling applies

This Ruling will apply for the period from 1 January 2000 to 31 December 2004 to the enjoyment of discounts by a life agent or by members of the life agent's family, occurring within that period.

This Ruling is signed by me on the 29th day of March 2000.

Martin Smith

General Manager (Adjudication & Rulings)

COMMENTARY ON PUBLIC RULINGS BR PUB 00/01 AND BR PUB 00/02

This commentary is not a legally binding statement, but is intended to provide assistance in understanding and applying the conclusions reached in Public Rulings BR Pub 00/01 and BR Pub 00/02.

The subject matter covered in these Rulings was previously dealt with by BR Pub 96/9A and in *TIB* Volume Eight, No.8, (November 1996), at page 6. These Rulings apply for the period from 1 January 2000 to 31 December 2004.

Background

Public Ruling BR Pub 96/9A dealt with the income tax and fringe benefit consequences of life agents who take out life policies on their own lives and on the lives of their families. The period of application for that Ruling expired on 31 December 1999.

In short the Ruling concluded that:

1. Cash commissions received by a life agent on the life agent's own life policy or on a family life policy are gross income;

2. Discounted premiums enjoyed by a life agent or by family members on policies on their respective lives are fringe benefits.

The Commissioner has reconsidered his conclusions reached in BR Pub 96/9A and is satisfied that these conclusions are correct. However, instead of reissuing the ruling, he has decided that it is legally appropriate to issue two rulings to cover the two arrangements, ie the receipt of commissions and the enjoyment of discounted premiums. These rulings will apply for the period from 1 January 2000 to 31 December 2004.

Legislation

Section CD 3 states:

> The gross income of any person includes any amount derived from any business.

Section CH 3 states:

> All monetary remuneration derived by a person is gross income.

Section OB 1 defines "employer" and "employee" for the purposes of the FBT rules.

"Employee" means:

> ...a person who will receive, receives, or has at any time received, or who will be, is, or has at any time been entitled to receive, a source deduction payment...

"Employer" means:

> ...a person who will pay, pays, or has at any time paid, or who will be, is, or has at any time been liable to pay, a source deduction payment...

"Source deduction payment" is defined in section OB 2(1) as:

> ...a payment by way of salary or wages, an extra emolument,... or a withholding payment.

Section CI 1 defines "fringe benefit". Under section CI 1(h), a fringe benefit includes any benefit that consists of:

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

Section CI 3 provides the methods for calculating the value of a fringe benefit. When services are provided to an employee, and the services are provided as part of the employer's business, the fringe benefit is valued in accordance with section CI 3(10)(a):

> Where the services were provided by the employer of the employee where the employer of the employee, as part of that employer's business, normally provides such services for payment, the price for which, at the time when the services were so provided to the employee, services identical or similar to those services were customarily provided by the employer of the employee to a member of the general public in the open market in New Zealand on ordinary trade terms between buyers and sellers independent of each other:

Section GC 15(1) states:

> For the purposes of the FBT rules, where any benefit which, if it were provided for or granted to an employee would be a fringe benefit, is provided or granted by the employer of the employee,...for or to a person other than the employee of the employer, the employee of the employer and the other person being associated persons, that benefit shall be deemed to be a benefit provided for or granted to the employee by the employer of the employee.

For the purposes of section GC 15 "associated person" is defined in section OD 7(1). That section states:

> For the purposes of this Act, unless the context otherwise requires, at any time associated persons or persons associated with each other are-
>
> ...
>
> (c) Two persons who are at the time relatives;...

"Relative" is defined in section OB 1:

> (a) Except in the international tax rules, in relation to any person, means any other person connected with the first-mentioned person by blood relationship, marriage, or adoption; and includes a trustee of a trust under which a relative has benefited or is eligible to benefit; and for the purposes of this paragraph-
>
> (i) Persons are connected by blood relationship if within the fourth degree of relationship:
>
> (ii) Persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other:
>
> (iii) Persons are connected by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other:

Application of the Legislation

1. Cash commissions received by life agents on their own policies or family policies

"Income" is not a term of art and has to be examined in accordance with ordinary concepts and usages (*Scott v C of T* (1935) 35 SRNSW 215 at page 219). The courts have identified several criteria that are considered to be the hallmarks of receipts of an income nature. The High Court in *Reid v CIR* (1983) 6 NZTC 61,624 at page 61,629 described the criteria as follows:

- Income is something which comes in; and
- Income imports the notion of periodicity, re-occurrence and regularity; and
- Whether a particular receipt is income depends upon its quality in the hands of the recipient.

An important feature of income is that it is something that comes in. This was emphasised in *Lambe v IR Commrs* (1933) 18 T.C. 212 where Finlay J said at page 217:

> Of course income may be of various sorts,...but none the less the [income] tax is a tax on income. It is a tax on what in one form or another goes into a man's pocket. That is the general principle.

Cash commissions received by life agents on own policies or family policies come in, in the same way that commissions from the sale of policies to unrelated third parties come in.

The major determinant in many cases is the periodic nature of the payment. Generally, commission income is periodic in nature. However, this in itself is not enough. It is necessary to consider the relationship between the life insurer and the life agent to determine the quality of the commission in the hands of the life agent.

Alternative arguments

One possible argument is that commissions received by life agents on their own policies are not income but are the proceeds from mutual transactions.

Mutual transactions

The general principle of income tax known as mutuality starts from the premise that a person cannot make a profit from trading with himself or herself, or with a body or association of persons of which the person is a member. In *Sydney Water Board Employees' Credit Union Ltd v FC of T* (1973) ATC 4,129 Barwick J said:

> The description "mutuality principle" is used, unfortunately as I think, to express the reason for the conclusion that the return to a taxpayer of a share of the surplus of a fund to which he has contributed in common with others after its use for a purpose agreed between them is not income... **What distinguishes the amount refunded in such circumstances from profit or income is that the payment is made out of moneys which are in substance the moneys of the contributors**. (At page 4,131.)(emphasis added).

Prima facie the profits from mutual transactions are not gross income.

There are numerous cases discussing the mutuality principle. Most discuss the situation where a person trades with a body or association of persons of which he or she is a member. There was some discussion of the principle that a person cannot trade with himself or herself in *Dublin Corporation v M'Adam* 2 T.C. 387 at page 397. The Court stated that:

> There must be, at least, two parties...If these two parties are identical, in my opinion there can be no trading. No man, in my opinion, can trade with himself; he cannot, in my opinion, make, in what is its true sense or meaning, taxable profit by dealing with himself; and in every case of this description it appears to be a question on the construction of the Act whether the two bodies - the body that supplies and the body or class that has to pay - were either identical, or, upon the true construction of the Act, must be admitted to have been held by the Legislature to be identical...

Does the mutuality principle apply?

Although the life agent is the person who *causes* the commission to be paid by taking up the policy on that person's life or the lives of the person's family, the commission is not a return of the life agent's own money. The commission comes from a source outside of the life agent, ie from the funds of the life insurer. The life agent is paid the commission for introducing business to the life insurer, not for taking out the policy and paying the premiums.

Case law indicates that the mutuality principle only applies when a person trades with himself or herself, ie there is only one party to the transaction giving rise to the income. Here there are two parties to the transaction. The commission arises from the sale of a life insurance product by one party (the life insurer) to another party (the life agent). It does not matter that

the life insurance product is sold by the life insurer through the life agent. There are still two parties to the transaction.

Mutuality principle – conclusion

The mutuality principle does not apply to commissions received by life agents on their own policies.

Discount on premiums

It may also be argued that cash commissions received by life agents on own policies should be regarded as discounts from the premiums payable under the policy and not as gross income. For example, a life agent takes out a policy on her life. The premium is $1,000. The life agent receives a cash commission of $200. The $200 can be seen as a discount, ie the 'real' cost of the policy is $800.

As discussed in the background to the Rulings, this was the view taken in *Commissions on Life Insurance sold to Agent's Family* in *TIB* Volume Four, No.10 (May 1993).

The treatment of cash commissions as reductions or discounts from the premiums payable under the policies is not supported by the legislation.

The commission payment arises from an arrangement between the life agent and the life insurer. The life agent receives the commission for introducing business to the life insurer, not for taking out the policy and paying the premiums.

Conclusion

Cash commissions received by life agents on own policies or family policies are gross income under section CD 3 or CH 3.

2. Life agents' commission is set off

Life agents may set off commissions on own policies or family policies against the premiums payable on their own policies.

Under section EB 1(1), an amount is deemed to have been derived by a person although it has not actually been paid to, or received by the person, or already become due or receivable, if that amount:

> ...has been credited in account, or reinvested, or accumulated, or capitalised, or carried to any reserve, sinking, or insurance fund, or otherwise dealt with in the person's interest or on the person's behalf.

Case law has established that income is derived under section EB 1 when the taxpayer does not receive a payment of that income, but some other monetary benefit moves to the taxpayer. This has been found to occur when income that would otherwise have been paid to the taxpayer is diverted for uses that are of benefit to the taxpayer (*Dunn v C of IR* (1974) 1 NZTC 61,245).

When life agents set off the commission, the amount of commission is gross income under section CD 3 or CH 3. The commission (which would otherwise have been paid to the agent) is diverted for uses that produce other financial benefit to the life agent, ie payment of the premiums on own policies.

The practice of setting off commissions on policies may also occur in respect of policies sold to third parties. For example, a life agent sells a policy to an unrelated third party and becomes entitled to a commission. Instead of being paid the commission, the life agent sets the commission off against premiums payable on own policies. Here, the commission, although not paid to the life agent, is derived by the life agent and is therefore gross income.

3. Charging of discounted premiums to life agents on own policies or to members of life agents' families on family policies

It is common for life insurers to allow life agents to receive lower commissions in order to discount premiums to prospective clients. The Commissioner understands that if a life agent agrees that no commission entitlement will arise on the sale of a policy, there is a corresponding reduction in the premiums payable under that policy.

The Commissioner also understands that when life agents agree that no commission entitlement will arise on their own policies or on family policies, the premiums payable under those policies are reduced.

Life agents who agree that no commission entitlement will arise on policies sold to third parties are not assessable on any notional commission, ie the amount of commission that would have been received. As discussed, an important feature of income is that it is something that comes in. When a life agent agrees that no commission entitlement will arise no income comes in.

This must also be the case when life agents agree that no commission entitlement arises on their own policies or family policies. As the life agent receives no commission, no income arises.

Alternative arguments

An important feature of income is that it is something that comes in. When life agents agree that no commission entitlement will arise on their own policies no money comes in. They do not receive a cash commission. However, if a life agent decides to either take the commission, or agree that no entitlement will arise and receive a discounted premium on a policy on the agent's own life or that of his or her family, the issue of convertibility arises. In particular, does the fact that the life agent can receive the commission in

lieu of the discounted premium mean that the discounted premium is convertible into money, and therefore assessable?

Case law

The principle of convertibility was initially laid down in *Tennant v Smith* [1892] 3 T.C. 158. *Tennant* involved a bank employee who received a benefit in the form of rent-free accommodation. The issue was whether the accommodation was assessable under Schedule E of the UK legislation (by virtue of the words "salaries, fees, wages, perquisites or profits payable"). The Court held that the taxpayer would only be taxable if what he received was convertible into money, ie was money or money's worth. Because the taxpayer could not sublet the accommodation or turn it to pecuniary account in any other way, he was not taxed.

The principle of convertibility has been discussed and applied by the New Zealand courts on a number of occasions. See *C of IR v Parson (No. 2)* (1968) NZLR 574, *Stagg v Inland Revenue Commissioner* (1959) NZLR 1,252, and *Dawson v Commissioner of Inland Revenue* (1978) 3 NZTC 61,252.

The convertibility test is normally satisfied by demonstrating that the benefit may be sold or exchanged for money. (In *Stagg* the value of holiday airfares given to an employee was held not to be assessable income of the employee. The employee could not sell the fares or require the company to give him the equivalent cash value.)

However, it is clear from case law that there are other ways in which convertibility can be satisfied. See *Abbott v Philbin* [1961] 2 All E.R. 763 and *Heaton (Inspector of Taxes) v Bell* [1969] 2 All E.R. 70.

The principle of convertibility was considered by the New Zealand Supreme Court in *Dawson*. The taxpayer subscribed for debenture stock under a debenture holders' colour television plan. Under that plan a person could subscribe for debenture stock and would receive in return a TV free of hire for five years. No interest was payable on the debentures.

The Commissioner argued that the use of the TV set was the substitution of one form of a benefit for another, ie interest, and that in taking the hire of the set rather than the payment of interest, the taxpayer received a benefit which could be valued in terms of money.

McMullin J said at page 61,258:

> In the view which I take of this matter, it is of some importance to note that Objector did not apply for a television set as an alternative to an interest-bearing investment. It is true that it was open to him initially to choose to invest in interest-bearing stock as, I have no doubt, many other investors did, but he completed his application for a television set and a television set only.

The Court held that the benefit that the taxpayer received was that he did not have to pay rental for the TV. That benefit did not constitute income in the ordinary sense because the benefit received by the taxpayer was not in monetary form, nor was it capable of being sold, surrendered, assigned, or mortgaged for money or money's worth.

Arguably *Dawson* provides some support for the view that the receipt of a discounted premium is convertible into money or money's worth, the discounted premium being a substitution for the commission. It may be implied from the Court's comments in *Dawson* that if the taxpayer had the option of investing and receiving either a TV set or an interest-bearing investment, and in fact received a TV set, the benefit would be convertible into money.

However, the better view is that discounted premiums are not convertible into money or money's worth.

The fact that a life agent initially has the choice of receiving a commission, or not receiving a commission and enjoying a discounted premium, is not relevant. The issue of convertibility is considered at the time the taxpayer receives the benefit.

If a life agent chooses to receive a commission, no question of convertibility arises as the commission is money.

However, when a life agent chooses to receive a discounted premium, it is the discounted premium itself that must be convertible into money or money's worth. At the time the discounted premium is received it cannot be converted into money. Therefore, the convertibility principle does not apply.

Conclusion

When life agents receive discounted premiums on own policies or members of their families receive discounted premiums on family policies, the amount of the discount is not gross income of the life agent.

4. FBT and discounted policies

A life insurer who provides discounted premiums to life agents on policies on their own lives or on the lives of their families or to members of their families on family policies may be liable to FBT.

For the purposes of FBT a life agent is an "employee", regardless of whether the life agent is an employee or an independent contractor at common law.

Employee vs independent contractor

The terms "employee", "employer" and "employment" are defined for FBT purposes by reference to the PAYE system.

Section OB 1 defines "employee" for the purposes of the FBT rules as:

> ...a person who will receive, receives, or has at any time received, or who will be, is, or has at any time been entitled to receive, a source deduction payment...

Section OB 2(1) defines "source deduction payment" as:

> ...a payment by way of salary or wages, an extra emolument,... or a withholding payment.

"Withholding payment" is defined in section OB 1 as:

> ...a payment which is declared by regulations under this Act to be a withholding payment for the purposes of the PAYE rules:

Under section 4 of the Income Tax (Withholding Payments) Regulations 1979, all payments of the classes specified in the Schedule to the regulations are withholding payments for the purposes of the PAYE rules. Included in Part A of the Schedule are commissions or other remuneration to insurance agents or sub-agents, or to salesmen.

A life agent who is an employee at common law is an "employee" for the purposes of FBT because of receiving a source deduction payment, namely salary and wages. A life agent who is an independent contractor at common law is also an "employee" for the purposes of FBT because of receiving a source deduction payment, namely withholding payments.

Discounts on family policies

If an employer provides a benefit to an associated person of any of the employer's employees, ie a member of the life agent's immediate family (and the benefit would have been a fringe benefit if provided to an employee), section GC 15(1) deems the benefit to be a benefit provided to the employee.

For the purposes of section GC 15, "associated person" is defined in section OD 7(1).

An "associated person" includes two persons who are at the time relatives.

A relative of a life agent is any person connected with the life agent:

- By blood relationship (if within the fourth degree of relationship); or
- By marriage (persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other); or
- By adoption (persons are connected by adoption if one has been adopted as the child of the other or as a child of a person who is within the third degree of relationship to the other).

Is there a fringe benefit?

As discussed above, when a life agent agrees that no commission entitlement will arise and enjoys a discounted premium, that discounted premium is not gross income of the life agent.

A discounted premium that represents a reduction in charges other than commission is also not gross income. A discount is not regarded as gross income. Income is something that comes in, not something that is saved from going out (see *Tennant* Lord Halsbury at page 165).

The issue then is whether discounted premiums received by life agents on own policies or discounted premiums received by members of their families on family policies constitute fringe benefits.

Analysis

Section CI 1 defines "fringe benefit" for the purposes of the FBT rules:

> In the FBT rules, "fringe benefit", in relation to an employee and to any quarter...or income year, means any benefit that consists of-
>
> ...
>
> Any benefit of any other kind whatever, received or enjoyed by the employee in the quarter or...income year,-
>
> being, as the case may be...a benefit that is used, enjoyed, or received, whether directly or indirectly, in relation to, in the course of, or by virtue of the employment of the employee (whether that employment will occur, is occurring, or has occurred) and which is provided or granted by the employer of the employee;...

It is clear from these opening words that in order to be a fringe benefit there must be some *benefit* to the employee, provided or granted by the employee's employer.

A life agent may have a discretion to reduce his or her commission in order to reduce premiums on policies sold to members of the public. In this case it may be argued that when life agents do not charge a commission on their own policies and receive discounted premiums, no benefit arises to the life agents because the benefit is also available to members of the public.

If a life agent purchases a life insurance policy at full value, ie the full amount of premiums are payable, there is no benefit to the life agent or his or her family. However, when a commission is not charged the full amount of premium is not paid. If a life agent agrees that no commission entitlement will arise, be it on an own policy or a policy sold to a member of the public, the amount of premium payable under the policy is reduced. This reduction in premium is clearly a benefit to the life agent and the public alike.

A life agent who enjoys a discounted premium, when the discount represents a reduction in charges other than commission, clearly receives a benefit. The benefit is the receipt of the services of the employer (the life insurance policy) for less than market value.

Therefore, discounted premiums received by life agents on own policies and discounted premiums received by members of their families on family policies are fringe benefits under section CI 1(h).

Note that sections CI 1(e) and CI 1(f) do not apply to discounts received by life agents (or associated persons) on own policies or family policies. The policies sold by the life agent are not "sick, accident, or death benefit funds" as defined in section CB 5(2) (see CI 1(e)), nor is the discount a "specified insurance premium" as defined in section OB 1. The life insurer does not pay the life insurance premiums of the life agent or the agent's family on the life agent's own policies or family policies (see section CI 1(f)).

Value of the benefit

The Act provides methods for valuing a fringe benefit.

Specific provisions exist for determining the value of services provided to an employee when they are provided as part of the employer's business.

Here the benefit is the provision of a life insurance policy at less than market value. The life insurer is in the business of selling such life insurance policies to the general public. Therefore, section CI 3(10)(a) applies to determine the value of the benefit.

The extent to which the benefit is subject to FBT will depend on the extent to which the discounts provided to life agents or members of life agents' family, are greater than the discounts available to members of the general public.

It is a question of fact whether the price paid for the policy by the life agent is the same as is customarily paid by a member of the general public in the open market on ordinary trade terms between buyers and sellers independent of each other. There will be no taxable value if the amount paid by the employee is the same as, or exceeds, the price customarily paid by a member of the general public in the open market on ordinary trade terms between buyers and sellers independent of each other.

Expenditure on account of an employee

The Ruling covers the situation when an employer (the life insurer) provides a benefit to the employee or associated person (the life agent or relative) by discounting the premiums payable by the life agent on the insurance policy. It does not seek to address the situation when the life insurer *pays* the life insurance premium of a life agent.

When a life insurer pays a life agent's insurance premiums, that expenditure will be expenditure on account of an employee if the employee is liable to pay the insurance premiums. Expenditure on account of an employee is monetary remuneration and is assessable income to the employee.

When a life insurer pays a life agent's insurance premiums, and the life insurer is liable for those premiums, that expenditure is a fringe benefit (unless expressly excluded from the definition of fringe benefit in section CI 1).

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.

BOAT LIFT STORAGE SYSTEMS

DRAFT GENERAL DEPRECIATION DETERMINATION

No general economic depreciation rate exists for boat lift storage systems: submersible devices that lift small boats clear of the water for cleaning, maintenance, and/or storage. The device is operated by positioning the boat over the lift, and air is then forced into two flotation chambers. The lift rises, lifting the boat clear of the water to enable cleaning or maintenance to be carried out. The lift can also be used to store a boat, rather than leaving it in the water for prolonged periods.

The Commissioner proposes to issue a general depreciation determination that will insert a new asset class of "Boat Lift Storage System (Inflatable)" into both the "Leisure" industry category and the "Lifting" and "Transportation" asset categories, with a depreciation rate of 22% D.V. (15.5% S.L.), based on an estimated useful life of 8 years.

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

GENERAL DEPRECIATION DETERMINATION DEP[X]

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

1. Application

This determination applies to taxpayers who own the asset class 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 "Leisure" industry category and the "Lifting" and "Transportation" asset categories, the general asset class, estimated useful life, and diminishing value and straight-line depreciation rates listed below:

"Leisure" industry category, and "Lifting" and "Transportation" asset categories	**Estimated useful life (years)**	**DV banded dep'n rate (%)**	**SL equivalent banded dep'n rate (%)**
Boat Lift Storage System (Inflatable)	8	22%	15.5%

3. Interpretation

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

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

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

We need to receive your submission by 31 May 2000 if we are to take it into account in finalising the determination.

2000 INTERNATIONAL TAX DISCLOSURE EXEMPTION ITR11

Introduction

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

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

Under section 61(2), the Commissioner has issued an international tax disclosure exemption which applies for the income year ended 31 March 2000. This exemption may be cited as "International Tax Disclosure Exemption ITR11", and the full text appears at the end of this item.

Scope of exemption

The scope of the 2000 disclosure exemption is the same as the 1999 exemption.

Interests held by residents

Disclosure is required by residents for these interests:

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

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

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

Example

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

They are not required to account for attributed foreign income or loss under the controlled foreign company rules. However, they would have to account for FIF income or loss under the FIF rules.

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

Foreign company interests

A resident who holds a control or income interest in a foreign company must disclose that interest, regardless of the company's country of residence. The 2000 international tax disclosure exemption also makes no distinction about residence, and any interest in a foreign company which is an "income interest of 10% or greater" must be disclosed. Disclosure is to be made on an IR 4G "Interest in a Foreign Company Disclosure Schedule" form.

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

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

Foreign investment fund interests

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

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

However, any interest that does not fall within the above types or which is specifically excluded as an interest in a FIF under section CG 15(2) does not have to be disclosed. The following are listed in section CG 15(2) as exemptions from what constitutes an interest in a FIF:

- An "income interest of 10% or greater" in a CFC.
- An interest in a foreign company that is resident and liable to income tax in a country or territory specified in Schedule 3, Part A of the ITA (i.e., Australia, Canada, Federal Republic of Germany, Japan, Norway, United Kingdom and the United States of America).
- An interest in an employment-related foreign superannuation scheme.
- A qualifying foreign private annuity, unless an election has been made to remain within the FIF regime, by the due date for filing the person's 2000 tax return. See Inland Revenue's booklet Overseas Private Pensions (IR 258A) for more information.
- Interests in foreign entities held by a natural person, if the aggregate cost or expenditure incurred in acquiring the interests remains under $20,000 at all times during the income year.
- An interest held by a natural person in a foreign entity located in a country where exchange controls prevent the person deriving any profit or gain or disposing of the interest for New Zealand currency or consideration readily convertible to New Zealand currency.
- An interest in a foreign life insurance policy or foreign superannuation scheme acquired by a natural person before he or she became a New Zealand resident for the first time, for a period of up to four years.

There is more information on exemptions from the FIF rules in Inland Revenue's "*Foreign investment funds*" booklet (IR 275B).

A resident who holds an interest in a FIF at any time during the 2000 income year must disclose the interest and calculate FIF income or loss on the form "*Interest in foreign investment fund disclosure schedule and worksheet*" (IR 4H). The FIF rules allow a person four options to calculate FIF income or loss (accounting profits method, branch equivalent method, comparative value method and deemed rate of return method), so the Commissioner has prescribed five forms under the IR 4H series to disclose and calculate FIF income or loss from an interest in a FIF using one of the methods.

Overlap of interests

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

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

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

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

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

Interests held by non-residents

The 2000 disclosure exemption excludes the need for interests held by non-residents in foreign companies and FIFs to be disclosed.

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

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

Summary

The 2000 international tax disclosure exemption removes the requirement of a resident to disclose an interest held in a foreign company (if the interest is not also an interest in a FIF) that does not constitute an "income interest of 10% or greater" (ie it is less than 10%). The disclosure exemption is not affected by the foreign company's country of residence. Further, an interest in a FIF must be disclosed.

The 2000 disclosure exemption also removes the requirement for a non-resident to disclose interests held in foreign companies and FIFs.

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

This exemption may be cited as "International Tax Disclosure Exemption ITR11"

1. Reference

This exemption is made under section 61(2) of the Tax Administration Act 1994. It details interests in foreign companies in relation to which any person is not required to comply with the requirement in section 61 of the Tax Administration Act 1994 to make disclosure of their interests, for the income year ending 31 March 2000. This exemption does not apply to interests in foreign companies which are interests in foreign investment funds, unless that interest is held by a non-resident of New Zealand.

2. Interpretation

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

3. Exemption

(i) Any person who has an income interest or a control interest in a foreign company (not being an interest in a foreign investment fund), in the income year ending 31 March 2000, is not required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year, unless the interest held by that person during any accounting period of the foreign company (the last day of which falls within that income year of the person), would constitute an "income interest of 10% or greater", as defined by section OB 1 of the Income Tax Act 1994, as if the foreign company was a controlled foreign company.

(ii) Any non-resident person who has an income interest or a control interest in a foreign company or an interest in a foreign investment fund in the income year ending 31 March 2000, is not required to comply with section 61(1) of the Tax Administration Act 1994 in respect of that interest and that income year if either or both of the following apply:

- No attributed foreign income or loss arises in respect of that interest in that foreign company by virtue of section CG 6(1) of the Income Tax Act 1994, and/or
- No foreign investment fund income or loss arises in respect of that interest in that foreign investment fund by virtue of section CG 16(4) of the Income Tax Act 1994.

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

This exemption is signed on the 7th day of April 2000.

Max Carr

National Manager, Corporates

FOREIGN CURRENCY AMOUNTS – CONVERSION TO NZ CURRENCY

The tables in this item list exchange rates acceptable to Inland Revenue for converting foreign currency amounts to New Zealand currency under the controlled foreign company (CFC) and foreign investment fund (FIF) rules for the 12 months ending 31 March 2000.

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

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

Table A

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

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

Key

$$\frac{X}{Y}$$

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

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

Example 1

A CFC resident in Hong Kong has an accounting period ending on 31 December 1999. Branch equivalent income for the period 1 January 1999 to 31 December 1999 is 200,000 Hong Kong dollars (HKD).

HKD 200,000 ÷ 4.1091 = NZ$48,672.46

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

Example 2

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

PHP 350,000 ÷ 20.3788 = NZ$17,174.71

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

Example 3

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

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

(0.9496 + 0.9195 + 0.8833 + 0.8872 + 0.8911 + 0.8560 + 0.8610) ÷ 7 = 0.8925

(ii) Conversion to New Zealand currency:

SGD 500,000 ÷ 0.8925 = NZ$560,206.16

Table B

Table B lists the end of month exchange rates acceptable to Inland Revenue for the 12 month period ending 31 March 1999. Use this table for converting foreign currency amounts to New Zealand dollars for:

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

Example 4

A New Zealand resident with a balance date of 31 December 1999 held an interest in an FIF resident in Thailand. The market value of the FIF interest at 31 December 1999 (item "a" of the comparative value formula) was 500,000 Thailand baht (THB).

THB 500,000 ÷ 19.5650 = NZ$25,555.84

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

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

Currency	Foreign Currency to NZ $		15-Apr-99 12 month rate	17-May-99 12 month rate	15-Jun-99 12 month rate	15-Jul-99 12 month rate	16-Aug-99 12 month rate	15-Sep-99 12 month rate	15-Oct-99 12 month rate	15-Nov-99 12 month rate	15-Dec-99 12 month rate	17-Jan-00 12 month rate	15-Feb-00 12 month rate	15-Mar-00 12 month rate
United States	Dollar	USD	0.5401 0.5281	0.5556 0.5298	0.5383 0.5330	0.5215 0.5328	0.5307 0.5351	0.5285 0.5360	0.5107 0.5339	0.5168 0.5322	0.4937 0.5299	0.5209 0.5283	0.4873 0.5232	0.4905 0.5196
United Kingdom	Pound	GBP	0.3348 0.3202	0.3428 0.3214	0.3348 0.3238	0.3334 0.3249	0.3303 0.3265	0.3287 0.3295	0.3070 0.3276	0.3195 0.3273	0.3063 0.3272	0.3184 0.3266	0.3070 0.3242	0.3112 0.3228
Australia	Dollar	AUD	0.8506 0.8481	0.8373 0.8470	0.8105 0.8437	0.7921 0.8396	0.8122 0.8368	0.8102 0.8306	0.7870 0.8270	0.7994 0.8233	0.7769 0.8180	0.7816 0.8121	0.7749 0.8060	0.7980 0.8026
Austria	Schilling	ATS	6.8741 6.4578	7.1625 6.4978	7.1005 6.5605	7.0213 6.5915	6.9018 6.6366	7.0170 6.7513	6.5080 6.7310	6.8669 6.7724	6.7418 6.8306	7.0631 6.8902	6.8385 6.9022	6.9856 6.9234
Bahrain	Dollar	BHD	0.2032 0.1986	0.2092 0.1992	0.2026 0.2004	0.1966 0.2003	0.1998 0.2012	0.1990 0.2015	0.1924 0.2007	0.1947 0.2003	0.1860 0.1995	0.1962 0.1990	0.1836 0.1970	0.1847 0.1957
Belgium	Franc	BEF	20.1399 18.8971	20.9767 19.0121	20.8033 19.1994	20.5767 19.2935	20.2198 19.4247	20.5603 19.7682	19.0683 19.7099	20.1390 19.8330	19.7563 20.0070	20.6946 20.1852	20.0200 20.2229	20.4679 20.2852
Canada	Dollar	CAD	0.8059 0.7955	0.8121 0.7986	0.7853 0.8030	0.7714 0.8027	0.7835 0.8045	0.7787 0.8026	0.7553 0.7986	0.7552 0.7923	0.7304 0.7863	0.7548 0.7803	0.7092 0.7712	0.7179 0.7633
China	Yuan	CNY	4.4704 4.3685	4.5977 4.3834	4.4517 4.4097	4.3170 4.4083	4.3943 4.4276	4.3789 4.4361	4.2273 4.4172	4.2648 4.4032	4.0867 4.3956	4.3154 4.3818	4.0351 4.3357	4.0617 4.3033
Denmark	Krone	DKK	3.7127 3.4884	3.8677 3.5089	3.8294 3.5423	3.7946 3.5590	3.7296 3.5822	3.7909 3.6445	3.5158 3.6338	3.7174 3.6574	3.6429 3.6891	3.8261 3.7225	3.6982 3.7297	3.7832 3.7424
European Community	Unit	XEU	0.4998 0.4666	0.5206 0.4698	0.5163 0.4748	0.5107 0.4775	0.5017 0.4811	0.5103 0.4901	0.4735 0.4887	0.5000 0.4921	0.4903 0.4966	0.5134 0.5010	0.4970 0.5019	0.5078 0.5034
Fiji	Dollar	FJD	1.0652 1.0506	1.0740 1.0511	1.0468 1.0527	1.0294 1.0500	1.0400 1.0501	1.0276 1.0476	0.9969 1.0434	1.0153 1.0403	0.9871 1.0370	1.0177 1.0342	0.9812 1.0277	0.9974 1.0232
Finland	Markka	FIM	2.9733 2.7878	3.0952 2.8052	3.0695 2.8331	3.0357 2.8470	2.9826 2.8662	3.0331 2.9159	2.8136 2.9074	2.9701 2.9260	2.9144 2.9518	3.0527 2.9780	2.9545 2.9836	3.0193 2.9928
France	Franc	FRF	3.2784 3.0765	3.4150 3.0953	3.3867 3.1259	3.3494 3.1412	3.2907 3.1624	3.3466 3.2183	3.1043 3.2088	3.2786 3.2293	3.2157 3.2574	3.3682 3.2861	3.2599 3.2919	3.3314 3.3021
French Polynesia	Franc	XPF	59.5148 55.7951	62.1400 56.1518	61.5367 56.7164	60.8083 57.0009	59.6742 57.3881	60.6918 58.4074	56.4367 58.2432	59.5006 58.6159	58.2810 59.1206	61.0016 59.6352	59.2550 59.7555	60.3531 59.9328
Germany	Deutsche-mark	DEM	0.9776 0.9175	1.0184 0.9231	1.0100 0.9321	0.9989 0.9367	0.9814 0.9429	0.9980 0.9596	0.9257 0.9568	0.9780 0.9629	0.9588 0.9713	1.0040 0.9798	0.9721 0.9817	0.9933 0.9847
Greece	Drachma	GRD	161.4908 153.7891	168.2283 154.1166	166.1383 155.1970	165.2517 155.9422	163.2360 156.8397	165.8227 158.7546	155.3250 158.4688	163.6225 159.5061	161.0918 160.9800	168.8867 162.6294	165.5517 163.4413	168.8918 164.4614
Hong Kong	Dollar	HKD	4.1822 4.0891	4.3028 4.1022	4.1733 4.1275	4.0448 4.1266	4.1183 4.1450	4.1025 4.1532	3.9661 4.1376	4.0143 4.1256	3.8373 4.1091	4.0507 4.0985	3.7903 4.0599	3.8171 4.0333
India	Rupee	INR	22.9816 22.2369	23.6543 22.4267	23.1143 22.6082	22.5069 22.6330	22.9443 22.7532	22.9177 22.8484	22.0330 22.7805	22.2544 22.7555	21.4065 22.7100	22.5993 22.6897	21.1876 22.5165	21.3019 22.4085
Indonesia	Rupiah	IDR	4,616.5902 5,362.6698	4,380.4450 5,255.7902	4,036.7150 4,996.0098	3,514.5100 4,652.3402	4,186.0671 4,472.7050	4,176.2546 4,297.3863	4,200.8325 4,289.3401	3,625.1886 4,237.4938	3,542.9889 4,209.2529	3,748.8962 4,136.9480	3,541.8350 4,037.1851	3,648.9011 3,934.9354
Ireland	Pound	IEP	0.3935 0.3670	0.4097 0.3696	0.4064 0.3737	0.4031 0.3761	0.3952 0.3790	0.4014 0.3860	0.3736 0.3850	0.3940 0.3876	0.3859 0.3911	0.4046 0.3946	0.3910 0.3953	0.3989 0.3964
Italy	Lira	ITL	967.5608 906.0665	1,008.0100 911.9752	999.4383 921.3808	988.4417 926.2283	971.2555 932.7748	987.6552 949.4770	916.1817 946.7024	967.4796 952.8078	948.9799 961.1363	994.1078 969.6971	962.0633 971.5343	981.8500 974.4187
Japan	Yen	JPY	64.0697 66.6724	68.1567 66.3874	64.8800 65.7836	62.8833 64.9172	61.5074 63.9135	55.9460 62.7830	54.7883 62.1168	54.3364 61.1690	51.0518 60.4095	55.0617 59.9047	52.9433 59.0870	51.4333 58.0882
Korea	Won	KOR	653.8750 674.2275	671.3150 673.9627	629.9600 667.7995	616.3950 662.6345	638.6550 660.6363	630.3350 647.1414	616.3950 641.7089	617.3150 652.0454	559.2300 632.7045	585.8150 627.7759	549.3400 619.0614	548.6250 609.0855
Kuwait	Dollar	KWD	0.1644 0.1605	0.1696 0.1610	0.1656 0.1620	0.1602 0.1620	0.1617 0.1625	0.1607 0.1630	0.1546 0.1623	0.1571 0.1618	0.1500 0.1612	0.1583 0.1609	0.1491 0.1595	0.1500 0.1584
Malaysia	Ringgit	MYR	2.0569 2.0443	2.1135 2.0536	2.0477 2.0568	1.9816 2.0422	2.0173 2.0347	2.0101 2.0385	1.9406 2.0303	1.9597 2.0233	1.8755 2.0145	1.9804 2.0084	1.8522 1.9888	1.8644 1.9750
Netherlands	Guilder	NLG	1.1013 1.0336	1.1473 1.0398	1.1378 1.0501	1.1252 1.0552	1.1055 1.0623	1.1243 1.0810	1.0429 1.0778	1.1013 1.0845	1.0802 1.0941	1.1313 1.1038	1.0952 1.1059	1.1191 1.1093
Norway	Krone	NOK	4.1659 4.0199	4.2616 4.0427	4.2261 4.0767	4.1626 4.0891	4.1388 4.1130	4.1815 4.1401	3.9335 4.1229	4.0884 4.1286	3.9681 4.1234	4.1589 4.1352	4.0115 4.1217	4.1345 4.1193

Currency	Foreign Currency to NZ $		15-Apr-99 12 month	17-May-99 12 month	15-Jun-99 12 month	15-Jul-99 12 month	16-Aug-99 12 month	15-Sep-99 12 month	15-Oct-99 12 month	15-Nov-99 12 month	15-Dec-99 12 month	17-Jan-00 12 month	15-Feb-00 12 month	15-Mar-00 12 month
Pakistan	Rupee	PKR	27.2981	28.1905	27.7744	26.8821	27.1739	27.2676	26.3569	26.7038	25.4266	26.8970	25.1491	25.2243
			26.5564	26.9383	27.4097	27.6282	27.7576	27.6371	27.5304	27.2303	27.0807	27.0407	26.8159	26.6954
Papua New Guinea	Kina	PGK	1.2696	1.3796	1.6413	1.3381	1.4282	1.5507	1.3773	1.3946	1.3289	1.4319	1.5115	1.4474
			1.1619	1.1867	1.2384	1.2546	1.2721	1.3099	1.3155	1.3369	1.3561	1.3819	1.4071	1.4249
Philippines	Peso	PHP	20.5175	20.8425	20.2710	19.8246	20.6802	20.9308	20.4389	20.5354	19.9975	20.9933	19.5857	19.9288
			21.2435	21.2230	21.2363	21.0780	20.9885	20.6587	20.6404	20.5454	20.5339	20.5629	20.4419	20.3788
Portugal	Escudo	PTE	100.1692	104.3650	103.4867	102.5250	100.5678	102.2634	94.8633	76.0054	98.2586	102.9787	99.6183	101.8493
			94.0720	94.6434	95.5908	96.0761	96.7265	98.4043	98.1093	96.7095	97.5592	98.4344	98.6091	98.9126
Singapore	Dollar	SGD	0.9161	0.9496	0.9195	0.8833	0.8872	0.8911	0.8560	0.8610	0.8280	0.8702	0.8236	0.8363
			0.8900	0.8955	0.8996	0.8995	0.9003	0.9034	0.8995	0.8972	0.8951	0.8923	0.8839	0.8768
Solomon Islands	Dollar	SBD	2.5741	2.6641	2.5958	2.5006	2.5657	2.5938	2.5039	2.5620	2.4662	2.5786	2.4665	2.4754
			2.5048	2.5215	2.5511	2.5524	2.5672	2.5747	2.5688	2.5691	2.5674	2.5663	2.5519	2.5455
South Africa	Rand	ZAR	3.2788	3.4440	3.2652	3.1933	3.2345	3.2060	3.1136	3.1600	3.0214	3.1583	3.0817	3.1472
			3.1160	3.1765	3.2279	3.2332	3.2392	3.2563	3.2444	3.2530	3.2438	3.2262	3.2050	3.1920
Spain	Peseta	ESP	83.1275	86.6050	85.8800	84.9300	83.4591	84.8663	78.7150	83.0792	81.5578	85.4166	82.6583	84.4752
			77.8655	78.3596	79.1528	79.5624	80.1441	81.5833	81.3443	81.8675	82.5848	83.3199	83.4734	83.7308
Sri Lanka	Rupee	LKR	37.3559	38.9725	37.9625	37.2500	37.7723	37.6989	36.2950	36.6769	35.2626	37.8122	35.4125	35.7910
			35.1972	35.6254	36.0917	36.3521	36.7388	37.2244	37.1470	37.1906	37.1955	37.3174	37.1231	37.0219
Sweden	Krona	SEK	4.4544	4.6529	4.5672	4.4747	4.4095	4.3906	4.1384	4.3088	4.2060	4.4058	4.2180	4.2562
			4.2165	4.2608	4.3087	4.3302	4.3547	4.3925	4.3714	4.3670	4.3698	4.3870	4.3793	4.3735
Switzerland	Franc	CHF	0.8023	0.8344	0.8233	0.8202	0.8036	0.8181	0.7531	0.8034	0.7842	0.8287	0.7991	0.8188
			0.7555	0.7589	0.7652	0.7672	0.7709	0.7845	0.7819	0.7868	0.7945	0.8026	0.8044	0.8074
Taiwan	Dollar	TAI	17.7000	18.1950	17.4700	16.8250	16.9850	16.7450	16.1550	16.5100	15.5700	17.0650	14.9250	15.0350
			17.5855	17.6409	17.6445	17.5432	17.4967	17.3682	17.2542	17.2479	17.1309	17.0991	16.8455	16.6064
Thailand	Baht	THB	20.2090	20.6067	19.8350	19.1983	20.0007	20.6420	20.0483	19.7296	18.9718	19.3851	18.1567	18.4802
			20.3606	20.3667	20.2142	20.0169	19.9519	19.8778	19.8920	19.8899	19.9232	19.8838	19.7192	19.6053
Tonga	Pa'anga	TOP	0.8565	0.8583	0.8442	0.8322	0.8450	0.8382	0.8206	0.8332	0.8091	0.8269	0.8002	0.8074
			0.8202	0.8272	0.8354	0.8392	0.8449	0.8470	0.8448	0.8429	0.8407	0.8390	0.8342	0.8310
Vanuatu	Vatu	VUV	69.8592	70.8950	68.8875	67.5700	67.8349	67.1597	64.7800	65.9613	63.6142	66.2989	63.6000	64.8849
			67.7180	68.0318	68.3450	68.3144	68.5722	68.5335	68.2207	68.0053	67.7644	67.5765	67.0966	66.7788
Western Samoa	Tala	WST	1.5977	1.6401	1.6046	1.5697	1.5861	1.6612	1.5397	1.5721	1.4955	1.5915	1.4788	1.4987
			1.5585	1.5675	1.5772	1.5806	1.5855	1.5973	1.5925	1.5911	1.5860	1.5866	1.5764	1.5696

Table B: End of month exchange rates

Currency	Foreign Currency to NZ $		30-Apr-99	31-May-99	30-Jun-99	30-Jul-99	31-Aug-99	30-Sep-99	29-Oct-99	30-Nov-99	31-Dec-99	31-Jan-00	29-Feb-00	31-Mar-00
United States	Dollar	USD	0.5570	0.5367	0.5293	0.5289	0.5131	0.5160	0.5110	0.5122	0.5219	0.4927	0.4852	0.4997
United Kingdom	Pound	GBP	0.3459	0.3349	0.3363	0.3268	0.3229	0.3137	0.3117	0.3195	0.3234	0.3040	0.3042	0.3135
Australia	Dollar	AUD	0.8438	0.8217	0.8056	0.8132	0.8108	0.7910	0.7912	0.8029	0.7983	0.7732	0.7900	0.8166
Austria	Schilling	ATS	7.2225	7.0725	7.0474	6.7811	6.7400	6.6587	6.6766	6.9795	7.1358	6.9352	6.8663	7.1601
Bahrain	Dollar	BHD	0.2098	0.2021	0.1992	0.1992	0.1932	0.1943	0.1924	0.1928	0.1968	0.1857	0.1823	0.1885
Belgium	Franc	BEF	21.1643	20.7068	20.6467	19.8605	19.7416	19.5209	19.5598	20.4480	20.9050	20.3163	20.1143	20.9791
Canada	Dollar	CAD	0.8155	0.7892	0.7813	0.7958	0.7643	0.7552	0.7523	0.7545	0.7571	0.7123	0.7035	0.7279
China	Yuan	CNY	4.6090	4.4390	4.3919	4.3812	4.2471	4.2758	4.2357	4.2449	4.3215	4.0774	4.0317	4.1461
Denmark	Krone	DKK	3.9015	3.8219	3.8039	3.6654	3.6400	3.5992	3.6050	3.7720	3.8615	3.7556	3.7153	3.8727
European Community	Unit	XEU	0.5251	0.5138	0.5123	0.4928	0.4899	0.4819	0.4853	0.5074	0.5185	0.5041	0.4991	0.5204
Fiji	Dollar	FJD	1.0815	1.0585	1.0419	1.0406	1.0195	1.0059	1.0019	1.0198	1.0361	0.9751	0.9811	1.0163
Finland	Markka	FIM	3.1222	3.0564	3.0460	2.9303	2.9124	2.8790	2.8855	3.0165	3.0850	2.9968	2.9673	3.0941
France	Franc	FRF	3.4474	3.3711	3.3609	3.2332	3.2134	3.1773	3.1838	3.3283	3.4039	3.3066	3.2741	3.4140
French Polynesia	Franc	XPF	62.5160	61.1771	61.0317	58.6296	58.2493	57.6452	57.7237	60.3585	61.8950	59.9755	59.3154	61.7693
Germany	Deutsche mark	DEM	1.0272	1.0056	1.0022	0.9641	0.9583	0.9474	0.9493	0.9924	1.0150	0.9861	0.9762	1.0180
Greece	Drachma	GRD	170.8231	166.3732	165.5483	159.7648	159.4599	158.7656	159.3481	165.9663	170.9817	166.6635	165.8536	173.3121
Hong Kong	Dollar	HKD	4.3137	4.1618	4.1041	4.1035	3.9818	4.0071	3.9693	3.9793	4.0555	3.8348	3.7753	3.8955
India	Rupee	INR	23.7526	22.9486	22.9033	22.8252	22.2222	22.4043	22.1099	22.1524	22.6237	21.4069	21.0841	21.7565
Indonesia	Rupiah	IDR	4,518.2423	4,259.5829	3,548.6300	3,612.6266	3,901.2683	4,301.8262	3,526.3822	3,748.2015	3,680.9450	3,665.7025	3,603.6546	3,803.8311
Ireland	Pound	IEP	0.4134	0.4047	0.4042	0.3875	0.3863	0.3824	0.3830	0.3986	0.4073	0.3965	0.3936	0.4100
Italy	Lira	ITL	1,016.7066	995.2910	991.7500	954.2399	948.3859	937.7126	939.5490	982.3331	1,004.5500	975.8469	966.2362	1,007.4730
Japan	Yen	JPY	66.2538	65.2397	64.0483	61.0192	57.0318	55.1512	53.6542	52.2588	53.4583	52.6933	53.2244	52.7306
Korea	Won	KOR	654.82	636.53	613.77	636.73	606.47	628.62	613.51	594.26	591.14	551.64	553.21	554.37
Kuwait	Dollar	KWD	0.1699	0.1641	0.1621	0.1612	0.1563	0.1565	0.1549	0.1557	0.1588	0.1506	0.1484	0.1530
Malaysia	Ringgit	MYR	2.1176	2.0401	2.0158	2.0113	1.9496	1.9628	1.9444	1.9484	1.9833	1.8716	1.8505	1.9029
Netherlands	Guilder	NLG	1.1573	1.1328	1.1291	1.0862	1.0795	1.0674	1.0695	1.1182	1.1435	1.1112	1.0998	1.1468
Norway	Krone	NOK	4.3407	4.2376	4.1544	4.1219	4.0560	3.9908	4.0095	4.1192	4.1835	4.0667	4.0385	4.1952
Pakistan	Rupee	PKR	28.1490	27.7280	27.1529	27.0142	26.4711	26.6253	26.3592	26.4618	26.8455	25.4139	25.0043	25.7739
Papua New Guinea	Kina	PGK	1.3356	1.4471	1.3588	1.3691	1.4694	1.5056	1.3623	1.4363	1.4003	1.5200	1.4885	1.2869
Philippines	Peso	PHP	21.0757	20.2754	19.9247	20.1754	20.1202	20.8861	20.3354	20.7532	20.9737	19.8082	19.7199	18.0662
Portugal	Escudo	PTE	105.2721	103.0448	102.7000	98.7954	98.1993	97.2241	97.2839	101.7087	104.0200	101.1015	100.0985	104.3762
Singapore	Dollar	SGD	0.9423	0.9233	0.8991	0.8912	0.8645	0.8794	0.8517	0.8610	0.8678	0.8411	0.8296	0.8581
Solomon Islands	Dollar	SBD	2.6673	2.5613	2.5338	2.5422	2.4824	2.5366	2.5109	2.5173	2.6146	2.4598	2.4186	2.5246
South Africa	Rand	ZAR	3.3613	3.3492	3.1852	3.2553	3.1169	3.0883	3.1377	3.1622	3.2043	3.1157	3.0632	3.2849
Spain	Peseta	ESP	87.3596	85.5194	85.2233	81.9873	81.4956	80.5749	80.7348	84.4036	86.3133	83.8570	83.0243	86.5764
Sri Lanka	Rupee	LKR	38.6272	37.8369	37.7550	37.7391	36.6361	36.8584	36.2592	36.6595	37.1800	35.7081	35.3825	36.5632
Sweden	Krona	SEK	4.6735	4.6094	4.4718	4.3250	4.2704	4.2132	4.2055	4.3453	4.4457	4.3515	4.2112	4.3134
Switzerland	Franc	CHF	0.8464	0.8191	0.8204	0.7868	0.7843	0.7752	0.7782	0.8137	0.8335	0.8108	0.8023	0.8294
Taiwan	Dollar	TAI	18.11	17.56	17.13	17.02	16.27	16.35	16.18	18.23	16.34	15.10	14.98	15.25
Thailand	Baht	THB	20.6574	19.8452	19.3950	19.4568	19.4790	21.1619	19.6345	19.8983	19.5650	18.3452	18.2795	18.8434
Tonga	Pa'anga	TOP	0.8695	0.8466	0.8328	0.8474	0.8312	0.8279	0.8261	0.8286	0.8370	0.7880	0.7841	0.8214
Vanuatu	Vatu	VUV	70.9386	68.8476	68.2050	67.8090	66.0948	65.4608	64.8610	65.8699	67.0525	62.9407	63.0733	66.1294
Western Samoa	Tala	WST	1.6439	1.6037	1.5856	1.5860	1.5500	1.5469	1.5355	1.5440	1.6049	1.4867	1.4726	1.5268

NEW LEGISLATION

ACCIDENT INSURANCE AMENDMENT ACT 2000 AND THE ACCIDENT INSURANCE TRANSITIONAL PROVISIONS ACT 2000

Introduction

Legislation introduced in December last year providing for the Accident Compensation Corporation (ACC) to be the sole insurer for workplace accidents from 1 July 2000 was enacted on 25 March 2000. The new ACC legislation has resulted in minor amendments to tax legislation.

From 1 April 2000 private insurers cannot write any new accident insurance contracts and from that date the Accident Compensation Corporation (ACC) will cover new employers and uninsured employers. All employers will be covered by the ACC from 1 July 2000. Private insurers will remain responsible for the (continuing) cost of workplace accidents that occur between 1 July 1999 and 30 June 2000 for which they have provided cover.

Background

The Government has enacted legislation to return the provision of insurance cover for workplace accidents to the ACC from 1 July 2000. Recently the insurance cover for workplace accidents had been opened up to competition from private insurers.

Inland Revenue will continue to collect the following on behalf of the ACC:

Residual claims levy. Payable annually by employers, the self-employed and private domestic workers. It funds the continuing cost of work-related injuries sustained before 1 July 1999 and non-work injuries sustained before 1 July 1992.

Earners' account levy. Payable annually by the self-employed. It funds the continuing cost of non-work injuries sustained between 1 July 1992 and 1 July 1999.

Earner premium. Payable by all employees, including shareholder-employees and private domestic workers. It provides employees with continuing cover from the ACC for non-work injuries. The earner premium includes the earners' account levy and is collected by Inland Revenue as a component of PAYE deductions from employers or as part of the end-of-year return for the self-employed.

Key features

The main changes relating to taxation are outlined below.

Because the ACC will be the sole provider of accident insurance cover for workplace accidents, a new section has been inserted into the Income Tax Act 1994 to specify when the employers' premium is deductible. New section ED 1B provides that the employers' premium is deductible in the income year the premium becomes due and payable. Special rules apply when the taxpayer is a client of an agent and has an extension of time for filing income tax returns.

To enable the ACC to identify liable employers and assess the premium payable by those employers, a new section has been added to the Accident Insurance Act 1998. New section 281G allows the ACC to seek information from Inland Revenue on employers and the total salary and wages paid.

Other tax-related changes are very minor.

Application date

The new section ED 1B of the Income Tax Act 1994 and the new section 281G of the Accident Insurance Act 1998 apply from 1 April 2000.

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 SUBSEQUENT AMENDING ASSESSMENTS SUPERSEDE EARLIER ONES; WHETHER AUTHORITY CAN CONSIDER OBJECTIONS TO EARLIER ASSESSMENTS; WHETHER *BASF* PRINCIPLE PREVENTS COMMISSIONER ISSUING FURTHER ASSESSMENTS ONCE ASSESSMENT OBJECTED TO

Case: Dandelion Investments Limited v CIR

Decision date: 6 March 2000

Act: The Income Tax Act 1976

Keywords: *Assessments, BASF principle*

Summary

The Court of Appeal upheld the judgment of the High Court and dismissed the objector's appeal.

Facts

This was an appeal from the High Court judgment of Chambers J (reported at (1999) 19 NZTC 15,317).

The Commissioner had made a series of assessments relying on section 99 (now section BG1). The assessment objected to was the second of four assessments made.

The objector argued that each assessment was replaced by the one following and that the Commissioner was statute barred from relying on the last in the series as it was greater than the very first assessment made. Thus, as the second assessment was "cancelled" or "superseded" by a later one the Authority should allow the objection made to that assessment.

The objector also argued that the *BASF* principle applied to prevent the Commissioner from issuing a further assessment once one had been objected to (this is derived from (1995) 17 NZTC 12,136).

Decision

The Court Of Appeal rejected the argument that the latest assessment, being outside the 4 year period, must be compared to the first assessment ever done to determine whether or not it is greater than that assessment. The point was described as "novel" by the objector. The Court of Appeal replied they did not imagine that anyone has previously considered it worth arguing.

The Court of Appeal also found that the words "the assessment" include all lawful amendments to that original assessment. Therefore an assessment outside the 4-year period is compared to the last valid assessment (being, in this case, the amended assessment). Thus an amended assessment does not cancel or supersede an earlier assessment but changes it:

"The amendment changes the earlier assessment in some respect or respects but it should not be regarded as necessarily completely replacing the earlier assessment. There may be cases in which this is what occurs. But in the more conventional situation the original assessment and its amendment or amendments have to be understood in combination."

Therefore, a change to an earlier assessment on a basis differing from the basis of objection does not prevent the objection proceeding: if it did the Court

considered such a result "ridiculous". So the Authority had the ability to consider and determine the objection to an earlier assessment that had subsequently been amended.

> "…we can see no basis in terms of the statutory scheme, any specific statutory provision, or any case law, upon which we should hold that an amendment has automatic and inevitable effect of removing altogether from contention the assessment which it is amending."

The Court of Appeal found that the *BASF* principle was inapplicable in this case. The principle acts to prevent the Commissioner altering a stance taken in a matter now before the TRA or Court. This was to prevent injustice to taxpayers. But the Court of Appeal said that:

> "If, while a case stated is pending, a further assessment is made which has no effect on the matters at issue on the case stated, the BASF principle cannot avail the taxpayer. The further assessment does not in such circumstances prejudice the taxpayer's position on the case stated at all."

The Court bemoaned the use of delaying tactics and emphasised the need for a "firm approach to this sort of tactical manoeuvring" favouring litigation procedures that are "simple and straightforward".

WHETHER PAYMENT TO RELIGIOUS ORGANISATION ON ENTERING INTO LEASE AGREEMENT WAS A CONSIDERATION SUBJECT TO GST OR A DONATION

Case:	TRA Number 97/092. Decision Number 9/2000
Decision date:	14 March 2000
Act:	The Goods and Services Tax Act 1985
Keywords:	*Payment, taxable supply*

Summary

Judge Barber upheld the Commissioner's assessments.

Facts

The objector, a religious organisation registered for GST, received a $20,000 payment from the owner and lessor of a building on signing a long-term lease to use part of that building. The payment was made in two instalments of $10,000.

The Commissioner assessed the objector for GST of $2,222.22 on the basis that the payments were consideration for a taxable supply, namely, the objector entering into the lease agreement.

The objector claimed that the payments were a donation by the lessor to the objector to do with as it wished and therefore were not subject to GST.

Decision

Judge Barber held that the payments were in fact consideration for the objector entering into the lease and therefore were subject to GST.

His Honour found that overall the evidence, especially the documentary evidence, supported the contention that the payments were consideration for a service supplied by the objector, namely the entering into of the lease agreement. Judge Barber placed emphasis on the fact that none of the documents, such as the lease agreement, the deed of lease and various letters negotiating the lease both to and from the objector, ever stated that the payments were to be a donation to the objector. Many of those documents also stated that the payments were to be used by the objector to renovate and repair the premises.

Judge Barber found on the evidence that the payment was conditional on two levels:

1. The payment was conditional upon the objector entering into the lease agreement with the Landlord.

2. The payment was conditional on its use by the objector for renovating and repairing the lease premises.

There was some conflicting evidence between the lessor, who appeared as a witness for the Commissioner, and the objector. His Honour observed that the objector was entirely credible, but referred to the confusion and misunderstanding between the objector and the lessor as to the nature of the payments. Judge Barber concluded that the bulk of the evidence supported the Commissioner's contentions.

WHETHER EMPLOYMENT COURT AWARD FOR UNJUSTIFIABLE DISMISSAL ASSESSABLE AS MONETARY REMUNERATION; WHETHER LEGAL EXPENSES DEDUCTIBLE

Case: TRA Number 97/93. Decision Number 11/2000

Decision date: 20 March 2000

Act: The Income Tax Act 1976

Keywords: *Deductibility of legal expenses, monetary remuneration*

Summary

Judge Barber found in favour of the Commissioner and held that the Commissioner was correct in assessing the objector for income tax.

Facts

In the 1993 income year the taxpayer received an Employment Court award totalling $126,000 for unjustifiable constructive dismissal by his former employer. The Commissioner assessed the objector for income tax on $96,000 of the total award on the basis that it was monetary remuneration. The Commissioner also disallowed the objector's deduction in respect of legal fees incurred.

The circumstances leading up to the objector's constructive dismissal and subsequent award for damages are summarised below:

The employer commenced a restructuring process in 1988 with effect from 1 July 1989. At that time the objector was approaching his optional retirement date of 18 July 1990 and his compulsory retirement date of 18 July 1995.

As a result of the restructuring the objector was placed in a different position to that he had occupied previously. This position attracted a lower salary but, in consideration of this, he was paid an abating equalisation allowance. The objector considered he had been disadvantaged by the restructuring and resisted accepting the position offered.

On 11 November 1991 the objector received an ultimatum from the employer to work in the new position, or face dismissal. On 28 February 1991, as a result of the ultimatum, the objector gave three months notice of his intention to retire.

The objector commenced an action in the Employment Court against his former employer alleging that the termination of his employment amounted to an unjustifiable constructive dismissal. On 11 November 1991 the Employment Court found that the objector had suffered a personal grievance by virtue of his unjustifiable constructive dismissal and awarded him the following damages under the Labour Relations Act 1987:

- Loss of wages due to date of hearing (section 229) $46,000
- Humiliation etc (section 227(c)(i)) $30,000
- Loss of benefits (section 227(c)(ii)) $50,000

$126,000

Decision

Judge Barber found in favour of the Commissioner on both issues.

The objector argued that he received the payment as damages for a personal grievance and not as an entitlement under his employment contract. He submitted that none of the amount awarded pursuant to the Employment Court award was compensation for loss of office or loss of employment, and accordingly did not come within the definition of 'monetary remuneration' in section 2 of the Income Tax Act 1976.

The objector also submitted that the payment came within the definition of 'redundancy payment' in section 68(1) of the Income Tax Act 1976. At the time of the award redundancy payments received concessional tax treatment.

Judge Barber found on the facts that there was no reason to find other than that the objector was bound by his claim in the Employment Court that he was unjustifiably dismissed. His Honour held that the objector did not retire, as termination of his employment was in fact involuntary.

His Honour found that the award under the Labour Relations Act 1987 did come within the definition of 'monetary remuneration' in section 2 of the Income Tax Act 1976.

Judge Barber also found that the award did not come within the definition of 'redundancy payment' in section 68(1) of the Income Tax Act 1976. Judge Barber held that the payment was not made (either causally or temporally) on the occasion of the termination of the objector's employment. His Honour found that the payment simply did not have the character of a redundancy payment in its overall factual context.

The $96,000 was held to be awarded for a combination of loss of wages and loss of benefits in respect of or in relation to the employment of the objector and therefore it was assessable as monetary remuneration.

His Honour upheld the submissions of the Commissioner that the objector was not entitled to deduct his legal fees because the incurring of those fees related to income from employment. From the income year commencing 1 April 1988, no deduction is allowed for expenditure incurred in the production of income from employment as defined in section 105(1) of the Income Tax Act 1976.

WHETHER EMPLOYMENT COURT AWARD FOR LOSS OF BENEFIT ASSESSABLE AS MONETARY REMUNERATION; CAPITAL PAYMENTS MAY BE ASSESSABLE IF MONETARY REMUNERATION

Case:	TRA Number98/047. Decision Number 10/2000
Decision date:	15 March 2000
Act:	The Income Tax Act 1976
Keywords:	*Employment, compensation, "monetary remuneration", "benefit in money", loss of office, capital*

Summary

Judge Barber found for the Commissioner by consent without formal hearing but after full written submissions.

Facts

The objector is an airline pilot who received a compensation payment of $10,000 from the Employment Court in an action against his employer. The Employment Court found that the objector had been wrongfully treated by his employer in that he was not appointed to a flight standards position when he should have been. Although retaining his employment as a senior captain, the airline had used various unwarranted grounds to deny the objector a promotion. The Employment Court awarded the objector the sum under section 227(c)(ii) of the Labour Relations Act 1987, for the loss of a benefit which he might reasonably have expected to have attained.

The Commissioner assessed the objector on the sum awarded and contended that the payment was assessable under sections 65(2)(b) of the Income Tax Act 1976, being monetary remuneration. The objector contended the sum is an item of capital and therefore not assessable.

Decision

The objector made extensive reference to the decision of the Employment Court, stressing that the mechanism by which the award was determined, ie reference to loss of future income, was not determinative of the nature of the loss. He submitted that the compensation was awarded for loss of a 'tenure' which was an item of capital. He further submitted that the compensation was awarded in respect of a 'de facto restraint of trade'.

The Commissioner agreed in his submissions that the method of calculation of the compensation was not determinative: in determining the nature of any receipt one must look at the loss for which it is compensation. Judge Barber agreed, noting the Employment Court's finding that the objector was compensated for a loss of skills and experience which the denied standards position offered. The Commissioner conceded that the payment had the character of capital, relating as it did to the objector's income earning structure.

His Honour upheld the Commissioner's submissions that payments of a capital nature do not escape assessment if they fall within the definition of 'monetary remuneration'. He considered the judgment of the Court of Appeal in *Shell New Zealand Limited v CIR* (1994) 16 NZTC 11,303, and his own decision in *Case L92* (1989) 11 NZTC 1,530. He did not go so far as to term the receipt an item of capital, but confirmed that its nature was immaterial if captured by the definition of 'monetary remuneration'. His Honour held that the receipt was clearly "… a benefit in money in respect of or in relation to the employment or service of the taxpayer."

His Honour rejected the Commissioner's alternative proposition that the receipt was "… compensation for loss of office…" being compensation for the loss of ability to render services of a more senior nature. His Honour preferred the orthodox approach to the concept: "… because the objector did not lose his job ie what he had."

The Authority rejected the objector's argument that the payment was in respect of a 'de facto restraint'. His Honour found that the payment clearly reflected money lost 'one way or another'; it was clearly in respect of or in relation to a contract of employment, and that it was also 'some kind of emolument'.

COMMISSIONER ENTITLED TO PRIORITY FOR GST DEBTS OF PARTNERSHIP WHERE PARTNERS ADJUDGED BANKRUPT

Case: CIR v Official Assignee

Decision date: 23 March 2000

Act: The Goods and Services tax Act 1985

Summary

The Commissioner was successful in his appeal from the High Court

Facts

On December 1998, Mr and Mrs Mehrtens were both adjudged bankrupt. They were the only partners in a partnership registered with the Commissioner of Inland Revenue for the purposes of accounting for GST.

When Mr and Mrs Mehrtens were adjudged bankrupt their partnership owed GST of $9,887.65, together with penalties of $3,979.37. On or about 8 January 1999 the Commissioner filed two proofs of debt with the Official Assignee in relation to the partners' debts and penalties. The proofs of debt claimed priority for the GST debts but not the penalties.

By separate notices dated 29 March 1999, the Official Assignee advised the Commissioner that it rejected the claim for priority of the GST debts. Accordingly, the Official Assignee advised that he would defer payment of the Commissioner's claim until all personal creditors were paid in full pursuant to section 106 of the Insolvency Act 1967. In fact, the Official Assignee did not receive any personal claims on the estates of Mr and Mrs Mehrtens (aside from claims for accident compensation levies, penalties and income tax). Mr and Mrs Mehrtens have, however, approximately 60 unsecured creditors through the partnership of the estate who are collectively owed a sum in the region of $220,000. Approximately $20,000 is available for distribution to creditors.

Decision

The Commissioner is entitled to priority under section 42.

The Court of Appeal held that while "association" is defined under section 17A to include a partnership, section 17B only applies where the association has been liquidated. As the partners in this case were each adjudged bankrupt, section 17B does not apply.

REGULAR FEATURES

DUE DATES REMINDER

May 2000

5 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

22 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

31 FBT return and payment due

GST return and payment due

ACC due date for employers:

- annual 2000 ACC *residual claims levy statement* (IR 68A) and payment due

June 2000

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

30 GST return and payment due

These dates are taken from Inland Revenue's Smartbusiness tax due date calendar 2000—2001

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

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	Issues paper	*Comment deadline*
☐	**IP3168:** The public benefit test.	31 May 2000
	Interpretation statement	***Comment deadline***
☐	**IS3427:** Treaty of Waitangi settlements – GST treatment	31 May 2000
	Draft standard practice statement	***Comment deadline***
☐	**ED 0014:** Offsetting and transferring refunds	31 May 2000

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